

Department of Land and Natural Resources

Division of Boating and Recreation

Amendments

Amendments to Parts I, II and III

Hawaii Administrative Rules

1. Section 13-230-8 Hawaii Administrative Rules, is amended to read as follows:

§13-230-8 Definitions.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has been determined by the department not to [exhibit any activity on board] have exited the assigned small boat harbor facility [or movement from its assigned berth] or assigned offshore mooring at least once within a ninety-day period, or cannot be made ready for sea upon thirty days notice to the owner.

"Temporary mooring" means mooring pursuant to a temporary ~~mooring~~-use permit or mooring without a use permit. Calculation of the cumulative period for temporary mooring shall include both types of mooring.

2. Section 13-230-27 Hawaii Administrative Rules, is amended to read as follows:

Section 13-230-27 Permittee required to report change of residence.

- (a) A resident permittee who subsequently takes up residence outside of the state and continues to moor the permittee's vessel in a state small boat harbor shall advise the department in writing within seven days of the permittee's change of residence. In such a case, nonresident fees and charges shall be payable commencing at the first residence determination date following the change of residence. (b) A permittee who takes up residence outside of the state or a different island and continues to moor the permittees vessel at a small boat harbor shall have a caretaker that resides on the same island as the permissess's vessel is moored. The permittee shall provide the name, phone number, and address of the care-taker, the care-taker in the absence of the permittee shall be able to operate the permittee's vessel, respond to emergencies concerning the permittee's vessel i.e., sinking, fire, adverse weather conditions etc. [Eff 2/24/1994] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

3. Section 13-231-3 Hawaii Administrative Rules, is amended to read as follows:

§13-231-3 Use permits; issuance.

. (a) "Use permit" as used in these rules means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring and state ocean waters, as evidenced by the fully executed "agreement" described in section 13-231-2. Corporations are prohibited from obtaining a recreational mooring permit. The department may issue the following types of use permits:

- (1) Mooring permit. A use permit which authorizes the docking, mooring, or anchoring of a vessel at a small boat harbor or offshore mooring area.
 - (A) Regular mooring permit. A use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period not to exceed one year from the date of issuance.
 - (B) Temporary mooring permit. A non-renewable use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period of thirty days or less from the date of issuance.
- (2) Harbor resident permit. A use permit which authorizes use of a state small boat harbor by the permittee for the purpose of residing on board a vessel authorized by the department to be used as a principal place of habitation while moored in Ala Wai or Ke'ehi boat harbor or in Ke'ehi Lagoon.
- (3) Stay aboard permit. A use permit which authorizes use of a state small boat harbor or offshore mooring by the permittee for the purpose of staying aboard a vessel while moored in a state small boat harbor or at an offshore mooring or at anchor.

- (4) Vacation permit. A use permit which authorizes use of the small boat harbor or an offshore mooring area by the permittee for the purpose of using a vessel as a vacation site while moored in a state small boat harbor or at an offshore mooring or at anchor.
- (5) Principal habitation permit. A use permit which authorizes use of the small boat harbor by the permittee for the purpose of using the vessel as a principal place of habitation while moored in Ala Wai or Ke'ehi boat harbor or in the Ke'ehi Lagoon mooring area.
- (6) Living aboard permit. A use permit which authorizes use of a small boat harbor by living aboard a vessel at a small boat harbor other than Ala Wai or Ke'ehi boat harbor.
- (7) Commercial permit. A use permit which authorizes the owner of a commercial vessel to use a small boat harbor and its facilities or an offshore mooring for commercial activities as specified in the permit.
- (8) Storage permit. A use permit which authorizes use of a small boat harbor storage area for vessels or other items on land at a small boat harbor.
- (9) Miscellaneous permit. A use permit which authorizes use of a small boat harbor or an offshore mooring area for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.

(b) Use permits shall be issued only after the department has determined that all applicable laws have been complied with and that all fees and charges have been paid.

(c) The issuance of any use permit by the department shall not create a property interest in favor of the permittee to an unrestricted use of state small boat harbors, facilities or state ocean waters.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-6) (Imp: HRS §§200-2, 200-3, 200-6)

[Eff]

4. Section 13-231-4, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

§13-231-4 Use permits; part-time or intermittent occupancy.

[(b)No use permit shall be issued authorizing temporary mooring of same vessel within the same small boat harbor or offshore mooring area for a cumulative period of more than ninety days in the same calendar year, provided that for Ala Wai small boat harbor the cumulative period shall not exceed one hundred and twenty days if space is available at the designated transient mooring area] and the temporary mooring permit is issued in accordance with section 13-231-85.] (b) Temporary mooring of a vessel within the same small boat harbor or offshore mooring area shall not exceed a cumulative period of more than one hundred and twenty days in the same calendar year per vessel, except as provided in section 13-256-73.11 for Heeia Kea small boat harbor. Temporary mooring permits shall be issued in accordance

with section 13-231-85. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-6) (Imp: HRS §§200-2, 200-3, 200-6) [Eff]

5. Section 13-231-6 Hawaii Administrative Rules, is amended to read as follows:

§13-231-6. Revocation of use permit.

(a) If after notice and lapse of reasonable period of time, the permittee fails to remedy any breach of the duties, covenants or conditions of the permit or to desist from violating or permitting violation of these rules, the department may revoke the permittee's use permit.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or willful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) Delinquency in excess of thirty days in the payment of any fees owed to the department shall result in automatic suspension of the any use permit, and delinquency in excess of sixty days shall result in automatic expiration of the use permit. All notification shall be sent by certified mail, return receipt requested to the last known address of the permittee. (Auth: HRS §200-10) (Imp: HRS §200-10)

6. Section 13-231-13 Hawaii Administrative Rules, is amended to read as follows:

§13-231-13 Joint and several liability; non-transferability of use permit.

(a) All persons whose signatures have been affixed to any agreement with respect to a vessel shall be jointly and severally liable for the full performance of such agreement. No use permit shall be transferable, so that whenever a permittee parts with possession or transfers the title to or interest in the vessel or corporation identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner shall have no right to use the space covered by the use permit.

(b) Upon written application to and approval by the department:

(1) The original permittee may retain the mooring space under the permittee's permit; provided that within seven (7) days the permittee shall notify the department of the transfer and within thirty days the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth and pays the appropriate fees therefor;

- (2) A principal owner may retain a berth if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- (3) An owner may retain the berth if an interest in a vessel is transferred to the owner's spouse or other immediate family member;
- (4) The spouse of a permittee may retain all small boat harbor use permits held by the permittee upon the death of the permittee, provided that the permittee's will or a court decree states that the spouse shall be awarded ownership of the vessel identified in the mooring permit; or
- (5) The department may extend the deadline for the permittee to place a new vessel in the assigned berth if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.

(c) Notwithstanding the requirements of subsection (a), the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the permittee holds a valid commercial permit or is engaged in commercial fishing as a primary means of livelihood and notifies the department in writing of an intended change in ownership. The transfer of all small boat harbor use permits from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the foregoing change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall be limited to the permittee, any co-owners of the vessel and the members of the immediate families of the permittee and co-owners;
- (2) The permittee shall apply for the reissuance of the commercial permit, mooring permit and any other small boat harbor use permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and
- (3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: §§200-2, 200-9, 200-10)

7. Section 13-231-26 Hawaii Administrative Rules, is amended to read as follows:

§13-231-26 Use of a vessel as a place of principal habitation.

(a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi boat harbor may use that vessel as a place of principal habitation if the owner has applied for and secured:

- (1) A principal habitation permit; and
- (2) A harbor resident permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility;
- (4) The area leased to Ala Wai Marine, Ltd.; and
- [(5) The moorings adjacent to the breakwater.]

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit and harbor resident permit issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse of each, and their legal dependents may be issued a harbor resident permit.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi boat harbor shall be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its moorings shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

[Eff]

8. Section 13-231-45 Hawaii Administrative Rules, is amended to read as follows:

§13-231-45 Vessel inspections.

(a) "Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with subsections (h) and (i). "Approved vessel inspector" as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit. An inspection conducted by an approved vessel inspector is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and shall be valid for a period of [only one] two years. The inspections conducted by DOBOR harbor agents shall also be valid for a period of two years.

(b) Before a regular mooring permit is issued or renewed, the vessel owner shall complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense, signed by an approved marine surveyor certifying the surveyor has inspected the vessel and considers it to fulfill the minimum requirements described in the exhibit at the end of this chapter entitled "vessel inspection report". The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine survey have been corrected prior to issuing a mooring permit. All vessels owners shall demonstrate to the department that their vessel is capable of navigating beyond the confines of the harbor.

(c) Commercial vessels carrying more than six passengers for hire are exempted from the provisions of subsection (b) when evidence of a current Coast Guard certificate of inspection is presented.

(d) Owners of vessels failing the vessel inspection shall have thirty days to correct deficiencies and complete the inspection. Failure to do so will preclude re-issuance of the use permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time is reasonable and essential due to the necessity of replacing essential parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.

(f) Owners of vessels that fail the vessel inspection may contest the decision at an arbitration board as established in section 200-13, Hawaii Revised Statutes. The costs of the arbitration shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a small boat harbor in accordance with these rules. No additional time allowance for the correction of deficiencies will be granted following arbitration and the vessel shall be removed from the harbor. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department, pursuant to this section shall be as prescribed in section 13-234-29.

(h) A person who desires to become an approved marine surveyor shall apply to the department upon a form furnished by the department and pay the application fee prescribed in section 13-234-30.

(i) An application to become an approved marine surveyor shall not be accepted by the department unless the applicant is engaged wholly or partly in the business of performing marine surveys for gain or compensation and the person's surveys are acceptable to at least one insurance company or surety company authorized to do business in the State[.], and is a member of a nationally recognized marine surveyor organization as approved by the department.

(j) An approved marine surveyor permit shall be valid for a period of three years from date of issuance. The department reserves the right to revoke any approved marine surveyor permit at any time prior to the expiration of the permit.

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor agent;
- (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the harbor or mooring area and maneuvering into and out of the assigned berth;
- (3) A finding that the vessel and all systems are in good material and operating condition;
- (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met; and

Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and are adopted and incorporated herein by reference.

(l) A marine survey shall be required for any vessel which has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially affect the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the small boat harbor or offshore mooring area in which it is moored. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Ke'ehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

9. Section 13-231-57 Hawaii Administrative Rules, is amended to read as follows:

§13-231-57 Berthing or using commercial vessels in state small boat harbors; signs and other structures.

(a) This section is applicable in all state small boat harbors and boat launching facilities except Ala Wai and Keehi small boat harbors. This section is applicable to all commercial vessels including commercial fishing vessels engaged in charter fishing or any other trade or business; provided that commercial fishing vessels are

exempt from this section if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.

(b) No commercial vessel shall load or discharge passengers or cargo or engage in any other commercial activity at any small boat harbor unless the owner possesses a regular mooring permit and a valid commercial permit issued by the department in accordance with this chapter. The foregoing restrictions shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.

(c) Notwithstanding subsection (b), the department may authorize the owner of a transient or visiting commercial vessel engaged in a trade or business elsewhere to:

- (1) Carry passengers for hire in the above listed small boat harbors if the vessel will be so engaged as a registered participant in a bona fide fishing tournament;
- (2) While on cruise, off-load and load passengers in the above listed small boat harbors if those passengers are embarked elsewhere or bound for another destination; provided that a reservation for a berth was made in advance and space is available; or
- (3) Embark and disembark passengers occasionally and infrequently, not exceeding [eight] twenty four times in a calendar year on a special charter when approved not less than seven days in advance of the voyage.

(d) A use permit shall automatically expire upon the department's notice to vacate, if any vessel granted a temporary mooring permit under section 13-231-57(c)

engages in a trade or business contrary to the provisions of the permit issued for the vessel while authorized to be moored in the above listed small boat harbors.

[Eff 2/24/94] (Auth: HRS §200-2, 200-4) (Imp: HRS §§200-2, 200-4)

[Eff]

10. Section 13-231-58 Hawaii Administrative Rules, is amended to read as follows:

§13-231-58 Limitations on the number of commercial permits for vessels assigned permanent moorings.

