

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of the Chairperson
Honolulu, Hawaii

March 13, 2009

State of Hawaii
Board of Land and Natural Resources
Honolulu, Hawaii

REQUEST FOR ADOPTION OF ADMINISTRATIVE SANCTIONS SCHEDULE
FOR THE CIVIL RESOURCE VIOLATIONS SYSTEM

I. ACTION REQUESTED

The Department of Land and Natural Resources (hereinafter the "Department"), Office of the Chairperson, hereby submits a request for your approval to adopt as proposed the Administrative Sanctions Schedule, attached hereto in Exhibit 1, for the purpose of providing guidance to staff when issuing violation notices under the rules of the Civil Resource Violations System of the Department.

II. DISCUSSION

A. Legal Authority

On December 12, 2008, the Board of Land and Natural Resources (hereinafter the "Board") adopted Title 13, Chapter 1 of the Hawaii Administrative Rules, which includes a Subchapter 7 on the Civil Resource Violations System (CRVS).

Since then, Chapter 13-1, HAR, has been approved as to form by the Department of the Attorney General, signed by the Chairperson, and signed off by Governor Linda Lingle for final adoption. The adopted rules were filed with the Office of the Lt. Governor on February 17, 2009, and thus became effective as of February 27, 2009.

B. Strategy for Implementing the CRVS Rules and Developing the Schedule

The Department recognizes that the CRVS is a valuable and long overdue tool for handling the Department's minor civil violation cases, and intends to implement the rules as soon as the system is in place. As the first move toward implementation, under the direction of the Chairperson and the Deputy Directors, staff has formulated an administrative sanctions schedule for those violations that could be processed through the CRVS.

The Department intends to phase in the CRVS over the next two years. The Department believes that this planned implementation is prudent and practicable given due consideration of the following factors:

- Introducing the schedule in incremental steps will encourage more meaningful discussions by staff, the resource users, and the general public, and allow more time for review by the Board.
- The system and its case management database are currently being initiated and will not be able to accommodate the caseload if too many case categories are initiated at the same time.
- This is a groundbreaking project spanning across all divisions, and shall require substantial time and efforts in the training and integration of staff in different offices.

The guideline is only for use by Department personnel in the CRVS, and is not intended and cannot be relied upon to create rights, substantive or procedural, enforceable by any party in any litigation or administrative proceedings with the Department or the State of Hawaii. The Department may act at variance with this guideline by bringing a particular case to the Board for direction and decision making.

C. The Schedule Being Proposed

With this understanding, the Department identified two divisions and case categories and proposes to include them in the initial schedule and CRVS development. These categories are chosen for different reasons, which will be briefly discussed below:

1. Violations Pertaining to the Filing of Commercial Marine License (CML) Fishing Catch Reports

One of the Department's many responsibilities is to oversee commercial fishing activities and capture reliable and accurate data on commercial fisheries. The data that the commercial fishers provide via their catch reports are invaluable to the Department's ability to monitor and manage the marine fisheries in the State. Unfortunately, about 30% of Hawaii's 2,700 commercial fishers fail to consistently file monthly catch reports. Obtaining these missing data is critical to the Department's fisheries stock management.

In light of the urgency to protect the State's marine fishery resources and the fact that delinquent catch reporting is perhaps the most prevalent violation facing the Department, staff proposes to include this case category for the immediate implementation of the CRVS. The fine amounts are set to relatively low levels to encourage timely and complete compliance.

2. Violations Pertaining to Boating Registration, Unauthorized Mooring, and Use Permit Violations

Boating registration, unauthorized mooring, and small boat harbor use permit violations are usually considered civil infractions but have been processed through the criminal

courts in the past. Their volume is relatively large with cases clogging the DOCARE and court systems every month. By routing them through the CRVS, the Department hopes for fast and easy administrative processing of these cases, which will benefit the DOCARE and the parties involved in the proceedings. In essence, these cases will be decriminalized in the CRVS with the adoption of the schedule. The fine amounts are relatively low and meet statutory provisions, administrative rules and judicial precedents.

