

STATE OF HAWAII

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

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SMALL BOAT HARBORS

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SMALL BOAT HARBORS

CHAPTER 230 GENERAL PROVISIONS

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- §13-230-8 Definitions
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Historical note. This chapter is based on general provisions, definitions, and determination of residency of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

§13-230-1 Purpose and scope. The purpose of these rules is to secure the most effective control and management of the small boat harbors and facilities of the State in order that the general public may enjoy safe, orderly, and convenient water recreation. These rules are intended to harmonize and coordinate the department's powers and duties with

all applicable public laws, and are also intended to govern the use or operation of vessels and the activities of persons in the small boat harbors, shores,

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ocean waters, and navigable streams of the State.

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

§13-230-2 Interpretation. If any section of these rules is inconsistent with any laws of the United States or any rule, or standard established pursuant thereto, such section shall be construed, superseded, or governed thereby. Nothing contained in these rules shall be construed to limit the powers of any state department or agency. Each provision of these rules is also intended to be construed most liberally in light of the purpose stated in section 13-230-1. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-3 Severability. The provisions of these rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of such remainder to other persons or property shall not be affected.

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

§13-230-4 Penalties and prosecution. Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules by any small boat harbor master, harbor agent or any boating district manager, while in the discharge of that person's duty, shall be guilty of a

misdemeanor. Recommended fines for each violation are as set forth in the bail schedule for boating, small boat harbors, ocean waters, navigable streams and beaches, provided that nothing in these rules shall prohibit a court from imposing the maximum fine of not more than \$10,000 for each violation as provided in section 200-14, Hawaii Revised Statutes. In addition to or as a condition to the suspension of any fines, the offender may be deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than two years as prescribed in section 200-14, Hawaii Revised

Statutes. Prosecution of offenders shall be as provided by law. [Eff 2/24/94] (Auth: §§200-2, 200-3, 200-4, 200-14) (Imp: 200-2, 200-3, 200-4, 200-14)

§13-230-5 Judicial review. Nothing contained in these rules shall be construed to preclude appropriate resort to judicial remedy or review. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-6 Notice. Where notice to a permittee, co-owner, lien holder, owner or any other party is required by this chapter the department shall effect service by one of the following:

- (1) Posting the notice in a conspicuous place aboard the permittee's vessel or at the assigned berth;
- (2) Mailing the notice to the person by certified mail, return receipt requested, at the person's last known address, provided that service by mail is deemed received and completed five days after the date of mailing; or
- (3) Personal service;

provided that in an emergency, where life or property is endangered or if a vessel may interfere with other vessels, construction or maintenance of berthing facilities, or with the free and proper navigation of a waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. [Eff 2/24/94] (Auth: HRS §§200-4, 200-10) (Imp: HRS §§200-4, 200-9, 200-10)

§13-230-7 Tampering with, defacing or removing notices. No person shall tamper with, deface, or remove any notice posted by the department pursuant to section 13-230-6 except the owner of the vessel or the permittee assigned to the berth. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-230-8 Definitions. When used in this part, unless the context clearly indicates otherwise:

"Agreement" means the agreement between the boatowner and the State as required by section 13-231-2.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk or pier.

"Boatowner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing tournament where participation is invited from the general public.

"Business" includes all professions, trades, occupations, and callings carried on for a profit or livelihood, every kind of commercial enterprise, and the operation of games, machines, or mechanical devices.

"Coast Guard" means the United States Coast Guard.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended with in or on the water.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Department" means the department of land and natural resources of the State.

"Dinghy" means a small open boat under thirteen feet in length, carried on or towed by a larger boat or yacht; it may be propelled by oars, sails or an outboard motor.

"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 or movement from its assigned berth or mooring at least once within a ninety-day period, or cannot be made ready for sea upon thirty days notice to the owner.

"Firm" includes a business organization such as a sole proprietorship, partnership or corporation which is licensed to engage in or conduct business in the State.

"Harbor resident" means the owner, co-owner, spouse of each, and their legal dependents authorized by the department to reside on board a vessel used as the principal habitation of the owner.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or to be moved by oars, sweeps, or towing.

"Immediate family" means any person and his or her spouse and dependent children under twenty-one years of age.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" means any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

(1) Spouse;

(2) A son or daughter who is

(A) Unmarried and under eighteen years;

(B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school, or unmarried and under twenty-two years if a full-time undergraduate student at a college; or

(C) Unmarried and physically handicapped so as to be incapable of self-support;

(3) A parent or grandparent if physically handicapped so as to be incapable of self-support;

(4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" means "vessel length" as defined in this section.

"Living aboard" means the substantial use of a vessel as a place of abode, dwelling, living quarters, or residence, including, but not limited to, the regular use for such purposes during weekends.