(b) The total number of valid commercial permits which may be issued for vessels assigned permanent mooring in the following small boat harbors are:

	<u>Harbor</u>	<u>Number of commercial permits</u>
(1)	Ala Wai	0
(2)	Keehi	0
(3)	Heeia Kea	7
(4)	Haleiwa	[8] <u>20</u>
(5)	Waianae	15
(6)	Nawiliwili	10
(7)	Port Allen	12
(8)	Kikiaola	3
(9)	Kukuiula	4
(10)	Hana	2
(11)	Kaunakakai	9
(12)	Lahaina	30
(13)	Maalaea	29
(14)	Honokohau	120
(15)	Kawaihae (north)	4
(16)	Kawaihae (south)	14
(17)	Kailua-Kona	3
(18)	Keauhou	6
(19)	Wailoa	20
(20)	Reed's Bay	3

. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

11. Section 13-231-59 Hawaii Administrative Rules, is amended to read as follows:

§13-231-59 Limitations on commercial permits for vessels moored elsewhere.

(a) The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding section 13-231-57, the department may issue a limited number of commercial permits to owners of vessels moored elsewhere for use of small boat harbor facilities. The number and categories of those commercial permits shall be based on the physical capacity of the small boat harbor facilities to accommodate the additional volume of activity expected to be generated by the additional permits, and shall be determined by the department on a case-by-case basis for each small boat harbor, subject to the limitations listed in subsection (b).

(b) No commercial vessel moored elsewhere shall use any small boat harbor facilities for commercial purposes unless the owner of the commercial vessel moored elsewhere has been issued a commercial permit for that vessel, or the vessel is exempt from commercial permit requirements under the provisions of subsection 13-231-57(c) or as otherwise permitted by the department. "Commercial purposes" as used in this subsection includes the staging, loading and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial permits for vessels moored elsewhere which may be issued for each small boat harbor shall be as follows:

- (1) Maalaea harbor: twenty;
- (2) Lahaina harbor: sixteen;
- (3) Manele and Heeia-Kea harbors: six each, except that for Heeia-Kea, commercial permits shall be limited to vessels having passenger categories I and II as listed in subsection (d), and may include the use of an auxiliary platform in an offshore operating area for which the owner has been issued a permit by the department; provided

that there shall be no increase in the level of commercial activity by the permittee, as of June 19, 1990, the effective date of Act 208, SLH 1990; and
- (4) All other small boat harbors: no limit. These limits notwithstanding, all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met.

(d) Each commercial permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-carrying capacity of the vessel named in the permit:

- (1) Category I- one to twenty-four passengers
- (2) Category II - twenty-five to forty-nine passengers
- (3) Category III - fifty to seventy-four passengers
- (4) Category IV - seventy-five to ninety-nine passengers
- (5) Category V - one hundred to one hundred forty-nine passengers

(e) No commercial use permit for vessels moored elsewhere shall be issued for any vessel with a passenger-carrying capacity in excess of one hundred forty-nine, and no existing commercial permit issued for a vessel moored elsewhere shall be issued a permit whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the [original] current permit was assigned.

(f) The department reserves the right to impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of small boat harbor facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda to existing commercial permits issued by the department. Refusal of a permittee to accept or comply with additional restrictions implemented in this manner shall be cause for immediate termination of the use permit.

(g) Use of any vessel in violation of this section may be cause for termination of all small boat harbor use permits issued to the owner by the department.[Eff]

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

12. Section 13-231-61 Hawaii Administrative Rules, is amended to read as follows:

§13-231-61 Reissuance of Commercial use permits.

(a) The department may reissue a commercial use permit provided that:

(1) The gross receipts during the twelve-month period under the commercial permit from which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:

- (A) Vessel used for bare boat (demise)
 - Charters and charter sailboats \$7,000

- (B) Vessels registered by the state or documented by the U.S. Coast Guard to carry six passengers or less,
Including charter fishing boats \$15,000
- (C) Vessels certified by the U.S. Coast Guard to carry seven to twenty-five passengers \$45,000
- (D) Vessels certified by the U.S. Coast Guard to carry twenty-five to forty-nine passengers \$85,000
- (E) Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers \$125,000
- (F) Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers. \$250,000
- (G) Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above \$7,000
- (H) Water Sports Equipment Rentals \$7,000

or

- (2) The permittee applies to the department in writing for reissuance of the permittee's commercial use permit and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel as prescribed in this subsection was due to:
- (A) The sinking, loss, or destruction of the permittee's vessel;
- (B) The permittee's vessel being inoperative in excess of sixty days due to disability of the permittee;
- (C) The permittee's vessel was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated or

(D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial use permit would be fair and warranted, and the application for reissuance is approved by the department; and

(3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No commercial use permit shall be issued to any permittee whose commercial permit has been terminated for cause, provided that the permittee may apply for a new commercial permit after one year has expired from date of termination of the commercial permit, all fees and charges owing the State have been paid, and the permittee is in compliance with federal and state laws.

(c) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain use permits upon the transfer of any interest in that corporation. [Eff2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

13. Section 13-231-67 Hawaii Administrative Rules, is amended to read as follows:

§13-231-67 Limitation on commercial permits issued for the use of state boat launching ramps.

(c) The maximum number of commercial permits which may be issued for the use of the following launching ramps are:

- | | | |
|-----|--------------|---|
| (1) | Ala Wai | - none |
| (2) | Keehi | - none |
| (3) | Heeia Kea | - [7] <u>as provided for in section 13-256-73.1</u> |
| (4) | Maunalua Bay | - 5 |
| (5) | Mala | - 15 |
| (6) | Kihei | - 15 |
| (7) | Manele | - 3 |
| (8) | Kaunakakai | - 5 |
| (9) | Kukuiula | - 6 |

(10) <u>Lahaina</u>	- <u>none</u>
(11) <u>Maalaea</u>	- <u>none</u>
(12) <u>Kikiaola</u>	- <u>5</u>
(13) <u>Nawiliwili</u>	- <u>5</u>
(14) <u>Port Allen</u>	- <u>5</u>
(15) <u>Waikaea</u>	- <u>2</u>
(16) All others	- no limit.”

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39)
 (Imp: HRS §§220-2, 200-3, 200-4, 200-10, 200-39)

14. Section 13-232-8 Hawaii Administrative Rules, is amended to read as follows:

§13-232-8 Marine toilets - restrictions.

(a) No toilet on a vessel or contrivance shall be operated so as to discharge any untreated sewage directly or indirectly into the waters of a small boat harbor.

(b) No person on a vessel or contrivance equipped with a toilet shall use, or permit the use of that toilet on the waters of a small boat harbor unless the toilet is equipped with facilities in good operating condition that will adequately treat, hold, incinerate, or otherwise handle sewage in a manner that is capable of preventing water pollution. A water pollution control device that is acceptable for the purposes of this section is any device determined by the director of the department of health to be effective in arresting the possibility of pollution from sewage passing into or through a toilet aboard a vessel or contrivance.

(c) No person shall live on board a vessel or contrivance in any small boat harbor unless it contains one or more toilets equipped with water pollution control devices in good operating condition and of a type acceptable to the director of health; provided that, the department may permit the operator or other persons to live on board a vessel not equipped with a toilet and acceptable water pollution control device for a period not to exceed the period described in sections 13-231-21 and 13-231-22 if:

- (1) The vessel is from another state or a country other than the United States and is temporarily using the waters of this State or if the vessel has a home port in the state but is visiting another small boat harbor;
- (2) Adequate on-shore toilet facilities are readily available for the use by the persons living on board; and
- (3) A toilet aboard the vessel is not used while in the small boat harbor.

"Readily available" as used in this section means within a walking distance of not more than two hundred feet.

d) Any harbormaster of a state operated small boat harbor, for the purpose of monitoring illegal discharge of human waste where it is prohibited by law may board any vessel, if the owner is aboard, for the purpose of inspecting the marine sanitation devise for proper operation and placing a dye tablet in the holding tank. Any dye released into harbor waters from a monitored vessel shall be considered proof of non-compliance and constitute grounds for immediate revocation of the owner's mooring permit. [Eff]

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

15. Section 13-234-1 Hawaii Administrative Rule, is amended to read as follows:

§13-234-1 General statement.

(a) The fees and charges relative to the use of state property and facilities at a small boat harbor are:

- (1) Calculated to produce an amount at least sufficient to pay the expenses of operating, maintaining, and managing the facilities and services and the cost including interest, of amortizing capital improvements for boating facilities appropriated after July 1, 1975, including, but not limited to, berths, slips, and related accommodations, exclusive of the costs of constructing, operating, and maintaining general navigation channels, protective structures, and aids to navigation; and
- (2) Fixed with due regard to the primary purposes of providing public recreational facilities and promoting the fishing industry. See sections 200-2 and 200-08, Hawaii Revised Statutes.

(b) Nothing contained in this subchapter shall be construed to limit the authority and power of the department to [waive any fees] waive or reduce any late charges and interest that may be incurred by a permittee, or to assess any reasonable fees and charges in addition to those specifically provided in this subchapter for trivial or infrequent uses of state property, facilities, or services; if fees for the uses are not contained herein; or as the circumstances may warrant.

(c) The acceptance of payment, or billings there for, shall not waive the nature of trespass or ratify or permit illegal mooring, docking, storage or parking.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

16. Section 13-234-15 Hawaii Administrative Rule, is amended to read as follows:

§13-234-15 Waiver of fees.

[The department reserves the right to waive or reduce any fees or charges contained in this chapter.] The department reserves the right to waive or reduce late charges and interest that may be incurred by a permittee.

[Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-4, 200-7, 200-12)

17. Section 13-243-5 Hawaii Administrative Rules, is repealed.

Section 13-243-5 Recognition of marine examination decals.

[§13-243-5 Recognition of marine examination decals. In order to free enforcement personnel for other inspections and duties and in recognition of the exacting requirements of the Courtesy Marine Examination, enforcement personnel shall not stop and board any vessel properly displaying a valid United States Coast Guard Auxiliary Courtesy Marine Examination decal for the purpose of determining compliance with this chapter except upon reasonable belief that the vessel is being operated in violation of these rules or other regulations or laws. [Eff 2/24/94; R]

18. Section 13-244-19 Hawaii Administrative Rules, is amended to read as follows:

13-244-19 Authorization required to hold regatta, marine parade, boat race or exhibition.

- (a) Definition of terms used in this chapter. “Regatta” or “marine parade” means an organized water event of limited duration which is conducted according to a prearranged schedule.
- (b) Authorization required; submission of application.
 - (1) Any person or organization planning to hold a regatta or marine parade which, by its nature, circumstances or location, will introduce extra or unusual hazards to the safety of persons or property on the waters of the State shall submit an application to the

chairperson of the board of land and natural resources or the person(s) designated by the chairperson. No person shall hold such a regatta or marine parade, unless the authorization of the chairperson, or the person(s) designated by the chairperson, has been secured, except that the chairperson's authorization is not required if prior authorization has been secured from the United States Coast Guard. Examples of conditions which are deemed to introduce extra or unusual hazards to the safety of life include, but are not limited to: an inherently hazardous competition, the customary presence of commercial or pleasure craft in the area, any obstruction of navigable channels which may reasonably be expected to result, and the expected accumulation of spectator craft.

(2) Where the events are to be held regularly or repeatedly in a single area by an individual or organization, the chairperson or the person(s) designated by the chairperson, may subject to conditions set from time to time by the department, grant a permit for the series of events for a fixed period of time, not to exceed one year.

(3) The application and all required documents listed on the application, shall be submitted no less than thirty days prior to the start of the proposed event. If the application is not received no less than thirty days prior to the start of the proposed event, the application may be rejected.

(4) The application shall [include the following details:] be completely filled out and include the following:

[(A) Name and address of sponsoring organization.

(B) Name, address and telephone number of person or persons in charge of the event.

(C) Nature and purpose of the event.

(D) Information as to general public interest.

(E) Estimated number and type of watercraft participating in the event.

(F) Estimated number and type of spectator craft.

(G) Number of boats being furnished by sponsoring organization to patrol event

(H) Time schedule and description of events.]

[(I) (A) A detailed and readable section of a chart or scale drawing showing the boundaries of the event, various water courses or areas to be utilized by participants, officials and spectator crafts. (B) The applicant shall pay a \$25.00 application and processing fee for each event at the time the application is submitted.

(C) A general liability insurance certificate issued to the sponsoring organization, which shall name the State of Hawaii as an additional insured. The liability insurance policy limits shall be in accordance with Section 13-231-65.

An authorization by the chairperson or the person(s) designated by the chairperson, does not exempt a person from holding an event from compliance with applicable federal law.

[Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

19. Section 13-251-1 Hawaii Administrative Rules, is repealed:

[§13-251-1 Permits.

Catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators shall have an operator permit.