D. Specific Powers and Authorities to Be Delegated by the Board

Several duties and responsibilities in enforcement actions previously held solely by the Board can now be delegated to the Department and Chairperson in CRVS cases under Chapter 13-1, HAR, including the power to issue a civil citation, the authority to assess administrative fines according to a schedule approved by the Board, and the authority to hold a contested case hearing.

By approving this schedule, the Board will exercise its power under §171-6(8), HRS, in granting the following additional delegations in CRVS cases:

- To the Chairperson the power to suspend a regulatory license or permit previously issued by the Board or the Department until full compliance in an enforcement action by a respondent holding the license or permit;
- To the Chairperson the power to revoke a regulatory license or permit previously issued by the Board or the Department for a period not to exceed six months in specified repeat offense cases;
- To the Department the power to deny an application for a regulatory permit, license, registration, or a renewal of such, or to impose additional conditions thereto if one is issued, during the time when the applicant is a respondent in a pending CRVS case;

III. STAFF RECOMMENDATION

That the Board of Land and Natural Resources approve the adoption of the Administrative Sanctions Schedule as proposed in Exhibit 1 for the Civil Resource Violations System of the Department.

Respectfully submitted,



BIN C. LI

Administrative Proceedings Coordinator

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson
Board of Land and Natural Resources

EXHIBIT LIST:

- Exhibit 1: Civil Resource Violations System – Administrative Sanctions Schedule (03/13/2009)

State of Hawaii
Department of Land and Natural Resources
Civil Resource Violations System

ADMINISTRATIVE SANCTIONS SCHEDULE

March 13, 2009

The following Administrative Sanctions Schedule is adopted for the Department of Land and Natural Resources to be used under the Civil Resource Violations System (CRVS).

PART 1. GENERAL PROVISIONS

Item 1-1. Objective

This Administrative Sanctions Schedule (“Schedule”) seeks to provide a Department-wide standard policy guideline for all divisions of the Department of Land and Natural Resources (DLNR or “Department”) in processing the civil resource violations so as to promote:

- Voluntary compliance of state law for the protection of Hawaii’s natural and cultural resources,
- Fair and cost-effective process for all parties involved, and
- Deterrence of violations.

Item 1-2. Legal Authority

This Schedule is adopted pursuant to §171-6 and Chapter 199D, Hawaii Revised Statutes (HRS), §13-1-70, Hawaii Administrative Rules (HAR), and other statutes and administrative rules of the Department.

Item 1-3. Applicability

The Department shall follow this Schedule when processing a civil resource violation under the CRVS pursuant to Chapter 13-1, Subchapter 7, HAR.

Item 1-4. Denial of Application for Cause

If a person is a respondent in a pending case with the CRVS, the Department may deny any application submitted by such person to the Department for any

regulatory permit, license, or a renewal of such, or may issue one with additional conditions upon full payment of the CRVS fines assessed, subject to the review by a hearing officer and the Board or its delegate if the CRVS case is properly contested.

Item 1-5. Delegation of Power to Suspend Permits and Licenses Issued by the Department

- (a) Unless otherwise provided by law or in this Schedule, if a respondent has been issued a CRVS violation notice for any violation related to a particular DLNR permit or license issued to or held by the respondent and fails to comply with the notice within 21 days of the service of the notice, the Chairperson is authorized to suspend the permit or license until the respondent comes into full compliance with all sanctions and requirements imposed through the CRVS.
- (b) A suspension of a permit or license shall mean that the permittee or licensee is not entitled to conduct any activity pursuant to the permit or license until such time as the permit or license is reinstated. Suspension of a permit or license will not affect the expiration of the term of the permit or license.
- (c) The Chairperson may reinstate a suspended permit or license for good cause at any time upon petition of the respondent.
- (d) The Division Administrator shall reinstate a suspended permit or license upon a determination that the respondent has come into full compliance with the law and all violation notices previously issued.