"Moor" means to secure a boat by making it fast with cables, lines or anchors.

"Mooring" means a device for holding a vessel in place, when an anchor, concrete block or similar device is placed or dropped on submerged land with a rope or chain attached to a buoy to which the vessel is attached.

"Mooring device" means the use of a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured.

"Owner" shall be synonymous with the word "boatowner" as defined in this section.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Passenger" means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number or who is named as managing owner of a Coast Guard documented vessel.

"Regular permittee" means a person holding a valid regular mooring permit.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term

"roadway" shall refer to each roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors as set forth in this part.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are, as described in Section 200-9, Hawaii Revised Statutes, as constructed, maintained, and operated for the primary purpose of promoting recreational boating activities and the landing of fish.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"Stay aboard" or "staying aboard" means a person or persons aboard vessel for a period of two hours or more between the hours of 12:00 midnite and 6:00 A.M., while the vessel is moored in a state small boat harbor.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Use permit" means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring and state ocean waters.

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"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water.

"Vessel carrying passengers for hire" means any vessel which is used for the carriage of any person or persons for a valuable consideration whether directly or indirectly flowing to the owner, charterer, operator, agent, or any person who has a lien on the vessel.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided that hull platings, plankings, and extensions aside from the hull proper, such as bowsprit, are not to be included in the measurement; provided further that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings and any extensions beyond the hull proper, such as bowsprit, bumpkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a state small boat harbor.

"Visiting vessel" means a vessel having a mooring within the State and temporarily moored in another state small boat harbor. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-230-9 to §13-230-19 (Reserved)

Subchapter 2 Determination of Residency

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§13-230-26	Determination of residence procedure
§13-230-27	Permittee required to report change of residence
§13-230-28	Appeals
§13-230-29	Misrepresentation; penalty for violation

§13-230-20 Purpose. The purpose of this subchapter is to provide a procedure whereby a determination of residence status shall be made for all persons who own a vessel moored in a state small boat harbor or who apply for such moorage to assure that they are assessed the proper fees and charges as established by these rules; to provide appeals mechanism for those persons who believe their residency classification is in error; and to provide sanctions for misrepresentation by a petitioner.
 [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-21 Definitions. For the purpose of this subchapter:
 "Adult" means a person who has reached majority.
 "Dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States.
 "Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of the person and of managing the property of that person.
 "Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents - traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Hearing officer" means a person appointed by the chairperson to hear appeals concerning the determination of residency status.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached majority.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to the minor for the twelve-month period immediately preceding the residence determination date.

"Residence" or "residence status" is a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to the provisions of under section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-22 Twelve-month rule. (a) Status as a Hawaii resident must be acquired, and not subsequently lost at least twelve months prior to the residence determination date to avoid payment of the nonresidence fee differential prescribed in chapter 234. This twelve-month rule also applies to the person whose residency is determined by the fact of residency of another.

(b) While residency shall be lost if it is interrupted during the twelve months immediately preceding the

residence determination date, resident status derived from two or

more successive periods of domicile in Hawaii may be joined together to compute the twelve-month period.
[Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10, 200-16)

§13-230-23 Indications of residence. Because determination of residence in Hawaii requires a finding of subjective fact (intent to make a permanent home) as well as of objective fact (and physical presence), the following objective indications of a person's intent will be considered when determining the person's status. No single index is decisive.

- (1) Primary indications.
 - (A) Voter registration in Hawaii.
 - (B) Voting in Hawaii.
 - (C) Possession and use of Hawaii motor vehicle license plates.
 - (D) Payment of Hawaii personal income tax.
 - (E) Presence of spouse, children, and other close relatives in Hawaii.
- (2) Secondary indications.
 - (A) Membership in voluntary organizations in Hawaii.
 - (B) Licensing from the State for professional practice.
 - (C) Carrying on of a business or the holding of a position in Hawaii.
 - (D) Ownership of residential property or continuous letting of an apartment on a lease basis in Hawaii. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-24 Rules of construction. The following rules of construction shall be applied in all cases:

- (1) Residence in Hawaii and residence in another place cannot be held simultaneously.
- (2) Presence in Hawaii primarily to attend an institution of higher learning does not create resident status.

- (3) Resident status, once acquired, will be lost by future voluntary actions of the resident inconsistent with such status. However, Hawaii residence will not be lost solely because of absence from the State while employed in the service of the United States, while engaged in navigation, or while a student at any institution of learning. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-25 Particular categories. (a) Adults. The resident status of every adult shall be established by the adult's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in these rules.

(b) Minors.

- (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.
- (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.
- (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is that of the father if the minor is not living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.
- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.

- (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order.

Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.

