

State of Hawaii
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement
Honolulu, Hawaii

April 8, 2010

Board of Land and
Natural Resources
Honolulu, Hawaii

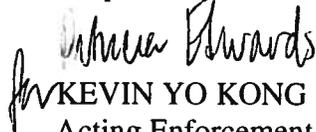
RE: Request Board Approval to Enter Into a Federal/State Recreational Boating Safety Cooperative Agreement between the Department of Land and Natural Resources and the United States Coast Guard

The purpose of this agreement is to define the relationship between the State of Hawaii and the United States Coast Guard in the conduct of recreational boating safety programs, including the mutual enforcement of laws relating to recreational boating safety on waters within the concurrent jurisdiction of Hawaii and the United States.

RECOMMENDATION:

The Division of Boating and Ocean Recreation and the Division of Conservation and Resources Enforcement request approval of this Memorandum of Agreement and ask that the Chairperson be authorized to approve the final agreement after review and approval as to form by the Office of the Attorney General. Changes recommended to DLNR by the Attorney General's Office will be incorporated into the final document in order to meet all State requirements.

Respectfully submitted,


KEVIN YO KONG
Acting Enforcement Chief

APPROVED FOR SUBMITTAL:


LAURA H. THIELEN, Chairperson
Board of Land & Natural Resources

ITEM B-1

FEDERAL/STATE RECREATIONAL BOATING SAFETY
COOPERATIVE AGREEMENT

MEMORANDUM OF AGREEMENT BETWEEN
THE GOVERNMENT OF HAWAII AND THE UNITED STATES COAST GUARD

1. **PURPOSE:** To define the relationship between the State of Hawaii, hereinafter referred to as Hawaii, and the United States Coast Guard in the conduct of recreational boating safety programs, including the mutual enforcement of laws relating to recreational boating safety on waters within the concurrent jurisdiction of Hawaii and the United States.

2. **AUTHORITY:** This agreement is authorized under the following:
 - a. 14 U.S.C. 2
 - b. 14 U.S.C. 93
 - c. 14 U.S.C. 141
 - d. 46 U.S.C. 13109(b)
 - e. 33 C.F.R. 1.01-1

3. **BASIC GUIDELINES:**
 - a. Hawaii and the United States exercise concurrent jurisdiction over those waters within the jurisdiction of Hawaii that are also waters subject to the jurisdiction of the United States, except as to matters preempted by Federal law.
 - b. Hawaii has exclusive jurisdiction over public waters within Hawaii that are not waters subject to jurisdiction of the United States or waters of the United States.
 - c. This Memorandum of Agreement (MOA) does not abrogate or limit the jurisdiction of Hawaii or the United States.
 - d. All vessels equipped with propulsion machinery, except vessels exempt under the provisions of 33 CFR 173.11 or vessels documented or required to be documented by the U. S. Coast Guard, that are principally operated on waters subject to the jurisdiction of Hawaii are subject to the numbering laws of Hawaii.
 - e. Hawaii shall, to the fullest extent practicable, endeavor to conform its laws, rules, and regulations to Federal law, subject to the Federal preemption provisions contained in 46 U.S.C. 4306. The Commandant of the Coast Guard (CG-54222) and Hawaii will promptly furnish to each other the text of any proposed or enacted law, rule, or regulation having to do with numbering, titling, equipping, or operating vessels that are the subject of this Agreement and any published interpretations of such boating rules issued by the party to clarify its position or procedures, or explain the respective agency's policy.

The address for the Commandant is:

Commandant (CG-54222)
Office of Auxiliary and Boating Safety
2100 2nd St. SW
Washington, DC 20593-0001
Telephone: (202) 372-1064
Fax: (202) 372-1932

The primary contact within Hawaii is:

Department of Land and Natural Resources
Administrator, Division of Boating and Ocean Recreation
333 Queen St., Suite 300
Honolulu, HI 96813
Telephone: (808) 587-1966
Fax: (808) 587-1977

- f. The U. S. Coast Guard and Hawaii will promptly provide each other a copy of statistical and other data pertinent to the matters agreed to herein.
- g. Nothing in this agreement shall be construed to obligate appropriated funds.
- h. Nothing in this agreement is intended to, nor shall operate to, preempt federal law, conflict with current law or regulation or the directives of the United States Coast Guard or Department of Homeland Security. If a term of this agreement is inconsistent with such authority, then that term is invalid. All other terms and conditions of this agreement remain in full force and effect.
- i. Nothing in this agreement is intended to create any right or benefit, substantive or procedural, enforceable at law against the United States or Hawaii, their agencies, their officers, or any person.