Item 1-6. Delegation of Power to Revoke Permits and Licenses Issued by the Department

- (a) Unless otherwise provided in this Schedule, if a respondent is found to have committed three offenses under this Schedule in the past twelve months for any violation of state law or the terms or conditions of a particular DLNR permit or license issued to or held by the respondent, the Chairperson is authorized to revoke the permit or license for a period not to exceed six month.
- (b) If a permit or license revoked under this Schedule expires before the end of the revocation period, the revocation shall continue to be enforced by denying any application for the renewal or new issuance of a permit or license until the revocation period is over.
- (c) For good cause, the Chairperson may withdraw a revocation of a permit or license.

- (d) After the revocation period, the Division Administrator may reissue a revoked permit or license upon the respondent's application for renewal and payment of the fee that the Department charges for the renewal of the permit or license.

Item 1-7. Interpretation of the Schedule

The Chairperson and a hearing officer appointed pursuant to §13-1-57, HAR, shall have the power to interpret this Schedule, subject to review by the Board.

Item 1-8. Standard Forms

- (a) The Chairperson may make minor modifications and corrections to a standard form adopted by the Board for use in the CRVS if deemed necessary.
- (b) The Department shall use the standard form of Notice of Civil Resource Violation(s), as attached in Appendix 1-A, when preparing a violation notice pursuant to §13-1-62, HAR.

Item 1-9. Effective Dates

This Schedule and its subsequent amendments shall be effective upon adoption by the Board.

Appendix 1-A. Notice of Civil Resource Violation(s)



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
NOTICE OF CIVIL RESOURCE VIOLATION(S)**



Notice No. CRVS – 09 –

Date: _____

TO RESPONDENT: Any administrative proceedings instituted pursuant to this Notice shall not preclude the State from pursuing separate criminal prosecution against you for an offense committed in the same course of conduct.

COMPLAINT: The undersigned official/officer of the Department of Land & Natural Resources (DLNR) states that the named respondent did commit the civil resource violation(s) noted below.

A. RESPONDENT INFORMATION				
Last Name / Company Name		First Name, M.I.		Sex <input type="checkbox"/> M <input type="checkbox"/> F
Street Address		City		State & ZIP (Country)
ID Type	Issued By	ID No.	Juvenile <input type="checkbox"/>	Phone

B. VEHICLE / VESSEL INFORMATION (If applicable)			
<input type="checkbox"/> Vehicle	License Plate No., VIN / Vessel Type, ID, Name	License State	Year / Make / Model / Color
<input type="checkbox"/> Vessel			

C. STATEMENT OF FACTS		
Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Violation Site: Island / Location / TMK
DESCRIPTION: (Specify any witness, evidence, damage, injury and seizure. Attach additional sheet if needed.)		

D. CITATION(S)			E. FINES ASSESSED	
No.	Authority	Civil Resource Violation	Comply in 21 days	After 21 days
1	§		\$	\$
2	§		\$	\$
3	§		\$	\$
TOTAL ADMINISTRATIVE FINE ASSESSED >>>			\$	\$

F. OTHER SANCTIONS AND REQUIREMENTS
TO RESPONDENT: In addition to any fines assessed in Section E, you must comply with the following sanctions and/or requirements within 21 days of the service of this Notice, unless a different period is provided in this section below:

G. ISSUANCE AND SERVICE		
F.I. & Last Name	Agency	Signature
Service: <input type="checkbox"/> In Person <input type="checkbox"/> Certified Mail <input type="checkbox"/> Unoccupied vehicle/vessel		Issued by APO:

H. ACKNOWLEDGEMENT
I acknowledge the receipt of this Notice. This is not an admission of responsibility.
Respondent Signature

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PART 2. DIVISION OF AQUATIC RESOURCES (DAR)

Item 2-1. Violations Pertaining to the Filing of Commercial Marine License (CML) Fishing Catch Reports (§189-3, HRS)