(a) No person shall navigate a catamaran or canoe as catamaran captain, canoe captain, or canoe second captain on a vessel carrying passengers for hire, or operate as a surfboard or sailboard instructor for compensation in or upon Waikiki or Kaanapali ocean waters unless the person has a valid permit under this part.

(b) No person shall navigate a commercial motorboat in or upon Kaanapali ocean waters unless the person has a valid permit under this part.

(c) No permit is required for captains navigating catamarans carrying passengers for hire who, while cruising, enter Waikiki or Kaanapali ocean waters other than restricted waters described in sections 13-251-57 and 13-251-58, and do not load or unload passengers in or on Waikiki or Kaanapali ocean waters or shores. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

20. Section 13-251-2 Hawaii Administrative Rules, is repealed:

[§13-251-2 What persons shall not receive permits.

The department shall not issue an operator permit to any person:

- (1) Who is under the age of twenty-one years for a catamaran captain or commercial motorboat operator, or under the age of twenty years for a canoe captain, or under the age of eighteen for a canoe second captain, or surfboard or sailboard instructor;
- (2) Whose permit has been suspended or revoked, while the suspension or revocation is in effect;
- (3) Who is a habitual drunkard, or a habitual user of narcotic or other drugs, to a degree which renders the person incapable of safely operating as a permittee;
- (4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency as provided by law, such as to render the person incapable of safely operating as a permittee;
- (5) Who is required by this chapter to pass an examination or re-examination and has failed to do so; or

- (6) Who the chairperson has good cause to believe is incapable of operating as a permittee without substantially jeopardizing public safety and welfare. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

21. Section 13-251-3 Hawaii Administrative Rules, is amended to read as follows :

§13-251-3 Special restrictions.

[(a)] The department, upon issuing [an] a [operator] commercial use permit, shall indicate there-on the class of permit so issued and shall appropriately examine each applicant's qualification's according to the class. The applicant shall insure that the following requirements are met;

[(b)] (a) [The department shall not issue a catamaran captain permit unless the applicant] All operators of a vessel certified to carry passengers for hire has a valid Coast Guard license to operate in State ocean waters .[sailing catamarans carrying passengers for hire,. and has a minimum of ninety working days catamaran sailing experience in Waikiki ocean waters, Zone A, or Kaanapali ocean waters, as appropriate, attested to by two persons holding valid catamaran captain permits issued by the department.]

[(c)] (b) [The department shall not issue a canoe captain permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and] [t]he applicant and its employees [has a minimum of three years experience in canoe handling,] possesse[s] a current Red Cross advanced life saving certificate or equivalent[,] and knows elementary first aid[.], [and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's physical examination made no earlier than thirty days prior to the effective date of the permit.]

[(d)] The department shall not issue a canoe second captain's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of eighteen months experience in canoe handling, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.]

[(e)] The department shall not issue a senior surfboard instructor's permit or a sailboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard or sailboard riding experience, as appropriate, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.]

[(f)] The department shall not issue a primary surfboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard riding experience, possesses a current Red Cross advanced life saving certificate (on application for original permit only), knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.]

[(g) A primary surfboard instructor's permit for Waikiki shall entitle the permittee to instruct only in waters five feet or less in depth at mean low water and not in the outer surf break area. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

22. Section 13-251-4 Hawaii Administrative Rules, is repealed:

[§13-251-4 Learner steersperson permits.

Any person who is at least seventeen years of age may apply to the department for a learner steersperson permit. After the applicant has passed all parts of the applicable examination other than a canoe surfing test, the department may issue to the applicant a learner steersperson permit which shall entitle the applicant to navigate a canoe, registered by the department and not carrying passengers for hire, in or upon Waikiki or Kaanapali ocean waters as appropriate. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

23. Section 13-251-5 Hawaii Administrative Rules, is repealed:

[§13-251-5 Application for operator permit.

(a) Every application for an operator permit shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass any examination within a period of six months from the date of application.

(b) Every application shall include the full name, aliases, date of birth, sex, and resident address of the applicant and briefly describe the applicant, and the applicant's experience related to the vessel, surfboard, or sailboard the applicant wishes to use or operate. The application shall state whether the applicant has been issued a permit and, if so, when and whether the permit has ever been suspended or revoked, or whether an application has ever been refused and, if so, the date and reason for the suspension, revocation, or refusal. Two recent photographs shall be attached to the application.[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

24. Section 13-251-6 Hawaii Administrative Rules, is repealed:

[§13-251-6 Examination of applicants.

(a) The department shall examine every applicant for an operator permit, except as otherwise provided in this section. The examination shall include a test of the applicant's knowledge of this chapter and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of catamarans, canoes, surfboards, sailboards, or commercial motorboats, as the case may be, and such further written, physical, and mental examination as the department feels is necessary to determine the applicant's fitness to operate a catamaran, canoe, surfboard, sailboard, or motorboat safely upon the Waikiki or

Kaanapali ocean waters as appropriate; provided that applicants for learner steersperson permits shall not be required to pass the canoe surfing test.

(b) The department may issue without examination an operator permit to any person applying therefore who furnished evidence satisfactory to the department that the person is not disqualified under this chapter and that the person has previously been issued an operator permit by the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

25. Section 13-251-7 Hawaii Administrative Rules, is repealed:

§13-251-7 Operator permits issued to catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators.

(a) An operator permit when issued by the department shall bear a distinguishing number assigned to the permit, the full name, date of birth, residence address, and brief description of the permittee, and a space upon which the permittee shall sign in ink the permittee's name immediately upon receipt of the permit. No permit shall be valid until it has been so signed by the permittee.

(b) Every operator permit shall bear the permittee's photograph showing the permittee's facial features, which shall be furnished by the permittee. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

26. Section 13-251-8 Hawaii Administrative Rules, is repealed:

§13-251-8 Operator permit to be carried on board and exhibited upon demand.

Every permittee shall have the operator permit in the operator's immediate possession or at a place for safekeeping in the immediate vicinity at all times when operating as a permittee and shall display the same upon demand of a lifeguard, peace officer, or representative of the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

27. Section 13-251-9 Hawaii Administrative Rules, is repealed:

§13-251-9 Duplicate certificate.

In the event that an operator permit issued under this subchapter is lost or destroyed, the permittee may obtain a duplicate or substitute thereof, upon payment of the required fee, as provided by chapter 13-253, obtain a duplicate or substitute thereof. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

28. Section 13-251-10 Hawaii Administrative Rules, is repealed:

[§13-251-10 Expiration of operator permit.

Every operator permit shall expire three years after its issuance. Application for a new permit shall be made as provided in section 13-251-5. The department may in its discretion, as provided in section 13-251-6, waive examination for renewal of a permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

29. Section 13-251-11 Hawaii Administrative Rules, is repealed:

[§13-251-11 Records to be kept by the department.

(a) The department shall file every application for a permit received by it and shall maintain suitable records concerning permits issued.

(b) The department shall file upon receipt, all accident reports and abstracts of records of convictions for violating this chapter. The department shall also maintain convenient records or make suitable notations so that an individual record of each licensee, showing the licensee's convictions and accidents, shall be readily ascertainable and available for the consideration by the department upon any application for renewal of license or permit and at other suitable times. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

30. Section 13-251-16 Hawaii Administrative Rules, is repealed:

[§13-251-16 Authority of department to revoke operator permit.

(a) The department may revoke any operator permit upon determining that the permittee failed to give the required or correct information in the application, committed any fraud in making such application, or repeatedly violated section 13-251-17.

(b) Upon revocation, the department shall immediately notify the permittee in writing and upon written request shall afford the permittee full and reasonable opportunity for a hearing. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

31. Section 13-251-17 Hawaii Administrative Rules, is repealed:

[§13-251-17 Authority of department to suspend operator permit.

(a) The department may suspend the operator permit of a catamaran captain upon sufficient evidence that the permittee does not have a valid Coast Guard license.

(b) The department may suspend the operator permit of a canoe captain, second captain, surfboard instructor, sailboard instructor, operator of a commercial motorboat or learner steersperson upon sufficient evidence that the permittee:

- (1) Has been convicted of violations of this chapter in such frequency and seriousness as to indicate a disregard for the safety of other persons on the waters;
- (2) Is incompetent to operate canoes, surfboards, sailboards or motorboats for charter or rent, as the case may be;
- (3) Has permitted an unlawful or fraudulent use of the permittee's license or permit; or
- (4) Has violated this chapter.

(c) Upon suspension, the department shall immediately notify the permittee in writing and upon a written request

shall afford the permittee full and reasonable opportunity for a hearing. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

32. Section 13-251-18 Hawaii Administrative Rules, is repealed:

[§13-251-18 Department may require re-examination.]

The department upon written notice of at least five days to the permittee, may require the permittee to submit to an examination if the department has good cause to believe that a permittee is incompetent or otherwise not qualified to retain an operator permit. Upon the conclusion of the examination, the department shall take action as may be appropriate and may suspend or revoke the permit of that person or may issue a permit subject to restriction. Refusal or neglect of the permittee to submit to this examination shall be grounds for suspension or revocation of the permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

33. Section 13-251-19 Hawaii Administrative Rules, is repealed:

[§13-251-19 Period of suspension or revocation.]

(a) The department shall not suspend an operator permit for a period of more than one year, except as provided under section 13-251-27.

(b) Any person whose operator permit had been revoked shall not be entitled to have that permit or privilege renewed or restored unless the revocation was for a cause which has been remedied, except that after one year from the date on which the revoked permit was surrendered to and received by the department, the person may apply for a new permit as provided by this chapter. However, the department shall not issue a new permit unless it is satisfied, after investigation, with the character and ability of the person. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

34. Section 13-251-20 Hawaii Administrative Rules, is repealed:

§13-251-20 Surrender and return of operator permit.

The department, upon suspending or revoking an operator permit, shall require that the permit be surrendered to and be retained by the department, except that at the end of the suspension, the surrendered permit shall be returned to the permittee. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

35. Section 13-251-26 Hawaii Administrative Rules, is repealed:

§13-251-26 Unlawful use of operator permit.

No person shall:

- (1) Display, cause or permit to be displayed, or have in the person's possession, any cancelled, revoked, suspended, fictitious, or fraudulently altered permit;
- (2) Lend the person's permit to any other person or knowingly permit the use thereof by another;
- (3) Display or represent as one's own, any permit not issued to oneself;
- (4) Fail or refuse to surrender any departmental permit to the department upon its lawful demand;
- (5) Permit any unlawful use of a permit issued to that person;
- (6) Do any act forbidden, or fail to perform any act required, by this chapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

36. Section 13-251-27 Hawaii Administrative Rules, is repealed:

§13-251-27 Operating while operator permit suspended or revoked.

(a) No person shall operate as a permittee at a time when the privilege is suspended or revoked.

(b) The department shall extend the operator's suspension for a period equal to the original suspension upon receiving a record of that person's conviction for operating while the person's operator permit was suspended. If the conviction was for operating while a permit was revoked, the department shall not issue a new permit for an additional period of one year from the date the person would otherwise have been entitled to apply for a new permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

37. Section 13-251-28 Hawaii Administrative Rules, is repealed:

§13-251-28 Permitting unauthorized person to operate catamaran or canoe.

No person shall authorize or permit a catamaran or canoe carrying passengers for hire to be navigated in or upon Waikiki or Kaanapali ocean waters by any person who is not authorized by this chapter to do so. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

38. Section 13-251-31 Hawaii Administrative Rules, is amended to read as follows:

§13-251-31 Owner of passenger-carrying vessels, for-rent surfboards, for-rent sailboards, for-charter or rent motorboats, or for-rent water sports equipment to give proof of financial responsibility.

(a) It shall be unlawful for the owner of any:

- (1) Vessel carrying passengers for hire to authorize or knowingly permit that vessel to be navigated in or upon [Waikiki or Kaanapali] State ocean waters, unless the owner has registered the catamaran as prescribed in this subchapter.; except that this paragraph shall not apply to cruising vessels as described in section 13-251-1];
- (2) Surfboard or sailboard engaged in the business of renting surfboards or sailboards for use in [Waikiki or Kaanapali] State ocean waters, to rent a surfboard or sailboard, unless the owner has registered the surfboard or sailboard as prescribed in this subchapter. The department shall not register any vessel, surfboard, or sailboard unless the owner gives proof of financial responsibility as provided by this chapter. The department shall cancel the registration of any vessel, surfboard, or sailboard equipment whenever the department ascertains that the owner has failed to or is unable to give and maintain proof of financial responsibility;
- (3) Motorboat engaged in the business of chartering or renting motorboats for use in [Kaanapali] State ocean waters to charter or rent a motorboat, unless the owner has registered the motorboat as prescribed in this subchapter. The department shall not register any vessel unless the owner gives proof of financial responsibility as provided by this subchapter. The department shall cancel the registration of any vessel whenever the department ascertains that the owner has failed to or is unable to give and maintain proof of financial responsibility;
- (4) Water sports equipment engaged in the business of renting water sports equipment for use in [Waikiki or Kaanapali] State ocean waters to rent water sports equipment, unless the owner has registered the water sports equipment as prescribed in this subchapter. The department shall not register any water sports equipment unless the owner gives proof of financial responsibility as provided by this subchapter. The department shall cancel the registration of any water sports equipment whenever the department determines that the owner has failed to or is unable to give and maintain proof of financial responsibility.