- (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have completed twelve consecutive months of residence; provided that such classification will be lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).
- (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.
- (8) Emancipated minors. An emancipated minor shall be considered an adult for purposes of residence hereunder. The following shall constitute indications of emancipation, no one of which is controlling:
 - (A) Financially independent or self-supporting.
 - (B) Subsistence not provided by parent or legal guardian.
 - (C) Prior military service.
 - (D) Other primary and secondary indications of residence enumerated under section 13-230-24.
 - (E) Any other conduct inconsistent with parental control and custody.
- (9) Hanai. A person may base the person's residency on that of other than the parent or legal

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guardian, provided that the relationship between the person and the person or persons other than the parent or legal guardian is that of "hanai".

(c) Aliens. In addition to all other requirements herein, an alien shall be classified as a resident only upon the alien's admission to the United States for permanent residence (immigration visa). Residence of a minor alien can only be

derived from another person (e.g., a parent) when both that person and the minor achieve resident status.

(d) Military personnel. Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a nonresident member of the United States Armed Forces whose last duty station is in Hawaii and who does all other things necessary to establish a bona fide Hawaiian domicile, including discharge from the military in Hawaii, may be classified as a resident. In addition, a person who establishes a Hawaiian domicile but who enters the military service prior to the expiration of twelve months from the date of such establishment may add the period of the persons's military service on to the former period to satisfy the twelve-month rule.

(e) Married persons. A married person may establish resident status, either on the basis of indications of residence, or on the basis of the indications of the married person's spouse. However, the married person must clearly state intent to make Hawaii the married person's permanent residence. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-26 Determination of residence procedure. (a) These rules establish a fee structure in which nonstate residents in specified instances shall pay an application and permit fee differential. Therefore, any person seeking to be classified as a Hawaii resident for fee purposes shall, at the time of application for or prior to being issued a permit, complete and submit to the department a questionnaire provided by the department designed to elicit facts which will aid the department in determining the applicant's resident, nonresident, or Armed Forces status. The applicant shall answer all pertinent questions and shall attest to the truth of the answers with the

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applicant's signature. The department may also require the applicant to produce certified copies of documents or other relevant proof as may be necessary for the determination of residency status.

(b) A nonresident who believes that the nonresident's residency status has changed so that the nonresident has achieved Hawaii residency status may seek reclassification as a resident by submitting a completed questionnaire as prescribed in subsection (a) on or following the date the nonresident believes that the change in residency status occurred. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4,

200-10)

§13-230-27 Permittee required to report change of residence.
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. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-230-28 Appeals. (a) Classification as a nonresident by the department may be appealed by the aggrieved person by filing a petition for a declaratory ruling in accordance with section 13-230-27.

(b) No petition for appeal shall be accepted by the department unless:

- (1) The petitioner has paid the nonresident fees and fees and charges and filing fee for residency status appeal.
- (2) The petitioner has submitted with the petition documentary evidence tending to establish that the petitioner has, for a period of twelve months prior to the residency determination date, been physically present in the State of Hawaii with the intent to make Hawaii the petitioner's home. The documentary evidence to be furnished shall support the claim of residency by establishing acceptable indicia of residency as provided under section 13-230-23.

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- (3) The petition is filed with the department within thirty days following receipt by certified mail, return receipt requested, or personal delivery, as the case may be, of the department's determination of the petitioner's nonresident status.

(c) The petition shall be signed by the petitioner, and submitted upon a form provided by the department. The petition shall be filed at any division of boating and ocean recreation district office on or before the thirtieth day following receipt by certified mail, return receipt requested or personal delivery, of the department's determination of the petitioner's nonresident status. The district manager receiving the appeal shall promptly forward it to the chief of the division of boating and ocean recreation.

(d) The chief of the division of boating and ocean recreation shall promptly review any petition filed with the department and take appropriate action as follows within fifteen days after the filing of the petition:

- (1) Return the petition to the concerned district manager if the chief of the division of boating and ocean recreation determines the petition should not have been accepted under section 13-230-28(b) with an explanation of the basis for rejection a copy of which shall be forwarded to the petitioner; or
- (2) Reverse the department's prior determination that the petitioner is a nonresident if the chief of the division of boating and ocean recreation determines that the petitioner has submitted adequate proof that the petitioner is a resident of the State of Hawaii; or
- (3) Forward the petition to the chairperson for a declaratory ruling in accordance with section 13-230-27.