4. TERMS OF UNDERSTANDING:

a. Law Enforcement

- (1) The Hawaii Department of Land and Natural Resources (DLNR), Division of Conservation and Resources Enforcement, hereinafter referred to as DOCARE, has primary recreational boating safety law enforcement responsibility within concurrent jurisdiction areas. The primary DOCARE contact within Hawaii is:

DOCARE Enforcement Chief
Department of Land and Natural Resources
Division of Conservation and Resources Enforcement
1151 Punchbowl St.
Room 311
Honolulu, HI 96813

Main office telephone: (808) 587-0066
Fax Number: (808) 587-0080
Monday-Friday, 0800-1630, officer dispatch contact: (808) 453-6780.

- (2) The United States exercises responsibility for the enforcement of Federal laws and regulations applicable to recreational and commercial vessels on waters under both concurrent and exclusive Federal jurisdiction.
- (3) In order to provide the most effective law enforcement possible with the vessels and personnel available, and to avoid duplication of efforts in a given area at a given time, the DLNR Chairperson, through the DOCARE Enforcement Chief, and Commander, Sector Honolulu, shall coordinate law enforcement patrols on waters subject to concurrent jurisdiction.
- (4) Vessel registration violations observed by U. S. Coast Guard boarding officers and any prosecution action taken by the U. S. Coast Guard directly related thereto will be reported to the Hawaii Department of Land and Natural Resources, Division of Boating and Ocean Recreation, hereinafter referred to as DOBOR. In addition, other recreational boating violations may be referred to DOCARE at the discretion of Commander, Fourteenth U. S. Coast Guard District. The primary DOBOR contacts by county within Hawaii are:

Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Hawaii District Manager
Honokohau Small Boat Harbor
74-380 Kealakehe Parkway
Kailua-Kona, HI 96740-2704
Telephone: (808) 329-4997
Fax: (808) 326-7896

Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Kauai District Manager
Kauai Grove Executive Center
4370 Kukui Grove St., Suite 109
Lihue, HI 96766
Telephone: (808) 245-8028
Fax: (808) 246-6678

Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Maui District Manager
Maalaea Boat Harbor Road
Wailuku, HI 96793

Telephone: (808) 243-5824
Fax: (808) 243-5829

Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Oahu District Manager
4 Sand Island Access Road
Honolulu, HI 96819
Telephone: (808) 832-3520

Fax: (808) 832-3524

- (5) Violations of Federal safety standards for boats and associated equipment detected by DOCARE officers will be reported to the U. S. Coast Guard for disposition.
- (6) Violations of vessel inspection laws, or violations of Federal laws involving any vessel operated by a U. S. Coast Guard licensed operator, that are observed by DOCARE officers will be reported to the U. S. Coast Guard for appropriate enforcement action.
- (7) When a complaint is made to the U. S. Coast Guard alleging an offense that is a violation of Hawaii recreational boating laws or regulations, the U. S. Coast Guard will refer the complaint to DOCARE. Similarly, when a complaint is made to DOCARE of a violation of any vessel laws or regulations within the exclusive jurisdiction of the United States, DOCARE will refer the complaint to the U. S. Coast Guard.
- (8) The Vessel Safety Check (VSC) program of the U. S. Power Squadrons and the U. S. Coast Guard Auxiliary helps to achieve voluntary compliance with Federal and state recreational boating safety laws, particularly regarding the carriage of safety equipment. The program raises awareness of safety issues through one-on-one contact with volunteer vessel examiners. A DOCARE enforcement officer or U. S. Coast Guard boarding officer may accept a current Vessel Safety Check decal as proof of compliance with applicable safety requirements in lieu of conducting a recreational vessel examination. However, nothing in this MOA prohibits an enforcement officer from conducting a vessel examination or inspection as provided by existing authority, even if the vessel displays a current VSC decal.
- (9) A U. S. Coast Guard boarding officer who has observed a violation of a Hawaii boating law or regulation, or a DOCARE officer who has observed a violation of federal vessel inspection law or other regulations of the United States, will generally be made available to testify for Hawaii or Federal prosecution for the observed offense, or to testify in any other proceeding relating to the violation.

b. Boating Under the Influence (BUI)

- (1) A common goal of the U. S. Coast Guard and Hawaii is to rid the waterways of boaters operating under the influence of alcohol or any dangerous drug in violation of Hawaii or United States law. To this end, DOCARE and the U. S. Coast Guard agree to coordinate their Boating Under the Influence (BUI) enforcement efforts so that the most effective enforcement option is executed in each case, and each will encourage the establishment of cooperative operational procedures between U. S. Coast Guard and State law enforcement officials operating in the same area. DOCARE and the U. S. Coast Guard agree to apply best efforts in responding to requests for mutual assistance whenever an operator is suspected of operating under the influence of alcohol or drugs.
- (2) In the course of normal operations, the U. S. Coast Guard may detect a boat operator suspected of BUI within Hawaii waters where concurrent jurisdiction exists. When this occurs, the U. S. Coast Guard may administer field sobriety tests to the operator, including a chemical analysis of the operator's breath.