(b) The owner shall submit to the department evidence that there has been issued to the owner by an insurance carrier authorized to do business in the State, and naming the State as an additional insured, a public liability insurance policy or policies covering the operations under the permits issued in accordance with this chapter and with the following minimum coverages:

- (1) In the case of vessels carrying passengers for hire, the following amounts for bodily injury and damage to property per occurrence:

- (A) \$100,000 for vessels authorized to carry not more than six passengers;
 - (B) Not less than \$300,000 for vessels authorized to carry more than six passengers, but less than twenty-six;
 - (C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;
- (2) In the case of surfboard or sailboard operations, the amount of \$50,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$100,000 for bodily injury or death;
 - (3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000 for bodily injury or death;
 - (4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000 for bodily injury or death.

(c) The owner shall maintain the policy or policies in full force and effect during all times that the owner is engaged in the businesses described in subsection (a), unless the owner has given proof of financial responsibility as provided in section 13-251-32.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

39. Section 13-251-32 Hawaii Administrative Rules, is amended to read as follows:

§13-251-32 Owner of passenger-carrying vessels, for-rent surfboards, for-rent sailboards, for-rent motorboats, and for-rent water sports equipment when no policy obtained.

(a) The department shall not register any vessel, surfboard, sailboard, motorboat, or water sports equipment rented, chartered or used for carrying passengers, as the case may be, in [Waikiki or Kaaanapali] State ocean waters if the owner thereof has not given proof of financial responsibility as provided in section 13-251-31; provided no such proof is necessary if the owner demonstrates, to the satisfaction of the department, the financial ability to respond to claims for damages as follows:

- (1) If the owner applies for registration of surfboards or sailboards, in the sum of at least \$50,000 per person injured or killed in a surfboard or sailboard operation, subject to the total coverage in any one accident of \$100,000 for bodily injury or death; or
- (2) If the owner applies for the registration of any vessel carrying passengers for hire, in the following sums for bodily injury or death per occurrence:
 - (A) \$100,000 for vessels authorized to carry not more than six passengers;
 - (B) Not less than \$300,000 for vessels authorized to carry more than six passengers but less than twenty-six;

- (C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;
- (3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000; or
- (4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000.

(b) The department shall cancel the registration of any vessel, surfboard, sailboard, motorboat or water sports equipment whenever the department determines that the owner has failed or is unable to comply with the requirements of this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

40. Section 13-251-36 Hawaii Administrative Rules, is amended to read as follows:

[§13-251-36 Application for registration.

- (a) No person shall:
 - (1) Offer for hire, navigate, operate, or sail a catamaran or canoe carrying passengers boarded or to be disembarked in or on [Waikiki or Kaanapali] State ocean waters and shores;
 - (2) Permit the use of a surfboard, sailboard or motorboat for compensation in and on [the Waikiki or Kaanapali] State ocean waters and shores;
 - (3) Permit the use of water sports equipment for compensation in and on [the Waikiki or Kaanapali] State ocean waters and shores; or
 - (4) As the owner of a vessel, surfboard, sailboard, motorboat or water sports equipment, permit or authorize those operations described in paragraphs (1), (2), or (3);

unless the vessel, surfboard, sailboard or water sports equipment has been properly registered with the department.

(b) The registration shall be initiated by the owner upon appropriate forms furnished by the department in accordance with those procedures that the department may reasonably prescribe. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

41. Section 13-251-37 Hawaii Administrative Rules, is amended to read as follows:

[§13-251-37 Grounds for refusing registration.

- (a) The department shall refuse registration, or any transfer of registration, upon a finding that:

- (1) The application contains any false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the department, or the applicant is not entitled to registration this subchapter;
- (2) The vessel, surfboard, sailboard or water sports equipment is unsafe to be operated upon the [Waikiki or Kaanapali] State ocean waters;
- (3) The registration of the vessel, surfboard, sailboard or water sports equipment stands suspended or revoked for any reason as provided in this subchapter;
- (4) The required fee has not been paid;
- (5) Any catamaran:
 - (A) Engaged in carrying more than six passengers does not have a valid Coast Guard certificate of inspection; or
 - (B) Engaged in carrying six or less passengers does not have a record of a condition survey, by a marine surveyor as defined in section 13-231-45, undertaken within ninety days prior to application for registration or renewal of registration, attesting that the vessel:
 - (i) Is in good material and operating condition;
 - (ii) The minimum required Coast Guard safety equipment is on board;
 - (iii) The catamaran is suitable to carry passengers in [Waikiki or Kaanapali] State ocean waters while being propelled solely by sail;
- (6) The catamaran cannot be safely navigated in [Waikiki or Kaanapali] State ocean waters, as appropriate, while being propelled by sail only;
- (7) The catamaran is equipped with auxiliary mechanical propulsion machinery using a propeller but does not have a propeller guard, approved by the department, permanently installed on the vessel;
- (8) The catamaran:
 - (A) Is more than forty-five feet in length for Waikiki ocean waters operation;
 - (B) Is more than sixty-five feet in length for Kaanapali ocean waters operation;
 - (C) Has a passenger capacity of more than forty-nine passengers;
- (9) The catamaran will be used to transport passengers in a shuttle-type service wherein passengers will be disembarked at a point other than at or near the embarkation point;
- (10) The applicant for a catamaran registration holds a valid registration issued by the department in accordance with this subchapter for another catamaran authorized to be used on Waikiki or Kaanapali ocean waters as applicable;

- (11) The owner has not furnished proof of financial responsibility as prescribed in this subchapter;
- (12) The owner of a catamaran holds a valid registration issued by the department in accordance with this subchapter for another catamaran authorized to be used on Waikiki or Kaanapali ocean waters, as applicable; or
- [(13) The operator of any vessel, surfboard, sailboard, or water sports equipment does not hold a valid operator permit; or]
- (1[4]3) Any other grounds provided by this subchapter warrants refusal of the registration or transfer of registration.

(b) The department shall notify the owner in writing of the refusal. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

42. Section 13-251-47 Hawaii Administrative Rules, is amended to read as follows:

[§13-251-47 Operation of vessels without proper identification.

No person shall operate, nor shall an owner permit to be operated upon [the Waikiki or Kaanapali] State ocean waters, any vessel or rented surfboard, sailboard or water sports equipment required to be registered under this subchapter, unless there shall be attached, painted on, or otherwise displayed a valid distinguishing name, number, or mark as required by this subchapter.[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

43. Section 13-251-48 Hawaii Administrative Rules, is amended to read as follows:

[§13-251-48 Operation of a vessel or renting of surfboard, sailboards, or water sports equipment when registration suspended or revoked.

No person shall operate nor shall an owner knowingly permit to be operated upon [the Waikiki or Kaanapali] State ocean waters any vessel or rented surfboard, sailboard, or water sports equipment, the registration of which has been suspended or revoked.[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

44. Section 13-251-49 Hawaii Administrative Rules, is amended to read as follows:

[§13-251-49 Authority of department to suspend or revoke registration.

(a) The department may suspend or revoke the registration of a vessel, surfboard, sailboard, or water sports equipment whenever:

- (1) The department is satisfied that the registration was fraudulently or erroneously issued;
- (2) The department determines that a registered vessel is unsafe to be operated upon [the Waikiki or Kaanapali] State ocean waters;
- (3) A registered vessel has been sold, dismantled, or wrecked, provided that the owner of the vessel at the time it was sold, dismantled, or wrecked may, upon written application to and approval by the department, transfer the registration to another vessel of like characteristics and ownership if the replacement vessel is in operation within ninety days of the transfer;
- (4) The owner of any for-rent surfboard, for-rent sailboard or water sports equipment, or vessel carrying passengers for hire has failed or is unable to give proof of financial responsibility as provided in this subchapter;
- (5) Any catamaran's Coast Guard Certificate of Inspection has expired;
- (6) Any registered vessel boards passengers on [Waikiki or Kaanapali] State ocean waters for a shuttle-type service and disembarks the passengers at a point other than at or near the point of boarding; or
- (7) A registered vessel has not been engaged in carrying passengers for hire in [Waikiki or Kaanapali] State ocean waters for a period of thirty consecutive days.

(b) Upon suspending or revoking the registration of a vessel, surfboard, sailboard or water sports equipment the department shall immediately notify the owner in writing of the reason for the suspension or revocation. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]

45. Section 13-256-3 Hawaii Administrative Rules, is amended to read as follows:

§13-256-3 Commercial [operator] use permit requirements.

(a) All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial [operator] use permit to be issued by the department. The applicant for such permit shall comply with the applicable provisions stated in Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches, [Sections 13-251-1 through 13-251-20] Sections 13-231-50 to 13-231-70. [A valid commercial use permit issued to the owner of a vessel to operate from state harbor or launching ramp facilities shall satisfy the commercial operator permit requirement of this section for the operation of that particular vessel.]

(b) The department [shall] may establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial [operator] use permit to be issued by the department as required by this section. The department shall consider the recommendations of the Advisory Committee, but is not bound by the recommendations. Members of the Recreation Advisory Committee shall have not less than three years experience in their area of specialty. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

46. Section 13-256-4 Hawaii Administrative Rules, is amended to read as follows:

§13-256-4 Commercial Vessel and water sports equipment registration requirements.

- (a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with [Sections 13-251-36 to 13-251-52] the Division's Commercial use permit standards and regulations, section 13-231-50 to 13-231-70.
- (b) Commercial use permits issued by the department for commercial vessels operating from state harbors or boating facilities are exempt from the requirements of this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

47. Section 13-256-5, Hawaii Administrative Rules, is amended to read as follows:

§13-256-5 Commercial use permits; public auction.

- (a) Unless otherwise provided by law, all commercial use permits issued by the department under this chapter for thrill craft, [or] parasail, water sledding and high speed boating operations may be made at public auction under sealed bid after public notice.

48. Section 13-256-11 Hawaii Administrative Rules, is amended to read as follows:

§13-256-11 Fees.

- (a) Fees required to be paid to the department are as follows:
- (1) Registration fee. A registration fee payable at time of issuance and renewal shall be as prescribed in section 13-253-1;
 - (2) [Operator] Commercial use permit fee. A commercial [operator] use permit fee payable at time of issuance and or renewal of the permit shall be as prescribed in §13-253-2;
 - (3) Commercial operating area use permit fee. A monthly commercial use permit fee shall be the greater of [\$75.00] \$200.00 per month, payable in advance, or [2%] 3% of the monthly gross receipts. The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form acceptable to the department. A permittee possessing both a harbor commercial use permit and a commercial operating area use permit who is paying [2] 3% of gross receipts under the commercial harbor use permit shall not be required to pay an additional [2] 3% of gross receipts under the commercial operating area use permit.
- (b) Delinquency in the payment of any fees owed to the department will result in automatic revocation of the commercial operating area use permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

49. Section 13-256-13 Hawaii Administrative Rules, is amended to read as follows:

§13-256-13 Mooring of rafts and platforms.

All permanent mooring of rafts and platforms for use in thrill craft, parasailing and other water sports activities is prohibited. Rafts and platforms shall be removed daily from state waters or located in a designated anchorage or harbor in accordance with a valid permit issued by the department. Ground tackle for mooring of rafts and platforms shall not be placed on or near live coral. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

50. Section 13-256-16 Hawaii Administrative Rules, is amended to read as follows:

§13-256-16 Thrill craft operations; general provisions.

(a) No person under fifteen years of age shall operate a thrill craft. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft.

(b) No person shall operate thrill craft within a marine life conservation district or marine natural area reserve except authorized department vessels.