(e) The nonstate resident fee differential and filing fee for residency status appeal shall be promptly refunded if the hearing officer reverses the determination of nonresident status as prescribed in section 13-234-24. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

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§13-230-29 Misrepresentation; penalty for violation. It is a violation of these rules for any person to misrepresent any fact upon any form or document intended for or used in determination of resident status for fees and charges purposes or for any person to misrepresent any fact at an appellant hearing hereunder. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

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HAWAII ADMINISTRATIVE RULES

CHAPTER 231 OPERATION OF BOATS,
 SMALL BOAT HARBORS, AND
 PERMITS

Historical note

Subchapter 1 Use of Small Boat Harbors

- §13-231-1 General statement and restrictions on mooring dormant vessels
- §13-231-2 Agreement for the use of small boat harbor property, facilities, and offshore mooring areas
- §13-231-3 Use permits; issuance
- §13-231-4 Use permits; part-time or intermittent occupancy
- §13-231-5 Period of validity and renewal of use permit
- §13-231-6 Revocation of use permit
- §13-231-7 Assignment and reassignment of moorings and vessel storage space
- §13-231-8 Inspections
- §13-231-9 Cancellation of use permit
- §13-231-10 Removal of a vessel or contrivance
- §13-231-11 Absence of vessel for more than fourteen days; effect on permits
- §13-231-12 Discontinuance of service
- §13-231-13 Joint and several liability; non-transferability of use permits
- §13-231-14 Sale of abandoned vessels or to collect delinquent fees
- §13-231-15 Boat owner required to report change of ownership, address, and other changes
- §13-231-16 Numbers or other vessel identification
- §13-231-17 Mooring prohibited except at assigned locations
- §13-231-18 Vessel reconstruction
- §13-231-19 Salvage
- §13-231-20 Houseboats prohibited
- §13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and Keehi boat harbors

CHAPTER 231, Cont'd:

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absence of regular permittee's vessel
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 - §13-231-25 Exchange of berths
 - §13-231-26 Use of vessel as a place of habitation
 - §13-231-27 Allocation of principal habitation permits
 - §13-231-28 Staying aboard vessels moored at
Ala Wai or Keehi boat harbors
 - §13-231-29 Vessel used as a vacation site
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- Subchapter 2 Boat Operation
- §13-231-40 General statement
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 - §13-231-47 to
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- Subchapter 3 Commercial Activities
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 - §13-231-51 Business activities
 - §13-231-52 Solicitations and advertisements
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Subchapter 5 Allocation of Berths

- §13-231-80 General
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- §13-231-82 Review and acceptance, or rejection of applications
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- §13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of acceptance
- §13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance
- §13-231-90 Offer of category I (breakwater) berth
- Ala Wai small boat harbor

Historical note. This chapter is based on use of small boat harbors, boat operation, commercial activities, special area rules, allocation of berths of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

Subchapter 1 Use of Small Boat Harbors

- §13-231-1 General statement and restrictions on mooring dormant vessels
- §13-231-2 Agreement for the use of small boat harbor property and facilities
- §13-231-3 Use permits; issuance
- §13-231-4 Use permits; part-time or intermittent occupancy
- §13-231-5 Period of validity and renewal of use permit

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- §13-231-6 Revocation of use permit
- §13-231-7 Assignment and reassignment of moorings and vessel storage space
- §13-231-8 Inspections
- §13-231-9 Cancellation of use permit
- §13-231-10 Removal of a vessel or contrivance
- §13-231-11 Absence of vessel for more than fourteen days; effect on permits
- §13-231-12 Discontinuance of service
- §13-231-13 Joint and several liability; non-transferability of use permits
- §13-231-14 Sale of abandoned vessels or to collect delinquent fees
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- §13-231-16 Numbers or other vessel identification
- §13-231-17 Mooring prohibited except at assigned locations
- §13-231-18 Vessel reconstruction
- §13-231-19 Salvage
- §13-231-20 Houseboats prohibited
- §13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and Keehi boat harbors
- §13-231-22 Staying aboard transient or visiting vessels
- §13-231-23 Interim use of berth during temporary absence of regular permittee's vessel
- §13-231-24 Interim use of berth pending occupancy by regular permittee
- §13-231-25 Exchange of berths
- §13-231-26 Use of vessel as a place of habitation
- §13-231-27 Allocation of principal habitation permits
- §13-231-28 Staying aboard vessels moored at Ala Wai or Keehi boat harbors
- §13-231-29 Vessel used as a vacation site
- §13-231-30 Restrictions on multiple permits
- §13-231-31 to
- §13-231-39 (Reserved)

§13-231-1 General statement and restrictions on mooring dormant vessels. (a) Berths in state small boat harbors and offshore mooring areas shall be used to accommodate recreational and commercial boats used for water transportation or fishing.

(b) Occupancy of berths at any small boat harbor or offshore mooring area shall be limited to vessels actively used as a means of transportation on water.

(c) The use permit for any vessel determined to be dormant by the department shall be terminated upon a show cause order. The show cause order may be issued by the department and shall contain the basis for the department's determination that the vessel is dormant. The show cause order shall be delivered to the owner as set forth in section 13-231-6. The owner shall have five working days after notification as provided in section 13-231-6 to inform the department of the owner's plan to resolve and correct the deficiencies noted in the show cause order. Failure to respond or failure to execute an approved plan in a timely manner shall result in the termination of the use permit. The department reserves the right to impound, remove and dispose of a vessel in accordance with chapter 200, Hawaii Revised Statutes, and these rules.