- (3) If the operator is believed to be under the influence of alcohol or drugs and there is no other person on board the vessel capable of operating the vessel in a safe manner, the U. S. Coast Guard will:
 - (a) Attempt to notify Hawaii DOCARE enforcement officers, terminate the voyage, bring the vessel to the nearest safe mooring where a telephone is available, and ensure an operator under the influence does not operate a vessel, in order to resolve the threat of harm to self and others. Only as operations permit and as DOCARE officers are available, DOCARE enforcement officers may take responsibility at the place of safe mooring for the operator, who is suspected to be under the influence of alcohol or drugs.
 - (b) Document the case completely for whichever jurisdictional prosecution is followed (Hawaii arrest, Federal arrest, or civil penalty).
 - (c) Discuss enforcement options available for the particular case with Hawaii enforcement officers notified above.
 - (d) If Hawaii enforcement officials proceed with prosecution, provide case documentation and appropriate witnesses to pursue prosecution.
- (4) The U. S. Coast Guard will, as operations permit, respond to calls for assistance from DOCARE with respect to BUI enforcement.
- (5) In their effort toward achieving a common goal of ridding BUI from the waterways, DOCARE will, as operations permit and as DOCARE officers are available:
 - (a) Respond to calls for assistance from the U. S. Coast Guard with respect to BUI enforcement.
 - (b) Determine the extent of assistance DOCARE can offer.
 - (c) Provide appropriate assistance within the agency's operational, logistical, and legal constraints.
 - (d) Provide local U. S. Coast Guard commands with a point of contact to facilitate and enhance mutual enforcement efforts and concerns.
- (6) DOCARE shall send quarterly reports of BUI cases it has had to the U. S. Coast Guard, Office of Recreational Boating Safety (RBS), within 30 days following the end of each quarter, beginning with January of every year for determining and describing the true picture of the number of BUI cases and incidents occurring on Hawaiian waters for the previous quarter. The reports should include the number of BUI cases occurring; whether any accidents, injuries, or fatalities occurred due to BUI operations; and a description of the vessel used; i.e. Recreational, Commercial Fishing, or Commercial Passenger.

The address for the U. S. Coast Guard, Office of Recreational Boating Safety (RBS) is:

Commander (dpi)
Fourteenth Coast Guard District
300 Ala Moana Blvd., Room 9-212
Honolulu, HI 96850-4982

Telephone: (808) 535-3424
Fax: (808) 535-3404

c. Education and Training

- (1) The parties will cooperate in public education and safety information programs. Hawaii will distribute any Federal boating publications as agreed upon through its boating safety offices. The U. S. Coast Guard will distribute any Hawaii applications and forms for motorboat numbering, Hawaii casualty report forms, and Hawaii boating pamphlets, which are made available for that purpose by Hawaii.
- (2) The U. S. Coast Guard will furnish to specifically affected Hawaii DOBOR county offices information regarding the time and place of public education courses within Hawaii that are sponsored by the U. S. Coast Guard. Every quarter, each DOBOR office will advise the U. S. Coast Guard, Office of Recreational Boating Safety (RBS), of public boating education courses being offered to the boating public within its county. The parties will cooperate in developing public boating safety education program(s) to be used within Hawaii.
- (3) The U. S. Coast Guard will make boating safety instructor training available for Hawaii law enforcement personnel through the Marine Patrol Officer Course (MPOC), the Boatswain's Mate (BMA) course, Coxswain "C" school, and the RBS Coxswain "C" course on a space available basis, provided any and all required prerequisites have been met.
- (4) If Hawaii should offer in-house training/orientation to Hawaii boating law enforcement personnel, especially concerning a new rule or specific enforcement situation, the U. S. Coast Guard, if invited by Hawaii, will endeavor to make personnel available to attend the training session(s).
- (5) Hawaii and U. S. Coast Guard agree to support and actively participate in the National Association of State Boating Law Administrators (NASBLA) meetings and conferences, the Western States Boating Administrators Association (WSBAA) meetings and conferences, U. S. Coast Guard sponsored workshops applicable to Hawaii, and meetings or conferences of other valued boating organizations held in any state or territory of the United States also applicable to Hawaii, in order to share best practices and to foster cooperation and coordination among State and Federal agencies and others who have an interest in or responsibility for boating safety.