(c) Thrill craft operations shall be curtailed in certain designated areas as described in subchapters two through eleven as necessary, to: 1) avoid possible adverse impacts on humpback whales or other protected marine life; 2) provide for increased public access;

3) reduce user conflicts; and 4) promote overall public safety. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

51. Section 13-256-17, Hawaii Administrative Rules, is amended to read as follows:

§13-256-17 Recreational thrill craft operations. (a) Access to and from designated recreational thrill craft operating areas shall be by the most direct route consistent with safety considerations. Thrill craft operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(b) In non-designated ocean recreation management areas, recreational thrill craft may operate only in state waters between five hundred feet from the shoreline or the outer edge of the fringing reef whichever is greater and two miles off the islands of Kauai, Oahu, Maui and Hawaii.

(c) In designated ocean recreation management areas, recreational thrill craft may operate only within locations designated for recreational thrill craft use and when traversing through ocean recreation management areas, thrill craft must proceed in the most safe and direct route possible to the non-designated areas.

(d) No thrill craft shall be operated for profit or gain in a recreational thrill craft operating area.

(e) Recreational thrill craft may gain access to state waters only from launching or harbor facilities or from private beach front property. [Eff 2/24/94] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

52. Section 13-256-18 Hawaii Administrative Rules, is amended to read as follows:

Section 13-256-18 Commercial thrill craft operations, commercial high speed boating and water sledding operations.

(a) No commercial thrill craft, high speed boating or water sledding activities shall be conducted on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated commercial thrill craft, high speed boating or water sledding operating area, in addition to any commercial use permit required for state-owned facilities. No more than one commercial operating area use permit shall be issued to an owner to conduct commercial thrill craft, high speed boating or water sledding.

(b) Commercial thrill craft are limited to operating within a two hundred foot radius of the permitted designated location except as otherwise designated. The number of thrill craft permitted to operate within each commercial thrill craft operating area shall be as directed by the department, not to exceed a limit of six rental units and two safety units per area. Water sledding operations may be conducted in the designated thrill craft areas, only if no other thrill craft activity is ongoing in said area.

(c) No more than one vessel shall be permitted to operate under a commercial operating area use permit issued for high speed boating or water sledding.

(d) Access to and from designated areas shall be only from harbors and ramp facilities, or areas designated by a valid conservation district use permit issued by the Department of Land and Natural Resources or areas designated by the Department.

(e) Commercial thrill craft, high speed boating and water sledding operators shall proceed at a speed of slow-no-wake, or as otherwise posted, by the most direct route consistent with safety considerations. Thrill craft, high speed boating and water sledding operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(f) No other activity is permitted in designated commercial thrill craft operating areas or recreational and commercial water skiing or water sledding areas during the time of authorized operations for safety purposes.

(g) Commercial thrill craft operators shall be required to establish a safety instruction program for customers that includes, but is not limited to, the safe use of a thrill craft, boundaries of operating areas and the use of a personal flotation device. [Eff 2/24/94 am July 5, 2003] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-24, 200-37)

53. Section 13-256-19 Hawaii Administrative Rules, is amended to read as follows:

§13-256-19 Parasailing activities.

(a) Parasailing operators shall comply with rules and regulations promulgated by the U. S. Coast Guard in addition to the following provisions:

- (1) All parasailing vessels shall have access to designated areas only from harbors or ramp facilities by the most direct route consistent with safety considerations.
- (2) No commercial parasailing vessel shall operate on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated parasail operating area, in addition to any commercial use permit required for state-owned facilities.
- (3) No operator shall be issued more than one commercial [operating area] use permit for a designated parasailing operating area.
- (4) No permittee shall be allowed to operate more than one parasail vessel with a parasail aloft in the designated parasailing operating area.
- (5) No parasailing vessel shall be engaged in parasailing activities while it is within three hundred feet of the shoreline or any marked channel entrance.
- (6) All parasail vessels shall carry at least one crew member in addition to the captain whose duty it shall be to observe the passenger in the chute.

(b) Parasailing operations shall be curtailed in certain designated areas under this chapter as necessary to avoid possible adverse impacts on humpback whales or other protected marine life. In designated areas during the whale season, the maximum vessel speed for parasailing shall be eighteen (18) knots, and maximum transit speed for shuttling passengers to and from the parasailing zones shall be fifteen (15) knots or minimum planing speed, whichever is less, unless governed by other limits such as slow-no-wake zones or as marked by signs. [Eff 2/24/94]
(Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

54. Section 13-256-32 Hawaii Administrative Rules, is amended to read as follows:

§13-256-32 [Commercial Operator Licensee experience requirements.]

[Commercial Operator Licensee experience requirements.] Experience requirements to operate in or on the waters of the north shore ocean recreation management area.

(a) [No commercial vessel operator shall be issued a commercial operator permit to operate or navigate within the Na Pali Coast ocean waters unless the applicant has a minimum of ninety

days experience operating within the Na Pali Coast ocean waters attested to by two persons each of whom holds a valid commercial operator permit issued by the department.

(b) No commercial kayak tour guide license shall be issued a commercial operator licensee unless the operator meets the following conditions:

(1) Possesses a current Red Cross Advanced Life Saving Certificate,

(2) Has knowledge of elementary first aid;

(3) Is physically qualified to perform as a kayak tour guide as evidenced by a written report of a physical examination made no earlier than thirty days prior to the application for the license; and

(4) Demonstrates a satisfactory knowledge of the waters through presentation of a log of ocean kayak trips performed in the Na Pali Coast restricted area during the preceding six-month period.

(c) The department shall establish an advisory committee of not less than three commercial operator licensees to review applications and make recommendations for commercial operator licenses required by this section. The department may seek recommendations for membership on the advisory committee from the North Shore Charter Boat Association. Members of the advisory committee shall have not less than three years experience in their area of specialty operating in the North Shore Kauai Ocean Recreation Management Area.] All commercial permittees wishing to conduct business in or on the waters of the north shore ocean recreation management area, as shown on Exhibit "A", "North Shore Kauai Ocean Recreation Management Areas, "dated June 30, 1988 and located at the end of this subchapter, shall provide documentation that the vessel operators possess

(1) A current adult CPR and first aid certificate;

(2) A minimum of ninety days documented experience on the waters of north shore ocean recreation management area. Supporting documentation of the competency of the operator may be provided through:

(A) Two letters of recommendation by commercial vessel operators that have the aforementioned requirements.

(B) United States Coast Guard U.S. Merchant marine Officer License. *USCG Captains license).[Eff 2/24/94](Auth: HRS §§200- 200-3, 200-4) (Imp: HRS §200-2, 200-3,200-4)256-17

Section 13-256-33, Hawaii Administrative Rules, is amended to read as follows:

55. Section 13-256-33 Hawaii Administrative Rules, is amended to read as follows:

§13-256-33 Priority and procedures in the issuance of commercial vessel permits.

(a) Notwithstanding the commercial use permit limitations in section 13-256-36 of [fifteen] commercial use permits at Hanalei River mouth and [two] commercial use permits for Anini Beach launching ramp, all commercial vessels operating with valid commercial use permits issued by the department on September 30, 1988, and who have complied with all the rules of the department and all other federal, state or county requirements may be issued a new commercial use permit for Hanalei or Anini Beach restricted Area.

(b) All commercial use permits shall be valid for not more than one year. These permits shall automatically terminate on the expiration date and there shall be no presumption or implication of a right to renew.

(c) An application for a commercial use permit shall be made in writing to the department on the form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel, including but not limited to the vessel's overall length, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the passenger carrying capacity, and any other pertinent information. No application shall be complete until the applicant pays the application fee prescribed in these rules. The department shall accept the completed application form for consideration by endorsing it and entering the time and date on the application form submitted. The time and date the application is endorsed by the department shall be the effective filing date and shall establish the applicant's priority date. An applicant must file a new application form each year but the effective filing date shall remain the same.

(d) Only when the number of commercial use permits issued under subsection (a) falls below the number authorized in section 13-256-36, will the department offer a permit to the applicant with the earliest priority date; provided that in no event shall the limit set in section 13-256-36 be exceeded thereby. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

56. Section 13-256-34 Hawaii Administrative Rules, is amended to read as follows:

§13-256-34 Review, acceptance, or rejection of the application.

(a) The department shall [examine and determine the genuineness of] review each application for a commercial [vessel] use permit and may require additional information or conduct an

independent investigation or audit [as may be deemed necessary for its determination].(b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.(c) An application shall not be accepted for consideration and shall be rejected if:

(1) The application fee is not paid at the time

the application is made;

(2) The applicant is delinquent in payment of

any moneys due and payable to the department; [or]

(3) The applicant is in violation of the rules of

the department[.] or:

(4) It is determined that the application is incomplete.

(d) [Upon rejection of] When an application[,] is rejected, the department shall notify the applicant[,] in writing within [a reasonable time,] ten working days that the application has not been accepted for consideration and has been rejected and the reasons [therefore] for the rejection. The applicant shall be afforded the opportunity to submit a new application [upon the correction of deficiencies cited in the notification of rejection of the original application] when the cited deficiencies have been corrected.[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

57. Section 13-256-35 Hawaii Administrative Rules, is amended to read as follows:

§13-256-35 [Owner]Permittee required to report change in ownership, address and other changes.

(a) [In addition to the provisions in section 13-251-44, the]. The holder of any commercial [vessel] use permit issued under this chapter shall notify the department in writing within seven days if:

(1) The [owner] permit holder no longer has possession of the vessel[;] authorized for use under the commercial use permit;

(2) All or any interest in [the] a vessel authorized for use under the commercial use permit is transferred to or assigned to another person(s) or business entity; [and] or

(3) The [owner's] permit holder's address or telephone number changes.

(b) "Transfer" as used in this section means any sale,

assignment, lease of a vessel or the change in ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder, or the transfer of

interest in any other business entity which results in a

change of the owner holding the majority interest.

(c) "Interest" as used in this section includes any claim

of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a commercial vessel permit issued under this subchapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

58. Section 13-256-37 Hawaii Administrative Rules, is amended to read as follows:

§13-256-37 [Fees] Registration and Commercial use permit fees

[(a)] Fees required to be paid to the department are described in [Chapter] chapter 13-234 and more specifically as follows:

(1) Registration fee. [A] The registration fee payable at the time of issuance shall be [prescribed in section 13-253-1] in accordance with Hawaii Revised Statutes, section 200-32.

[(2)] Operator license fee. A commercial operator license fee payable at time of issuance of the license shall be \$2.00.

(3)](2) Commercial [vessel] use permit fee. A monthly

commercial [vessel] use permit fee shall be the greater

of [\$75.00] \$200.00 or [two per cent] three percent of the monthly gross receipts.

[(b)](c) Delinquency in excess of thirty days in payment of any fees owed to the department [will] shall result in automatic suspension of the commercial use permit, and delinquency in

excess of sixty days shall result in automatic [revocation] expiration of the commercial [vessel] use permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4)(Imp: HRS §§200-2, 200-3, 200-4)

59. Section 13-256-72, Hawaii Administrative Rules, is amended to read as follows:

§13-256-72 Kualoa [Ocean Water Restricted Zones] waters restricted zones.

(a) Zone A Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “U”, “Kualoa, Oahu, Hawaii,” Date [June 30, 1988] September 8, 1998, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning as a point [on the low water mark of the shoreline which is four hundred seventy-five feet south of the groin across from the sugar mill, then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred ten feet; 360 degrees for a distance of five hundred twenty-five feet; 090 degrees to a point on the low water mark of the shoreline; then along the low water mark] at approximately 21° 31’ 16.6” N/ 157° 50’ 06.9” W, then going in an easterly direction to approximately 21° 31’ 16.6” N/ 157° 49’ 58.2” W, then going in an southerly direction to approximately 21° 31’ 11.5” N/ 157° 49’ 58.2” W, then going in a westerly direction to approximately 21° 31’ 11.5” N/ 157° 50’ 07.3” W, then to the point of beginning.

Zone A is designated as a commercial thrill craft zone for the Kualoa full service permit. [No] Not more than six rental thrill craft and one thrill craft used for safety and rescue purposes shall operate at any one time. No person shall operate or moor a vessel or sailboard in [this zone] Zone A when [in use] being used by commercial thrill craft. Commercial thrill craft shall be operated within Zone A only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operate within Zone A on [Saturdays,] Sundays[, and state] or federal holidays.