- (a) Each monthly catch report that is past due shall constitute a separate violation.
- (b) For a first offense of §189-3, HRS, an administrative fine of \$15 shall be assessed if the respondent fully complies with the violation notice within 21 days of the service of the violation notice. The administrative fine shall increase to \$30 if the respondent fails to fully comply within 21 days. In addition to a monetary fine, the respondent shall be required to submit an acceptable monthly catch report to the Department for the missing month. (Authority: §187A-12.5, HRS)
- (c) For a second offense within three months of a first offense within the same year of the CML, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$25, which shall be increased to \$50 if the respondent fails to fully comply within 21 days. The respondent shall also be required to turn in an acceptable monthly catch report for the missing month and all relevant sale receipts. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)
- (d) For a third offense or thereafter within three months of a second offense within the same year of the CML, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$100, which shall be increased to \$200 if the respondent fails to fully comply within 21 days. The respondent shall also be required to turn in an acceptable monthly catch report for the missing month and all relevant sale receipts. (Authority: §187A-12.5, HRS; Implementation: §13-1-71, HAR)
- (e) The Division Administrator shall review a respondent's report submitted to the Division for completeness, truthfulness and accuracy. Any report that fails the review shall constitute non-compliance.

Appendix 2-A.

DAR Administrative Sanctions Table

Item No.	Authority	Violation	No. of Offense	Fine (In 21 Days)	Fine (Late)	Other Sanctions*
2-1	HRS §189-3; HRS §187A-12.5	Failing to file a CML fishing catch report	First	\$15	\$30	Back report required
			Second	\$25	\$50	Back report required; sale receipts required
			Third	\$100	\$200	Back report required; sale receipts required

* In addition to any administrative sanctions that may be listed in this column, a regulatory permit or license issued to or held by the respondent may be subject to suspension under Item 1-5 of this Schedule and to revocation under Item 1-6.

PART 3. DIVISION OF BOATING AND OCEAN RECREATION (DOBOR)

Item 3-1. Violations Pertaining to the Registration of Vessels (§200-31, HRS)

- (a) The Department may issue a violation notice to the owner or operator of a vessel if the Department finds that the vessel has not been properly registered as required by law or that the vessel's registration has expired and not been properly renewed as required by law.
- (b) For a first offense of §200-31, HRS, an administrative fine of \$15 shall be assessed if the respondent fully complies with the violation notice within 21 days of the service of the notice. An administrative fine of \$30 shall be assessed if the respondent fails to fully comply within the 21 day period. (Authority: §200-14.5, HRS)
- (c) For a second offense, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$25, which shall be increased to \$50 if the respondent fails to fully comply with the violation notice within the 21 day period. (Authority: §200-14.5, HRS; Implementation: §13-1-71, HAR)
- (d) For a third offense or thereafter, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$100, which shall be increased to \$200 if the respondent fails to fully comply with the violation notice within the 21 day period. (Authority: §200-14.5, HRS; Implementation: §13-1-71, HAR)
- (e) In addition to a monetary fine, a respondent shall be required to register the subject vessel within the 21 day period. If the respondent fails to do so, the respondent has committed a separate violation, and the Department may issue a separate violation notice.

Item 3-2. Unauthorized Mooring of a Vessel (§200-16, HRS)

- (a) The Department may issue a violation notice to the owner or operator of a vessel if the Department finds that the vessel has been moored at a small boat harbor of the State or at an offshore mooring area without a valid use permit issued by the Department.
- (b) For an offense of §200-16, HRS, the assessment of fees and fines shall follow §13-234-5, HAR. An additional fine of \$50 shall be assessed if the respondent fails to fully comply with the violation notice within 21 days of the service of the notice. (Authority: §§200-14.5 and 16, HRS)

- (c) Impoundment: A proceeding on the impoundment of a vessel under §200-16, HRS, shall not be affected by the operation of the CRVS.