(d) The department reserves the right to restrict the use of state facilities to those who are in compliance with all state and federal laws and rules and make full and timely payment of their fees and charges. Failure to comply with this section shall be cause for termination of any use permit and for refusal or withholding the granting of any future use permit requests. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-6) (Imp: HRS §§200-2, 200-3, 200-6)

§13-231-2 Agreement for the use of small boat harbor property, facilities and offshore mooring areas. (a) Before any property or facility at a small boat harbor or offshore mooring area is utilized by any vessel, its owner shall comply with the following:

- (1) Execute an agreement as set forth in Exhibit "A", dated, May 15, 1991, located at the end of this chapter;
- (2) Obtain the approval of the department as evidenced by the chairperson's or the chairperson's representative's signature on the agreement; and
- (3) Be in compliance with all state and federal laws and rules of the department.

(b) Nothing contained herein shall restrict the department's power to waive the requirements of this section as the circumstances may warrant.

(c) For the purpose of this section, a lessee under a lease not intended as security is not an "owner".

(d) Offshore mooring rules and areas are described in chapter 13-235. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-6) (Imp: HRS §§200-2, 200-3, 200-6)

§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. 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.

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- (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)

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

(a) No use permit for docking, mooring, or anchoring a vessel at a small boat harbor or at an offshore mooring area shall be

issued to any person who has been issued a use permit to moor the same vessel at any other small boat harbor, offshore mooring, private marina or yacht club in the State. A temporary mooring permit may be issued to authorize temporary mooring in any small boat harbor or offshore mooring area.

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

§13-231-5 Period of validity and renewal of use permit. The department may issue or renew a use permit for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall automatically terminate. No use permit shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §200-10)

§13-231-6 Revocation of use permit. (a) If after notice and lapse of a 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 wilful 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. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §200-10)

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§13-231-7 Assignment and reassignment of moorings and vessel storage space. Holders of mooring permits may be temporarily assigned or reassigned to berths and spaces within the same small boat harbor, if possible, to accommodate small boat harbor repairs, improvements, maintenance, construction, emergencies, or when necessary during a special event. Reassignments may also be made within the same harbor if a vessel's size in relationship to the size of the assigned berth does not permit maximum and efficient public utilization of small boat harbor facilities or if a reassignment will in any other manner permit maximum and efficient public utilization of small boat harbor facilities. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §200-10)

§13-231-8 Inspections. All vessels located in or upon the waters of a small boat harbor shall be subject to inspection by the department or any peace officer of the State or its political subdivisions at any time when necessary and proper for the purpose of enforcing these rules. [Eff 2/24/94] [Auth: HRS §200-10) (Imp: HRS §200-10)

§13-231-9 Cancellation of use permit. A use permit may be cancelled by a boat owner upon thirty days written notice to the department. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-9, 200-10)

§13-231-10 Removal and custody of a vessel or contrivance.
(a) The department may impound and remove or dispose of any vessel or contrivance moored or left at a small boat harbor or offshore mooring area seventy-two hours after notice is given as provided in section 13-230-6 for the owner to remove the vessel or contrivance from the small boat harbor or an offshore mooring area when its presence is contrary to law or these rules or when the department determines that the removal is necessary to protect human life and property. This includes any property or personal articles located on board; its tackle, apparel, fixtures, equipment, and furnishings. Any action taken by the department to remove the vessel or contrivance, including any property or personal articles located thereon, shall be at the sole cost and risk of the owner of the vessel or contrivance.

(b) The department shall, within seventy-two hours of impoundment, send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any unauthorized vessel. The owner or operator of an unauthorized vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing to the administrator, division of boating and ocean recreation. The written request for an administrative hearing shall be mailed or delivered in person to the administrator during normal business hours. Any requests delivered outside of the normal business hours shall be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an unauthorized vessel to contest the basis given by the department for the administrative impoundment of the vessel. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32 of these rules.