d. Information Sharing

- (1) The U. S. Coast Guard and Hawaii recognize the need for timely and effective sharing of law enforcement, boating safety, and search and rescue information, in order to accomplish the purpose of this agreement. The U. S. Coast Guard and Hawaii agree to exchange relevant information that will further the objectives of this agreement, subject to information management requirements established by applicable laws and regulations.
- (2) Release of Information: On joint investigations, the release of information shall be in accordance with Federal and Hawaii law, policies, and procedures. Each party to this agreement will inform the other of any planned release of information related to any such investigation.

e. Boating Casualty/Accidents and Investigative Reports

- (1) Hawaii agrees to administer the casualty reporting system in accordance with 33 C.F.R. § 174.103.
- (2) For the purposes of this agreement, a boating casualty or accident is defined by 33 C.F.R. § 173.55 and generally involves any occurrence involving one or more deaths, injury requiring medical treatment beyond first aid, damage to vessels and/or property of \$2,000 or more, the complete loss of any vessel, the disappearance of a person from any vessel, or the death of a person within 24 hours of the occurrence.
- (3) DOCARE shall investigate all boating accidents on waters of joint jurisdiction involving recreational vessels.
- (4) As operations permit and as DOCARE officers are available, and at the request of the U. S. Coast Guard, DOCARE agrees to take necessary action at the scene of a non-recreational boating related accident to secure the scene, preserve perishable evidence, or provide for the safety of the public and property until the U. S. Coast Guard can physically take charge of the scene.
- (5) The U. S. Coast Guard may investigate accidents involving fatalities on vessels used on waters of joint or federal jurisdiction, including the high seas, if the case is subject to investigation under 46 C.F.R. Part 4. The U. S. Coast Guard will notify DOCARE of any Search and Rescue (SAR) or pollution case that meets the requirements of a reportable boating safety accident.
- (6) Upon receiving a request from DOCARE for information from a U. S. Coast Guard maritime casualty investigation or search and rescue operation, the U. S. Coast Guard will provide information and data to DOCARE from the Marine Information for Safety and Law Enforcement (MISLE) System, as well as investigation materials and documentation available at the time of the request. Pages containing material that is not releasable to the public will be marked "FOR OFFICIAL USE ONLY". Pages from activities that are open or incomplete will be marked "DRAFT". DOCARE will not release to the public, or to any other agency, any information or data provided by the U. S. Coast Guard that is marked "DRAFT" or "FOR OFFICIAL USE ONLY" without prior approval from the U. S. Coast Guard.

- (7) In accordance with 33 C.F.R. § 174.103, Hawaii shall review all accident and casualty reports for accuracy and completeness and shall determine the cause and circumstances surrounding each reportable accident, including whether or not alcohol or drugs were a factor.
- (8) In addition to forwarding reports required under 33 C.F.R. Part 174, Subpart D, DOBOR shall abstract accident data from each boating accident report form and enter such data into the Boating Accident Report Database (BARD) within 30 days of receipt of the initial casualty or accident report. DOBOR agrees to ensure the quality of data entry is accurate and complete.
- (9) An electronic copy of Hawaii's accident and investigative report data, including any alcohol/drug test results, and coroner's report, if applicable, shall be forwarded to U. S. Coast Guard Sector Honolulu within 30 days of receipt of the initial casualty or accident report.
- (10) Requests for Incident Investigation Reports shall be sent to:
Commandant (CG-54221)
U. S. Coast Guard
2100 2nd St. SW
Room 3100
Washington, DC 20593-0001

f. Coast Guard Auxiliary and Honolulu Sail and Power Squadron

- (1) In accordance with 46 U.S.C. § 13109 and under Section 141 of Title 14 United States Code, the services of members of the U. S. Coast Guard Auxiliary and the Honolulu Sail and Power Squadron may be used to assist Hawaii in the promotion of boating safety.
- (2) Requests for assistance of the U. S. Coast Guard Auxiliary will be initiated by the DOBOR Administrator, and will be directed to:
Commander (dpa)
Fourteenth Coast Guard District
PJKK Federal Bldg 9th Floor
300 Ala Moana Blvd.
Honolulu, HI 96850-4982