Item 3-3. Unauthorized Commercial Use of Boat Launching Ramps or Other Boating Facilities of the State (§13-234-31, HAR)

- (a) The Department may issue a violation notice to the owner or operator of a commercial trailered vessel that uses a state launching ramp, wharf, or other state boating facility except state small boat harbors without a valid permit pursuant to §13-234-31, HAR.
- (b) For a first offense, an administrative fine of \$25 shall be assessed if the respondent fully complies with the violation notice within 21 days of the service of the notice. An administrative fine of \$50 shall be assessed if the respondent fails to fully comply within 21 days. (Authority: §200-14.5, HRS)
- (c) For a second offense, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$50, which shall be increased to \$100 if the respondent fails to fully comply with the violation notice within 21 days. (Authority: §200-14.5, HRS; Implementation: §13-1-71, HAR)
- (d) For a third offense or thereafter, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$100, which shall be increased to \$200 if the respondent fails to fully comply with the violation notice within 21 days. (Authority: §200-14.5, HRS; Implementation: §13-1-71, HAR)
- (e) In addition to a monetary fine, a respondent shall be required to obtain a permit and pay all past due fees for the use of a state launching ramp, wharf, or other state boating facility within the 21 day period. If the respondent fails to do so and uses such facilities beyond that period, the respondent has committed a separate violation, and the Department may issue a separate violation notice.

Item 3-4. Unauthorized Recreational Use of Boat Launching Ramps or Other Boating Facilities of the State (§13-234-34, HAR)

- (a) The Department may issue a violation notice to the owner or operator of a trailered vessel using a state launching ramp or other state boating facility for recreational and fishing purposes without a permit pursuant to §13-234-34, HAR.
- (b) For a first offense, an administrative fine of \$15 shall be assessed if the respondent fully complies with the violation notice within 21 days of the service of the notice. An administrative fine of \$30 shall be assessed if the respondent fails to fully comply with the violation notice within 21 days. (Authority: §200-14.5, HRS)

- (c) For a second offense, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$25 if the respondent fully complies with the violation notice within 21 days of the service of the notice. An administrative fine of \$50 shall be assessed if the respondent fails to fully comply with the violation notice within 21 days. (Authority: §200-14.5, HRS; Implementation: §13-1-71, HAR)
- (d) For a third offense or thereafter, as determined pursuant to §13-1-71, HAR, a respondent shall be assessed an administrative fine of \$100, which shall be increased to \$200 if the respondent fails to fully comply with the violation notice within 21 days. (Authority: §200-14.5, HRS; Implementation: §13-1-71, HAR)
- (e) In addition to a monetary fine, a respondent shall be required to obtain a permit and pay all past due fees for the use of a state launching ramp or other state boating facility within the 21 day period. If the respondent fails to do so and uses such facilities beyond that period, the respondent has committed a separate violation, and the Department may issue a separate violation notice.

Appendix 3-A.

DOBOR Administrative Sanctions Table

Item No.	Authority	Violation	No. of Offense	Fine (In 21 Days)	Fine (Late)	Other Sanctions*
3-1	HRS §200-31; HRS §200-14.5	Failing to register a vessel	First	\$15	\$30	Registration
			Second	\$25	\$50	
			Third	\$100	\$200	
3-2	HRS §200-16; HAR §13-234-5	Unauthorized mooring of a vessel	N/A	Penalty schedule under §13-234-5, HAR	Additional \$50	Cease and desist; subject to impoundment with additional charges for fees and costs
3-3	HAR §13-234-31; HRS §200-14.5	Unauthorized Commercial Use of Launching Ramps or Other Boating Facilities	First	\$25	\$50	Application for appropriate permit; payment of fees including past due amounts
			Second	\$50	\$100	
			Third	\$100	\$200	
3-4	HAR §13-234-34; HRS §200-14.5	Unauthorized Recreational Use of Launching Ramps or Other Boating Facilities	First	\$15	\$30	Application for appropriate permit; payment of fees including past due amounts
			Second	\$25	\$50	
			Third	\$100	\$200	

* In addition to any administrative sanctions that may be listed in this column, a regulatory permit or license issued to or held by the respondent may be subject to suspension under Item 1-5 of this Schedule and to revocation under Item 1-6.