(c) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment of all fees and costs due, and fines levied by a court. Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner or a lien holder for more than thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-10, 200-16) (Imp: HRS §§200-2, 200-3, 200-10, 200-16)

§13-231-11 Absence of vessel for more than fourteen days; effect on permits. (a) A regular mooring permit and related use permits issued to a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days, unless the holder of the permit or permits submits an application prior to departure on a form furnished by the department enumerating the permits the holder wishes to reserve during the holder's absence. If this is done, the application may be approved, by the department, subject to subsection (b) and the regular permittee reserves for the estimated period of

absence noted in the permittee's application which shall not exceed one year, the privilege of returning the vessel to its assigned berth or mooring and also retains, for the estimated period of absence noted in the holder's application which shall not exceed one year, any other related use permit designated in the holder's application; provided that the regular permittee continues, during the absence from the assigned berth or mooring, to pay the fees and charges payable to the department in the amounts prescribed in section 13-234-6. The application shall contain information as to the duration of the absence of the regular permittee's vessel from the berth or mooring. If the assigned vessel does not return within thirty days after the time of return indicated in the approved application for the retention of the regular mooring permit and related use permits, or within one year, whichever is less, all use permits shall automatically expire unless the regular permittee applies to the department prior to the expiration date indicated on the approved application for an extension and the extension is approved by the department. No application to extend the period of retention of a permit to use the assigned berth or mooring and any other related use permits upon return shall be approved by the department if the absence of the permittee's vessel from the assigned berth or mooring would exceed one year unless the regular permittee presents conclusive evidence to the department that due to a boating accident, casualty, hull or equipment failure, weather, sea or related environmental conditions involving the permittee's vessel or similar unforeseen occurrences, the granting of additional time is reasonable and essential to prevent undue hardship. No extension in any case shall authorize the permittee to retain a permit to use the assigned berth or mooring or any other related use permits upon return if the period of absence of the permittee's vessel from its assigned berth or mooring would exceed fifteen months.

(b) Nothing contained in this section shall be construed as a waiver of the right of the department to:

- (1) Deny the application to retain the berth or mooring;
- (2) Deny the reissuance of or to revoke any use permit for failure to comply with any section of these rules; or

- (3) Reassign a vessel to another berth or mooring in order to provide for more efficient use of facilities in the reasonable discretion of the department or when a berth or mooring is unusable, eliminated, or in need of repairs.

(c) A temporary mooring permit and related use permits issued for a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days.

(d) The department recognizes that a vessel operator may depart on a voyage with the intent of returning to the small boat harbor or assigned mooring within fourteen days or less but may be unable to return as planned due to wind, sea, or related environmental conditions, delays in completing repairs or refurbishing, or other unforeseen occurrences. Therefore, under these circumstances, the holder of the regular mooring permit may initially apply to the department by letter, telephone, or any other means of communication and be permitted to retain the mooring permit and any other related use permits upon return of the vessel to the assigned berth or mooring, provided that the initial application is received not later than the fourteenth day following departure from the assigned berth or mooring and confirmed in writing by the permittee within ten days of the date of initial application. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-12 Discontinuance of services. When necessary and proper to do so, the department may, after reasonable notice, discontinue any service or withdraw the use of any utility, property, or facility at a small boat harbor as may be reasonable under the circumstances. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §200-10)

§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 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 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)

§13-231-14 Sale of abandoned vessels or to collect delinquent fees. In the event any vessel is abandoned at a small boat harbor or any owner is delinquent in the payment of any fee or charge, after reasonable notice, the department may institute proceedings in accordance with chapter 200, Hawaii Revised Statutes, to secure the sale of the vessel. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-3, 200-10, 200-16)

§13-231-15 Boat owner required to report change of ownership, address, and other changes. (a) The owner of any vessel moored, stored, or left in a small boat harbor shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel;
- (2) All or any interest in the vessel is transferred to another person or persons;
- (3) The owner's address or telephone number changes;
- (4) The vessel is chartered, leased, or rented; or
- (5) There is any change of tenants or agents or their telephone numbers or addresses.

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(b) The new possessor or owner of any interest in any vessel moored in a small boat harbor shall within seven days after acquiring same inform the department in writing concerning the acquisition. If the vessel is owned by a corporation, the duties and obligations of the "owner" as prescribed in this section devolve upon the person who owns or controls a majority of the stock of the corporation. If there is no such ownership or control, the corporation must perform the duties and obligations. "Transfer" as used in this section includes transfers of stock in a corporate owner if the transfer affects a change in the majority stockholder. "Interest" as used in this section includes ownership of stock in a corporation that owns a vessel moored in a small boat harbor.

(c) Evidence of any wilful misstatement or omission of fact regarding the ownership of a vessel moored in a state boat harbor, or transfer of ownership of a corporation or other business entity to which a mooring permit, commercial permit or other use permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all state small boat harbor use permits held by the parties involved, and may be a bar against the issuance of any use permit for state small boat harbor facilities in the future.