(b) Zone B Kualoa [Ocean Waters] waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “U”, “Kualoa, Oahu, Hawaii,” dated [June 30, 1988] September 8, 1998, incorporated herein, and located at the end of the subchapter. The boundaries of Zone B are as follows:

Beginning at a point [on the low water mark of the shoreline which is two hundred feet north of the boundary of Kualoa Regional Park; then along low water mark of the shoreline in a northerly direction to a point marking to southwest point of Zone A; then by azimuth measured clockwise from True South, 270 degrees for a distance of eight hundred feet; 180 degrees for a distance of five hundred twenty-five feet; 270 degrees for a distance of three hundred sixty feet; 360 degrees for a distance of one thousand thirty-five feet;] at approximately 21° 31’ 16.6” N/ 157° 49’ 58.2” W, then in an easterly

direction to approximately 21° 31' 16.6" N/ 157° 49' 56.0" W, then in an southerly direction to approximately 21° 31' 06.4" N/ 157° 49' 56.5" W, then in a westerly direction to approximately 21° 31' 06.4" N/ 157° 50' 07.5" W, then in a northerly direction to approximately 21° 31' 11.5" N/ 157° 50' 07.7" W, then in an easterly direction to approximately 21° 31' 11.5" N/ 157° 49' 58.2" W, then in a northerly direction [then] by straight line to the point of beginning.

Zone B is designated as a non-exclusive commercial ocean water sports zone [for sailing, windsurfing and scuba diving]. High speed towing, water skiing, and water sledding shall be prohibited. [Vessels] All vessels transiting [this zone] Zone B shall proceed with extreme caution.

(c) All commercial ocean [recreation] use activities are prohibited within Kualoa [ocean] waters restricted zones [(JA)] and [(JB)] on Sundays[, effective January 1, 1991] and federal holidays." [Eff 2/24/94; am] (Auth: HRS §§200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-22, 200-23, 200-24, 200-37, 200-39)

60. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-72.1 to read as follows:

§13-256-72.1 Kualoa waters restricted zones permit.

(a) Not more than one Kualoa full service permit shall be issued for Kualoa waters restricted zones subject to the following conditions:

- (1) The number of thrill craft shall be in accordance with the limits authorized in section 13-256-72(a). The number and type of other vessels and equipment shall not exceed the number and type of vessel and equipment permitted by the department on the effective date of these rules:
 - i. All thrill craft and other operational vessels and equipment shall be registered in accordance with section 13-256-4 (a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal;
 - ii. Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit a vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited;

- (4) The maximum number of customers per day may be established through the conservation district use permit application process, but shall not exceed one-hundred and fifty customers;
- (5) Water sledding, water skiing, and high speed towing shall be prohibited;
- (6) The permittee shall maintain a daily log of the number of customers serviced by thrill craft and shall present the logs to division of boating and ocean recreation for review and inspection upon request; and
- (7) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(b) All associated commercial operational and supporting activities shall be conducted from land in accordance with all applicable land use laws and zoning ordinances.

(c) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) Any transfer by the permittee or any transfer or combination of transfers of a majority interest or greater by the owners or shareholders of record of a business entity holding a permit shall automatically void the use of thrill craft and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5, unless the transfer is to a family member.

(e) Any transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(f) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of commercial operation.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

61. Section 13-256-73, Hawaii Administrative Rules, is amended to read as follows:

13-256-73 Kaneohe Bay [Waters] ocean waters. (a) Kaneohe Bay ocean waters means the area encompassed by the boundaries shown on Exhibit “V”, “Kaneohe Bay [Waters Boundary &

Commercial High Speed Boating Zone], Oahu, Hawaii,” dated [May 15, 1990] April 16, 2001, incorporated herein, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the northern point on the shoreline of Mokapu Point, located at approximately 21° 27’ 33.6” N/ 157° 43’ 21.6” W, then [by azimuth measured clockwise from True South, 127 degrees for a distance of fifty thousand nine hundred and twenty-five feet] in a straight line to Makahonu Point, located at approximately 21° 32’ 33.6” N/ 157° 50’ 34.2” W, then along the shoreline of Kaneohe Bay to the point of beginning.

[(b) Commercial ocean recreation activities shall be restricted within Kaneohe bay waters as follows:

- (1) No commercial operator, holding a valid ocean recreational management area commercial use permit, shall operate a thrill craft, engage in water sledding or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding during weekends and state or federal holidays.

(2)]

- (b) All commercial ocean [recreation] use activities in Kaneohe Bay ocean waters are prohibited on [Sunday, effective January 1, 1991] Sundays and federal holidays.

(c) There shall be no walking on, no sitting, no standing, no anchoring on live coral or otherwise damaging the reef within Kaneohe Bay ocean waters.

[(c)] (d) Zone A Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit [“W”]“X”, “Kaneohe, Oahu, Hawaii,” dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone A are [described] as follows:

[Beginning at a point in the water by azimuth measured clockwise from True South, 234.5 degrees for a distance of three thousand nine hundred feet from the Sampan Channel front navigational range light; then on a radius of two hundred feet around that point.] Zone A is a circle with a radius of two hundred feet with its center at approximately 21° 26’ 27.5” N/ 157° 47’ 45.5” W.

[(d)] (e) Zone B Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit [“W”] “X”, “Kaneohe, Oahu, Hawaii,” dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone B are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 200 degrees for a distance of five thousand two hundred eighty feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet

around that point.] Zone B is circle with a radius of two hundred feet with its center at approximately 21° 27' 28.5" N/ 157° 48' 08.5" W.

[(e)] (f) Zone C restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit ["W"] "X", "Kaneohe, Oahu, Hawaii," dated [October 24, 1990] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone C are as follows:

[Beginning at a point in the water, by azimuth measured clockwise from True South, 194 degrees for a distance of five thousand four hundred ninety feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.] Zone C is a circle with a radius of two hundred feet with its center at approximately 21° 27' 32" N/ 157° 48' 13.5" W.

[(f)] Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "W", dated October 24,1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, 187 degrees for a distance of five thousand seven hundred thirty feet from a point on the low water mark on the northern tip of Kealohi Point; then on a radius of two hundred feet around that point.]

(g) Zones A, B, and C are subject to the following:

(1) Zones A, B, and C[, and D] are designated as commercial thrill craft zones where full service permittees shall be required to operate. [No] Not more than six rental thrill craft shall operate within each [zone] of the zones A and B at any one time. No more than three rental thrill craft shall operate within zone C at any one time. [No person shall operate or moor a vessel or sailboard in these zones.] Zone A may be referred to as the Checker Reef commercial thrill craft zone. Zones B and C may be referred to as the commercial thrill craft sand flat zones.

(2) Commercial thrill craft shall be operated in a clockwise direction only within zones A, B, and C[, and D] only between the hours of 9:00 a.m. and 5:00 p.m., Mondays through [Fridays] Saturdays. No commercial thrill craft shall be operated within Zones A, B, or C[, and D] on [Saturdays,] Sundays[, and state] or federal holidays.

[(g)] Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "V-1", dated October 24, 1990, ,and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True south, 219 degrees for a distance of three thousand four hundred eighty feet from

the low water mark on the northern tip of Wailau Point “Kahaluu Landing”; then 300 degrees for a distance of five thousand two hundred eighty feet; 026 degrees for a distance of eight hundred forty feet; 032 degrees for a distance of five hundred forty feet; 120 degrees for a distance of one thousand six hundred twenty feet; then by a straight line to the point of beginning.:]

(h) Zone D Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Zone D is rectangular in shape which borders the Kaneohe Bay entrance channel daybeacon 11 beginning at a point in the water which is located at approximately 21° 28’ 32” N/ 157° 49’ 39”W, then by a straight line in a due East (true) direction to approximately 21° 28’ 32” N / 157° 49’ 32” W, then in a straight line to approximately 21° 28’ 10.5” N / 157° 49’ 27” W, then in a straight line due West (true) to approximately 21° 28’ 10.5” N / 157° 49’ 34”W, then in a straight line back to beginning.

[(h)] Zone [E] D is restricted to commercial SCUBA, snorkeling and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Activity shall take place only near the reef, not on the reef. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

[(i) Zone F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, October 24, 1990, and located at the end of this subchapter.

The boundaries of Zone F are as follows:

Beginning at a point in the water which is located by azimuth measured clockwise from True South, 182 degrees for a distance of four thousand two hundred sixty feet from the North tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand nine hundred fifty feet; 212 degrees for a distance of five hundred forty feet; 206 degrees for a distance of eight hundred forty feet; 314 degrees for a distance of one thousand two hundred feet; then by a straight line to the point of beginning.]

(i) Zone E Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “X”, “Kaneohe, Oahu, Hawaii,” dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Zone E is a circle with a radius of three hundred ten yards with its center located at approximately 21° 27' 25" N / 157° 47' 46.5" W. Zone E is restricted to SCUBA, snorkeling, underwater activities, and sightseeing cruises only. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial snorkeling operators shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. Vessels entering this zone shall use extreme caution while this zone is occupied during diving activities.

(j) Zone [G] F Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on exhibit "X", "Kaneohe Bay, Oahu, Hawaii," dated [October 24, 1990,] September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone [G] F are as follows:

Beginning at a point in the water which is located [by azimuth measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred ten feet from the north tip of the pier at Heeia Kea Small Boat Harbor; then 120 degrees for a distance of one thousand six hundred eighty feet; 211 degrees for a distance of seven hundred twenty feet; 301 degrees for a distance of one thousand six hundred sixty-five feet;] at approximately 21° 26' 50" N / 157° 47' 45" W, then by a straight line to approximately 21° 26' 23.5" N / 157° 47' 25" W, then by a straight line to approximately 21° 26' 16" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 20.5" N / 157° 47' 59.3" W, then by a straight line to approximately 21° 26' 28.5" N / 157° 48' 09" W, then [by] in a straight line to the point of beginning.

Zone F is designated as non-exclusive commercial ocean water sports zone. All vessels entering this zone shall exercise extreme caution while it is being utilized for commercial ocean water sports activities. Anchoring on live coral is prohibited. No person shall walk, stand or sit on live coral formations. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest to decrease the likelihood of standing on coral. All activity on top of Checker Reef in Zone F is prohibited.

(k) Zone G Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at a point in the water which is located at approximately 21° 26' 25" N / 157° 47' 49" W, then by a straight line to approximately 21° 26' 22" N / 157° 47' 34" W, then by a straight line to approximately 21° 26' 16.5" N / 157° 47' 36" W, then by a straight line to approximately 21° 26' 19" N / 157° 47' 51" W, then by a straight line to the point of beginning.

Zone G is designated as non-exclusive commercial water ski and water sledding zone.

Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes shall be restricted to this zone. No more than one commercial vessel for water sledding shall be permitted to tow at any speed within this zone at any one time for safety purposes. Commercial large full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor or anchor a vessel within this zone. High speed operations shall take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

[(k) Zones F and G are designated as commercial and recreational water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes west of the Sampan Channel is restricted to these zones. No more than four commercial operating area use permits for water sledding shall be permitted in Zone F or G for safety purposes. No Person shall moor a vessel within these zones.

(l) Zone H restricted zone is the area encompassed by the boundaries show on Exhibit "V-1", dated October 24, 1990, and located at the end of this subchapter. The boundaries of

Zone H are as follows:

Beginning at a point in the water which is located by azimuth measure clockwise from True South, 219 degrees for a distance of three thousand four hundred eighty feet from the low water mark on the tip of Wailau Point "Kahaluu Landing"; Then 168 degrees for a distance of three thousand five hundred seventy feet; 270 degrees for a distance of one thousand three hundred twenty feet; 311 degrees for a distance of nine thousand feet; 039 degrees for a distance of one thousand two hundred seventy-five feet; 012 degrees for a distance of one thousand fifty feet; 031 degrees for a distance of seven hundred twenty feet; 120 degrees for a distance of five hundred ten feet; 173 degrees for a distance of one thousand three hundred sixty-five feet; 134 degrees for a distance of hone thousand two hundred feet; then by a straight line to the point of beginning.

(m) Zone H-1 restricted zone is the area encompassed by the boundaries shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone H-1 are as follows:

Beginning at a point in the water which is located by azimuths measure clockwise from True South, 206.5 degrees for a distance of six thousand five hundred ten feet from a point on the low water mark on the northern tip of the Kealohi Point; then 210 degrees for a distance of two thousand seven hundred seventy-five feet; 227 degrees for a distance of two thousand seven hundred seventy-five feet; 039 degrees for a distance of one thousand fifty feet; then in a straight line to the point of beginning.

No person shall operate a vessel within Zones H and H-1 at a speed in excess of slow-no-wake. Recreational thrill craft and water ski and water sledding activities are prohibited. Commercial vessels and activities are prohibited, except for commercial fishing vessels engaged in baiting operations.