Telephone: (808) 535-3430
Fax: (808) 535-3439
- (3) Requests for assistance of the Honolulu Sail and Power Squadron will be initiated by the DOBOR Administrator, and will be directed to:
Squadron Hotline Number – (808) 255-3373
- (4) Such requests will be submitted in a timely manner to facilitate processing and coordination.

g. Regattas, Marine Parades, and other Marine Events

- (1) For the purposes of this agreement, the terms “Regatta”, “Marine Parade”, and “Marine Event” are defined as an organized water event of limited duration that is conducted according to a prearranged schedule.
- (2) The competent authority for regatta safety and security for the U. S. Coast Guard is:
Commander
U. S. Coast Guard Sector Honolulu
Waterways Management Division
400 Sand Island Pkwy
Honolulu, HI 96819
Telephone: (808) 522-8264, ext. 246
Fax: (808) 522-8271
- (3) The competent authorities for regatta and event permitting for Hawaii are the respective county DOBOR offices.
- (4) This agreement shall not be construed to alter, limit, or amend the authority of the U. S. Coast Guard Captain of the Port over U. S. navigable waters and maritime commerce, as provided by Federal laws and regulations. In addition, pursuant to 33 CFR 100.10(a), the Fourteenth District Commander, or the U. S. Coast Guard Captain of the Port reserves the right to assume sole responsibility and approval authority for any regatta or marine parade on navigable waters of the United States or waters of concurrent jurisdiction, when the U. S. Coast Guard District Commander or U. S. Coast Guard Captain of the Port deems such action to be necessary to protect the public safety, security, or interest.
- (5) As a courtesy to regatta planners and organizers, the U. S. Coast Guard will promptly refer to the DOBOR office of the appropriate County any notice of regatta event or permit application that it receives. Such notice shall not be construed to mean any acceptance or approval by the U. S. Coast Guard for the regatta, marine parade, or event.
- (6) Hawaii shall have primary responsibility for regulating all regatta and marine parade events occurring on waters of concurrent jurisdiction. Hawaii will provide U. S. Coast Guard, Sector Honolulu, Waterways Management Division, through the Port Safety and Security officer, a copy of any approved notice of event and accompanying event details as early as possible, but with a minimum period of no less than fifteen (15) days notice prior to the planned regatta. If the U. S. Coast Guard cannot be notified prior to the minimum period required, the event shall be denied, unless the U. S. Coast Guard District Commander determines in advance that good cause exists for a shorter notification period. Either agency denying any request will promptly notify the partner agency of the denial and the reasons for denying the request. All state approved high profile events, such as events taking place in a security zone, fireworks displays from barges, or other events requiring U. S. Coast Guard resources are to be marked and highlighted as “USCG Resources Required”. Hawaii will have the sole responsibility of notifying the event coordinator(s) of the final decision for submitted regatta requests. Under 33 CFR §100.10, the District Commander reserves the right to regulate any particular

regatta or marine parade when he or she deems such action to be in the public interest.

5. 5. LIAISON: Liaison shall be as follows:

FOR HAWAII:

Division Administrator
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
333 Queen St., Suite 300
Honolulu, HI 96813

Telephone: (808) 587-1966

Fax: (808) 587-1977

FOR THE UNITED STATES:

Commander (dpi)
Fourteenth Coast Guard District
PJKK Federal Bldg 9th Floor
300 Ala Moana Blvd.
Honolulu, HI 96850-4982

Telephone: (808) 535-3424 or 1-800-818-8724 Options 5, 4, 3

Fax: (808) 535-3404

6. DURATION OF AGREEMENT:

- a. This Memorandum of Agreement becomes effective when signed by all parties. The Memorandum of Agreement between Hawaii and the United States Coast Guard in the conduct of recreational boating safety programs immediately preceding this agreement is now cancelled and is replaced by this agreement.
- b. This agreement will be reviewed two years from the date signed and every two years thereafter. If the terms of the agreements remain acceptable to all parties, an endorsement, signed by all parties, will be attached. An amendment to this document can be made at anytime with mutual written agreement by all parties. Every amendment is to be attached to the document, as well as a copy provided to Commandant (CG-54222).
- c. This agreement remains in effect until canceled by either party. The canceling party must provide the other party with at least 30 days notice.

7. SIGNATURES:

**UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD**

By: _____

M. K. BROWN
Rear Admiral, U. S. Coast Guard
Commander, Fourteenth Coast Guard District

Date: _____

STATE OF HAWAII

Approved as to form:

By: _____

Attorney General of Hawaii

Date: _____

DEPARTMENT OF LAND AND NATURAL RESOURCES

By: _____

LAURA H. THIELEN
Board Chair

Date: _____