[Eff 2/24/94] [Auth: HRS §§200-2, 200-3, 200-4, 200-10] [Imp: HRS §§200-2, 200-3, 200-4, 200-10]

§13-231-16 Numbers or other vessel identification. Owners of vessels required by law to be documented or numbered shall document or number their boats prior to obtaining a mooring permit. Owners of vessels not required by law or regulation to be documented or numbered shall, prior to obtaining a mooring permit, affix the boat's name, the owner's name, or the name of the vessel to which attached in letters not smaller than three inches in height and in a color which contrasts with the background so as to be clearly visible for identification. Transient vessels are exempt from the provisions of this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-17 Mooring prohibited except at assigned locations.
(a) A vessel, contrivance or material shall not be moored, anchored, or stored:

(1) At a small boat harbor, offshore mooring or space other than that to which it was properly assigned.

(2) Contrary to directions of proper authorities.

(b) Any vessel, contrivance or material moored, anchored, or stored, including any property located thereon or therein or attached thereto in violation of this section may be removed by the department to an impounding area or other location at the owner's risk and expense and the State shall not be liable for any damage which may result if notice to remove is given by placing it upon the vessel, contrivance or material, or as near as possible, indicating the violation of this section, the date and time the notice was posted and that the vessel, contrivance or material must be removed within seventy-two hours from the time the notice was posted. When a vessel is so removed, appropriate fees and charges shall be assessed therefore and possession of the space the vessel unlawfully occupied shall vest in the department. The removal to the impounding area shall not be deemed to confer any rights of occupancy in the impounding area occupied by such vessel.

(c) In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any impounded vessel, contrivance or material. The owner or operator of an impounded vessel, contrivance or material shall have ten calendar days after receipt of notice of impoundment of the vessel, contrivance or material to request in writing an administrative hearing. The written request for an administrative hearing must be mailed or delivered in person to the administrator during normal business hours. After hours requests will be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel, contrivance or material to contest the basis given by the department for the impoundment of the vessel, contrivance or material. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32 of these rules.

(d) Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner or

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a lien holder for more than thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10, 200-16) (Imp: HRS §§200-2, 200-9, 200-10, 200-16)

§13-231-18 Vessel reconstruction. Vessel reconstruction or major modification shall be accomplished only in an area designated by the small boat harbor supervisor. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-1)

§13-231-19 Salvage. If a vessel is moored so as to be in danger of wreckage, damaging other property, or sinking, the department shall, upon notice and after reasonable time has elapsed, not to exceed ten days, to allow the owner or the owner's agent to take appropriate action, take such action as the circumstances require to save or rescue the vessel, or prevent damage to other property or the obstruction of waterways; provided that an emergency, where life or property is endangered or the vessel may interfere with other vessels or with free and proper navigation of waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. Appropriate fees and charges shall be assessed against the owner for such services. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-1)

§13-231-20 Houseboats prohibited. A use permit shall not be issued for any houseboat in any small boat harbor or designated mooring area, except in Ke'ehi Lagoon and in accordance with section 13-235-31. The department may consider the following in determining whether a vessel is a houseboat:

- (1) Whether the vessel is actually used as a dwelling or abode;
- (2) If used as a dwelling or abode, to what extent and in what manner;
- (3) The extent to which it is actually used for any recreational boating or for fishing;
- (4) Whether it is so constructed, reconstructed, or designed as to be capable of being used for recreational boating or fishing in the waters

- surrounding the small boat harbor or designated mooring area in which it is moored;
- (5) The frequency with which it leaves the confines of the small boat harbor or designated mooring area in which it is moored; and
 - (6) Whether it is equipped with any operating means of propulsion. [Eff 2/24/94] (Auth: HRS §§200-2, 200-6, 200-10) (Imp: HRS §§200-2, 200-6, 200-10)

§13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and Keehi boat harbors. (a) This section is applicable in all small boat harbors, except Ala Wai and Keehi boat harbors. Further, it is not applicable to a:

- (1) Vessel other than a yacht engaged in carrying passengers for hire on international voyages;
 - (2) Vessel owned by the United States Government; or
 - (3) Tug boat or towboat.
- (b) No person shall moor any vessel or any contrivance in a state small boat harbor if any person is living aboard, provided that the department may permit the operator and other persons accompanying the operator, of a visiting or transient vessel to moor the vessel and live aboard for a period not to exceed thirty days at any one small boat harbor during the calendar year, if the following conditions are met:

- (1) The operator applies for and is granted a living aboard permit authorizing the persons named in the permit to live aboard the operator's vessel.
 - (2) The mooring of the vessel in a small boat harbor with persons living aboard does not interfere with the maximum, safe, and efficient utilization of the small boat harbor facilities; and
 - (3) The vessel conforms with the department's standards of safety, sanitation, and maintenance as prescribed in these rules and the state boating rules.
- (c) Small boat harbors are constructed, operated and maintained for the primary purposes of providing public recreational boating facilities and promoting the fishing industry. To implement these purposes an application for a living aboard permit shall be reviewed and additional information may be required by the department to ascertain the effect or probable effect the issuance of the permit would have on the maximum efficient utilization of small