(n) (l) [Kaneohe Bay recreational thrill craft zone is the area seaward of the boundaries of Zones “H”, “H1” and “I” shown on Exhibit “X”, dated October 24, 1990, and located at the end of the subchapter. The boundaries are as follows:

Beginning at a point in the water immediately south of buoy “3”, which marks the southeast boundary of the northern shipping channel in Kaneohe Bay; then in southerly direction along the eastern boundary of the channel to the intersection of the Sampan Channel at buoy “10”, except where zoned for other activity; then in a northeast direction along the northwestern boundary of the Sampan Channel to buoy R-2; then on a straight line to the point of beginning. The Kaneohe Bay recreational thrill craft zone is designated for recreational thrill craft.] Recreational thrill craft shall not be operated in any [other] area of Kaneohe Bay [.] except in the designated recreational thrill craft zone as described in section 13-256-77. Recreational thrill craft shall access the recreational thrill craft zone by transiting from Heeia Kea small boat harbor directly to the Sampan channel to the Kaneohe recreational thrill craft zone as described in section 13-256-77.

[(o) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True South, 213 degrees for a distance of three thousand eight hundred then feet from the

north tip of the pier at Heeia Kea Small Boat harbor; then 210 degrees for a distance of six hundred seventy-five feet; 121 degrees for a distance of one thousand six hundred sixty-five feet; 192 degrees for a distance of one thousand fifty feet; 219 degrees for a distance of one thousand two hundred seventy-five feet; 311 degrees for a distance of five thousand eight hundred twenty feet; 037 degrees for a distance of one thousand nine hundred fifty feet; then by a straight line to the point of beginning.]

(m) Zone H restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point in the water which is located at approximately 21° 27' 32.5" N / 157° 48' 19.5" W, then by a straight line to approximately 21° 27' 26.5" N / 157° 48' 10" W, then by a straight line to approximately 21° 27' 14.5" N / 157° 48' 17" W, then by a straight line to approximately 21° 27' 20" N / 157° 48' 27" W, then in a straight line to the point of beginning.

Zone H is designated as non-exclusive commercial water ski and water sledding zone.

Commercial water skiing and water sledding and the operation of towed devices used to carry passengers for commercial purposes are restricted to this zone. No more than two commercial vessels for water sledding shall be permitted to tow at high speed within this zone at any one time for safety purposes. Commercial full service permittees and non-commercial recreational users shall share the zone equally. All towing shall be conducted in a clockwise direction. No person shall moor a vessel within this zone. High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(n) Zone I restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "X", "Kaneohe, Oahu, Hawaii," dated September 25, 2000, incorporated herein, and located at the end of this subchapter.

The boundaries of Zone I are as follows: Beginning at a point in the water located at approximately 21° 27' 41" N / 157° 48' 18" W, then by a line parallel to the edge of the sand flat to approximately 21° 27' 32" N / 157° 48' 02" W, then by a straight line to approximately 21° 27' 25" N / 157° 48' 07" W, then by a straight line to approximately 21° 27' 34" N / 157° 48' 22.5" W, then by a straight line to the point of beginning.

Zone I is designated as non-exclusive commercial ocean water sports zone. Other vessels entering this zone shall exercise extreme caution while it is being used for commercial ocean water sports activities. Commercial operators operating in this zone shall have a snorkel vest available for each snorkeler in the water and encourage snorkelers to use the vest. Commercial operators whose passengers do not operate thrill craft must keep their passengers out of Thrill Craft Zones B and C. Vessels operating in Zone I shall maintain a watch for sea turtles, which may mitigate to the north central part of the zone, and exercise care to stay clear of any turtle observed.

[(p) Zone J restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J are as follows:

Beginning at a point in the water which is located by azimuths measured clockwise from True south, 235 degrees for a distance of two thousand five hundred eighty feet from the front Sampan Channel navigational range light; then 114 degrees for a distance of one thousand two hundred thirty feet; 218 degrees for a distance of one thousand eight hundred feet; 287 degrees for a distance of one thousand six hundred ninety-five feet; 006 degrees for a distance of one thousand eighty feet; then by a straight line to the point of beginning.

(q) Zones I and J are designated as ocean water sports zones. Other vessels entering these zones shall exercise extreme caution while they are being utilized for commercial ocean water sports activities. Vessels operating in Zone I shall maintain a watch for sea turtles which may migrate to the north central part of the zone, and exercise care to stay clear of any turtles observed.

(r) Zone J-1 Kaneohe Bay restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit “W”, dated October 24, 1990, and located at the end of this subchapter. The boundaries of Zone J-1 are as follows:

Beginning at a point in the water by azimuths measured clockwise from True South, 206 degrees for a distance of two thousand two hundred fifty feet from Sampan Channel front navigational range light; then 114 degrees for a distance of two hundred twenty-five feet; 180 degrees for a distance of three hundred seventy-five feet; 218 degrees for a distance of one thousand four hundred forty feet; 287 degrees for a distance of four hundred fifty feet; then in a straight line to point of beginning.

(s) Zone J-1 is designated as commercial water ski and water sledding zones. All water skiing and water sledding and the operation of towed devices used to carry passengers for both commercial and recreational purposes is restricted to this zone. Only one commercial operating area use permit for water sledding shall be permitted within this zone for safety purposes. No person shall moor a vessel within this zone.

(t) (o) Kaneohe Bay [channel] speed restrictions. [Notwithstanding any rule to the contrary, the speed of any watercraft shall not exceed 15 knots when within the confines of the Kaneohe Bay channel as shown on Exhibits “V-1”, “W”, and “X” dated October 24, 1990, and located at the end of this subchapter. The boundaries are described as follows:

The Kaneohe Channel, beginning at a line across the channel at daybeacon G”11”, then through each and every buoy and day beacon in ascending order to the intersection at the extended line of the Sampan Channel range marks.]

In addition to speed restrictions found in section 13-244-9, slow-no-wake restrictions shall apply in Kaneohe Bay offshore mooring areas, Kaneohe Bay ocean waters zones D, E, F, and I, Kualoa waters zone B, and anywhere within the Kaneohe Bay when a vessel is within two hundred feet of Kapapa Island and the Central Reef shallows defined as areas having a depth of less than or equal to five feet mean lower low water, including the area of Ahu O Laka Island, (“The Sand Bar”).

[(u)] (p) No increase in the level of commercial ocean use activities [as of July 3, 1990] existing on July 1, 1993 will be permitted within Kaneohe Bay waters.

(q) Activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501 (c)(3)) organization shall not be subject to the restrictions of subsection (p), but shall operate only in accordance with a permit issued by the department pursuant to chapter 13-231 or chapter 13-256 or both.

(r) Anchoring or mooring on living coral is prohibited.

(s) All sea walker activity shall be done on a flat sandy bottom, not on sea grass beds.

(t) All underwater activity, including but not limited to SCUBA, snorkeling, and sea-walker, shall prohibit participants from touching coral and/or living parts of a reef.”

[Eff 2/24/94; am] (Auth: HRS §§220-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§220-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

62. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new subsection 13-256-73.1 to read as follows:

§13-256-73.1 Kaneohe Bay ocean waters commercial activity use permits. (a) No commercial ocean use activity may be conducted within Kaneohe Bay waters except in accordance with a Kaneohe Bay waters commercial activity use permit issued by the department. For the purpose of this section, “full service permit” means a permit which includes thrill craft,

water sledding, and other high speed boating activities in addition to sailing, snorkeling, scuba diving, sailboarding, and other related water recreational activities approved by the department.

(b) Commercial operators possessing a valid Kaneohe Bay Ocean Recreation Management Area use permit on the effective date of these rules shall be authorized a similar permit as described below upon complying with all laws and rules of the department. The number and types of Kaneohe Bay ocean waters commercial activity use permits authorized for Kaneohe Bay ocean waters shall be as follows:

- (1) One full service permit as authorized in section 13-256-72.1;
- (2) Two large full service permits as authorized in section 13-256-73.2;
- (3) One small full service permit as authorized in section 13-256-73.3;
- (4) One small full service permit as authorized in section 13-256-73.4;
- (5) Three large snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.5;
- (6) Three small sail or snorkel tour operations, including associated underwater activities approved by the department, as authorized in section 13-256-73.6; and
- (7) One glass bottom boat tour operation as authorized in section 13-256-73.7.

(c) Any transfer of a large full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the large full service permit to a large snorkel tour permit with an aggregate maximum carrying capacity of no more than one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a large full service permit to a large snorkel tour permit shall be on a one for one basis reducing the number of large full service permits by one and authorizing an increase to the number of large snorkel tour permits by one.

(d) Any transfer of a small full service permit, except for a transfer to a family member as defined in section 13-256-71, shall revert the small full service permit to a small sail or snorkel tour permit with an aggregate maximum carry capacity of no more than sixty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel. Any change from a small full service permit to a small sail or snorkel tour permit shall be on a one for one basis reducing the number of small full service permits by one and authorizing an increase to the number of small sail or snorkel tour permits by one.

(e) The Kaneohe Bay ocean waters commercial activity use permit required under this section shall satisfy the requirement for all other harbor use permits required of

commercial operators under chapter 13-231, with the exception of a mooring permit for each vessel moored in Heeia Kea Harbor or offshore.

(f) The Kaneohe Bay waters commercial activity use permit fee per permit shall be as provided in HRS chapter 200 and rules adopted thereunder.

(g) The report of gross receipts shall be received by the department for each month covered by the commercial activity use permit no later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Failure to submit the report of gross receipts as required for a period in excess of sixty days following the due date, may be treated by the department as causing an automatic termination of the Kaneohe Bay waters commercial activity use permit.

(h) The department may conduct a financial audit of the records of a Kaneohe Bay ocean waters commercial use permit to determine the accuracy of reported gross receipts or to inspect any other financial information directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, no less than thirty days prior to the audit.

(i) Any vessel with an authorized carrying capacity of more than six passengers with installed toilet facilities shall be equipped with a United States Coast Guard approved marine sanitation device.

(j) All permittees shall maintain a daily log of the operations, to include vessel and operator identifying information, number of customers serviced, fuel or sewage spills, sewage pumping out, refueling, incidents on the water and time of departure and arrival at the Heeia

Kea Small Boat Harbor pier, or authorized passenger loading and unloading area, or appropriate operating zone. All permittees shall submit the logs to the department each week.

(k) There shall be no passenger loading and unloading at a launch ramp at Heeia Kea Small Boat Harbor.

(l) Large full service permits authorized by section 13-256-73.2, shall be allowed to use no more than three trailers per permit per day at the Heeia Kea harbor launch ramps for the launching and recovery of vessels. Small service permits authorized by sections 13-256-73.3 and 13-256-73.4, shall be allowed not more than two trailers per permit per day to use the Heeia Kea harbor launch ramps for the launching and recovery of vessels. Each trailer allowed to use a launch ramp shall be properly licensed and shall be issued a ramp use decal by the department which shall be affixed to the forward end of the trailer tongue.

(m) No activity that is new to a permittee may be conducted without prior written authorization from the department.

(n) Permittees shall establish a safety instruction program for customers that includes, but is not limited to, the use of a personal flotation device, and notification of hazardous conditions or areas and restricted areas.

(o) Permittees shall maintain a visual watch over persons in the water.

(p) Permittees shall have no less than one staff member on site within the permittee's Kaneohe Bay operating area who carries a current adult cardio-pulmonary resuscitation (CPR), and standard first aid and lifeguard training certificates. A list of water safety training certificates acceptable to the department shall be provided to the permittee."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

63. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.2 to read as follows:

§13-256-73.2 Large full service permit restrictions. (a) Not more than one-hundred fifty customers per day per permit shall be allowed for a large full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) Two host vessels with an aggregate maximum carrying capacity of one-hundred fifty passengers for the vessel or vessels in use, but not exceeding the certified passenger carrying capacity of the individual vessel.
- (2) Six rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, for each of which the passenger carrying capacity shall be six or as established by a United States Coast Guard Certificate of Inspection;
- (4) Three motorboats, for each of which the passenger carrying capacity shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, and small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of each host vessel and service barge having a carrying capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The permittee shall indicate which host vessel is declared to be the primary vessel used to embark and disembark passengers from the pier. This vessel shall be allowed to load to full permit capacity of one-hundred fifty. Should the certified passenger capacity of the primary vessel be less than one-hundred fifty, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The three small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) Host vessels shall be equipped with a United States Coast Guard approved marine sanitation device.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and must display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) In the event there is a sale or transfer of a majority of ownership interest in the business to a person not an owner or a shareholder of record after the effective date of this section, the number of host vessels allowed per permit shall be reduced to one host vessel, unless the sale or transfer is to a family member.

(j) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of one hundred fifty customers allowed per day. Not-for profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(k) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in

the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a large snorkel tour permit as found in section 13-256-73.5 unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a large snorkel tour.

(l) High speed operations must take place in deep water 200 feet or more from any reef edge, reef crest, or sand flat.

(m) For the Checker Reef area, host vessel(s) must be moored with bow and stern anchoring as approved by the department, thirty feet or more off of the reef on the south and west edge of Checker Reef, with no obstruction of the use of the channel passing to the southwest of the reef.

(n) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation.”.

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

64. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.3 to read as follows:

§13-256-73.3 Small full service permit restrictions.

(a) Not more than seventy customers per day per permit shall be permitted for a small full service permit.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers;
- (2) Three rental thrill craft and one thrill craft used for operational safety purposes;
- (3) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection;

(4) Two small motor boats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and

(5) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of the vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessels or one of the equipment barges.

(g) All thrill craft and other vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have the discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time. Not-for-profit passengers shall not engage in thrill craft or high speed towing activities.

(j) Any transfer or combination of transfers by the owner or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically void the use of thrill craft, high speed towing/water sledding, and water skiing activities and the permit shall revert to a small sail/snorkel tour permit as found in section 13- 256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 200-37, HRS, for a transfer that includes the use of thrill craft and in accordance with section 13-256-7 for the transfer of a small sail/snorkel tour.

(k) High speed operations must take place in deep water two hundred feet or more from any reef edge, reef crest, or sand flat.

(l) The permittee shall identify and mark the boundaries of the designated thrill craft operating zone with temporary floating buoys only installed during periods of operation.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

65. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.4 to read as follows:

§13-256-73.4 Small full service permit restrictions without thrill craft, watersledding, and high speed towing activities.

(a) No more than seventy customers per day per permit shall be permitted for a small full service permit without thrill craft , watersledding, and high speed towing activities.

(b) The number and type of vessels and equipment which may be authorized by the department under this permit category are:

- (1) One host vessel with a maximum passenger carrying capacity of seventy passengers.
- (2) Two equipment barges, the passenger carrying capacity of each shall be six or as established by a United States Coast Guard Certificate of Inspection.
- (3) Two small motorboats, the passenger carrying capacity of each shall be six or less, as established by a United States Coast Guard Certificate of Inspection; and
- (4) Other non-motorized craft including kayaks, canoes, wind surfers, sailboards, small sailing vessels no larger than 20 feet, and individual water sports equipment as needed.

(c) The passenger carrying capacity of the host vessel and service barges having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(d) The host vessel shall be allowed to load passengers to the full permit capacity of seventy. Should the certified passenger capacity of vessel be less than seventy, the vessel may conduct more than one passenger loading trip to the pier to achieve the maximum number of customers permitted per day.

(e) The two small motorboats authorized under this permit may be either operated directly by the permittee or under contract with another party. Not more than one small motorboat shall be authorized to load or unload passengers at the pier.

(f) A United States Coast Guard approved marine sanitation device or portable toilet shall be located on either the host vessel or one of the equipment barges.

(g) All vessels and equipment must be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(h) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited.

(i) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of seventy customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(j) Any transfer or combination of transfers by the owners or shareholders of record of a business entity holding a permit that results in a transfer of a majority interest or greater in the business entity shall automatically cause the permit to revert to a small sail/snorkel tour permit as found in section 13-256-73.6, unless the transfer is to a family member. A transfer shall result in the assessment of a business transfer fee in accordance with section 13-256-7.

(k) Thrill craft, watersledding, waterskiing and high speed towing are not authorized activities under this permit.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

66. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.5 to read as follows:

§13-256-73.5 Large snorkel tour permit restrictions.

(a) No more than one-hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones “D” and “E” within Kaneohe bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe By waters designated as restricted zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea Small Boat Harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee’s total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer or ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted.”

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

67. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.6 to read as follows:

§ 13-256-73.6 Small sail/snorkel tour permit restrictions.

(a) Not more than sixty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than thirty five customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) Snorkel tours shall be conducted in Zones “D” and “E” within Kaneohe Bay waters, pursuant to section 13-256-73.

(d) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe Bay waters designated as restricted zone I and shall not exceed one hour. Only non-motorized equipment may be used for water sports recreation.

(e) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea Small Boat Harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993, by the department shall not be allowed.

(g) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(h) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(i) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(j) When a small full service permit turns into a small snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(k) When a small snorkel tour permit transfers ownership to a non-family member no more than thirty-five customers per day shall be permitted."

[Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

68. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.7 to read as follows:

§ 13-256-73.7 Glass bottom boat tour permit restrictions.

(a) The passenger carrying capacity of the vessel shall be established by a United States Coast Guard Certificate of Inspection. If a vessel has no U.S.C.G Certificate of Inspection, the vessel's capacity shall not exceed six passengers.

(b) The maximum number of passengers per outing shall be seventy passengers. Passengers may be loaded and unloaded only at the Heeia Kea small boat harbor pier.

(c) The vessel shall be equipped with a United States Coast Guard approved marine sanitation device.

(d) The vessel shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(e) Educational and not-for-profit tours shall not be counted against daily customer limits, but shall not exceed the maximum number of seventy customers allowed per outing. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(f) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the vessel being substituted as it existed on May 22, 2000.

An increase greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on the effective date of these rules by the department shall not be allowed.

(g) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of business transfer fee in accordance with section 13-256-7.

(h) An exchange of passengers between the glass bottom boat tour permittee and any other permittee shall not be allowed.”

[Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

69. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.8 to read as follows:

§ 13-256-73.8 Replacement vessels size restrictions.

(a) Replacement vessels shall not be greater in vessel length overall than 10 % of the vessel overall length authorized on May 22, 2000.

(b) Replacement of any existing vessels or equipment shall require prior written approval by the department.”

[Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

70. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.9 to read as follows:

§ 13-256-73.9 Shuttling restrictions.

No shuttling or transferring of customers among the permittees for the purpose of exceeding the maximum daily customer limit specified by type of permit or exceeding the certified passenger capacity of the vessel shuttling or receiving the passengers shall be allowed.”

[Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)
(Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

71. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.10 to read as follows:

§ 13-256-73.10 Permit Issuance.

(a) Permittees holding valid permits on the effective date of these rules shall be offered the opportunity to apply for the permit category in which they are operating. If any permit offer is refused by the permittee, that permit shall not be issued and shall be eliminated from the total number of Kaneohe Bay ocean waters commercial activity use permits.

(b) Permit applications shall be reviewed for compliance with chapter 200, HRS, applicable rules, and permit conditions. Failure to comply with any permit condition, or having any record of inaccurate submission of gross receipts, inconsistent or untimely payments of fees and charges, or unsafe operations during the last term of a valid permit held by the applicant, may be cause for rejection of the permit application.

(c) The following documents shall be submitted for review at the time an application is made for the issuance of a permit:

(1) Vessel documentation or registration.

- (2) Vessel certificate of inspection (if applicable).
- (3) Certificate of business liability insurance which insures all activities of permittee, including coverage for the operation of thrill craft or other activities including, but not limited to, canoeing, sailing, windsurfing, water sledding, snorkeling, scuba diving or other underwater activities, if applicable.
- (4) General excise tax license.
- (5) Copy of current business registration certificate on file with the department of commerce and consumer affairs.
- (6) Tax clearance certificate from the department of taxation.
- (7) Conservation district use permits (if applicable).
- (8) Affidavit describing any and all accidents, or safety related issues or events, including those affecting employees or customers, that have occurred within the past year.
- (9) Affidavit describing any and all warnings, discrepancies, citations, fines, penalties and convictions levied by the United State Coast Guard, department of land and natural resources, Honolulu police department, City and County of Honolulu, department of planning and permitting, or any other regulatory agency.
- (10) Affidavit describing any and all sales or transfers of any ownership interest in the business.

(d) The department shall publish a list of Kaneohe Bay waters commercial activity use permits scheduled for issuance to incumbent permit holders thirty days prior to the expiration dates of the preceding permits issued in a newspaper of general circulation in the Kaneohe area, with a copy to the Kaneohe Bay Regional Council, inviting public comment on this list and the incumbent permit holders. Any request that a permit not be issued must be accompanied by factual supporting documentation showing the incumbent permittee's failure to meet permit issuance requirements of this chapter.

(e) Insurance requirements for all commercial vessels and all activities conducted on or in the water of Kaneohe bay shall be not less than \$50, 000 for property damage and not less than \$1,000,000 for liability. The liability insurance shall name the State of Hawaii as an additional insured. Any subcontractor employed by a permittee, such as, but not limited to, a scuba diving instructor, shall have insurance coverage which provides the same coverage as required of the permittee and names the State of Hawaii as a additional insured. The permittee and its subcontractors shall provide to the Department certificate(s) of insurance that cover any and all activities conducted under the permit.

(f) In the event an application for the issuance of a new permit is denied, the applicant will be afforded the opportunity for a hearing in accordance with section 13-231-31 and section 13-231-32 for the sole purpose of allowing the applicant to contest the basis of the denial. The opportunity of a hearing shall not apply to automatic expiration provisions of these rules.” [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-37, 200-39)

72. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.11 to read as follows:

§ 13-256-73.11 Temporary mooring of vessels authorized for commercial use in Kaneohe Bay at Heeia Kea small boat harbor.

Temporary mooring within Heeia Kea small boat harbor for any vessel that is authorized for commercial use in Kaneohe Bay ocean waters shall not exceed a cumulative period of 180 days in the same calendar year. [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

73. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.12 to read as follows:

§ 13-256-73.12 Kaneohe Bay ocean waters commercial activity use permit revocation.

Revocation of a Kaneohe Bay waters commercial use permit shall be accomplished in accordance with section 13-231-6.” [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, 200-39)

74. Chapter 13-256-77, Hawaii Administrative Rules, is amended to read as follows:

§ 13-256-77: Kaneohe [commercial high speed boating] recreational thrill craft zone.

(a) The [high speed boating] recreational thrill craft zone is the area encompassed by the boundaries of the zone shown on Exhibit “V”, dated [May 15, 1990] April 16, 2001, and located at the end of this subchapter. The boundaries of Zone K are as follows:

[Beginning at a point in the water at the intersection of the Kaneohe Sampan channel ranges extending seaward with an azimuth measure clockwise from True South of 217 degrees, and the Kaneohe Bay waters boundary, establishing the southeastern boundary of the zone; then in a straight line to a point in the water at the intersection of the Kaneohe ship channel ranges extending seaward with an azimuth measure clockwise from True South of 227 degrees, and the seaward boundary of Kaneohe Bay waters, establishing the northwest boundary of the zone.]

Beginning at a point in the water at approximately 21° 28' 23.5" N / 157° 48' 27" W, that intersects the Kaneohe Sampan channel range extending seaward with an azimuth measured clockwise from True South of 217 degrees, and a straight line drawn to a point in the water at approximately 21° 30' 42" N / 157° 48' 52" W, that intersects Kaneohe ship channel range extending seaward with an azimuth measured clockwise from True South of 227 degrees, establishing the southwestern boundary of the zone. The northwestern boundary of the zone is the straight line that is an extension seaward of the Kaneohe ship channel range with an azimuth measured clockwise from True South of 227 degrees to the limit of the territorial sea. The southeastern boundary of this zone is the straight line that is an extension seaward of the Kaneohe Sampan channel range with an azimuth measured clockwise from True South of 217 degree to the limit of the territorial sea.

As an aid in locating the southwestern boundary, it exists between the Kaneohe Sampan channel and Kaneohe Ship channel ranges along a straight line which can be seen by sighting a straight line between Pyramid Rock which is located at approximately 21° 27' 42" N / 157° 45' 48" W, and Kaoio Point which is located at approximately 21° 32' 03" N / 157° 50' 16" W.

This zone is designated as a [commercial high speed boating] recreational thrill craft zone. Other vessels shall exercise caution when transiting this area. [No more than four commercial operating area use permits for high speed boating shall be issued for this zone. This zone shall be closed to commercial high speed boating annually, during the whale season, from December 15 to May 15 of the following year.]” [Eff 2/24/94] (Auth: HRS §§200-22, 200-23, 200-24, 200-37, 200-39) (Imp: HRS §§ 200-22, 200-23, 200-24, 200-37, 200-39)

73. Material, except source notes, to be repealed is bracketed. New material is underscored.

74. Additions to update source notes to reflect these amendments are not underscored.

75. These amendments to Parts I, II, and III Division of Boating and Ocean Recreation, 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 _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

Laura H. Thielen, Chairperson

Department of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General