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boat harbor facilities for recreational boating activities and the promotion of the fishing industry. No permit to live aboard a vessel shall be issued by the department unless the application and supporting information clearly shows that the issuance thereof is not contrary to the public interest, or otherwise unlawful. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-22 Staying aboard transient or visiting vessels. A stay aboard permit authorizing persons to stay aboard a transient or visiting vessel moored in a small boat harbor or offshore mooring area may be issued to the owner, master, crew, and passengers for a period or periods not to exceed ninety nights in a calendar year, except that for Ala Wai small boat harbor the period shall not exceed one hundred twenty nights in a calendar year. [Eff 2/24/94] (Auth: HRS §§200-2, 200-9) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-23 Interim use of berth during temporary absence of regular permittee's vessel. (a) The department may allocate a berth assigned to a regular permittee to another person, pursuant to section 13-231-5 for interim use while the regular permittee's vessel assigned thereto is temporarily absent from the berth or for a period not to exceed thirty days, whichever period is shorter. A temporary mooring permit for interim use, issued pursuant to this section, shall be nonrenewable.

(b) Interim use of the berth by a temporary permittee, pursuant to this section, while the regular permittee's vessel assigned thereto is absent, does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor, upon expiration of the temporary mooring permit or upon lapse of forty-eight hour written notice to vacate the berth prior to the return of the regular permittee's vessel, whichever event occurs first, and the temporary permittee shall remove the temporary permittee's vessel from the berth and the harbor upon the occurrence of either event.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to vacate the berth and the small boat harbor, upon expiration of the temporary mooring permit or upon lapse of forty-eight hours written notice to vacate in order to accommodate the return of the regular permittee's vessel shall subject the

temporary permittee to liability for any damages incurred by the returning regular permittee resulting from the temporary permittee's failure to vacate, and to a fine pursuant to section 200-14, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel to an impounding area. The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: §§200-2, 200-9, 200-10)

§13-231-24 Interim use of berth pending occupancy by regular permittee. (a) The department shall allocate an unassigned berth to the senior applicant for a regular mooring permit as expeditiously as possible pursuant to section 13-231-5. It is recognized that, despite efforts to expedite the process, variable periods of time will elapse before the berth is assigned and the newly-assigned regular permittee actually moves a vessel into the berth. Therefore the department may allocate the berth to another person, pursuant to section 13-231-5 for interim use, until the allocation and assignment procedures have been completed and the newly-assigned regular permittee is prepared to move a vessel into the berth, or for a nonrenewable period not to exceed thirty days, whichever period is shorter.

(b) Interim use of a berth by a temporary permittee pursuant to this section does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor, upon expiration of the temporary permittee's temporary mooring permit or upon lapse of forty-eight hours notice to vacate the berth prior to movement of the newly-assigned regular permittee's vessel into the berth, whichever event occurs first and the temporary permittee shall remove the temporary permittee's vessel from the berth and the small boat harbor upon the occurrence of either event.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to vacate the berth and the small boat harbor, upon expiration of the temporary mooring permit or receipt of forty-eight hours notice to vacate in order to accommodate the regular permittee's vessel shall subject the temporary permittee to liability for any damages incurred by the regular permittee resulting from the temporary permittee's failure to vacate,

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and to a fine pursuant to section 200-14, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel to an impounding area.

The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94] (Auth: §§200-2, 200-10) (Imp: HRS §§200-2, §200-9, 200-10)

§13-231-25 Exchange of berths. A permittee holding a regular mooring permit to moor in the small boat harbor may, upon approval by the department, exchange the permittee's berth with another permittee holding a regular mooring permit to moor in the small boat harbor if:

- (1) The vessels are suitable for the berths as determined by the factors enumerated in section 13-231-5;
- (2) There is mutual agreement between the permittees; and
- (3) The berths to be exchanged are of the same characteristics. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§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)

§13-231-27 Allocation of principal habitation permits. (a) Application for a principal habitation permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a principal habitation permit as described under subsection (e) if the maximum number of vessels authorized by subsection 13-231-26(f) are not being used as the principal habitation of the owners; provided that no prior requests therefore are pending as provided in this section.
- (2) If the maximum number of vessels permitted by subsection 13-231-26(f) is being used as the principal habitation of the owners, an owner's application for a principal habitation permit shall be retained and honored when the total number of vessels so used is less than the maximum limit so that the issuance of such a permit is authorized pursuant to these rules.

- (A) An application for the issuance of a principal habitation permit shall be made in writing to the department by the owner on a form provided by the department. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b).
 - (B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subsection (c) unless terminated sooner in accordance with these rules. An application is void after the date of expiration indicated thereon.
 - (C) An application may be renewed within a ninety-day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending one year from expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.
 - (D) It is the policy of the department to mail an application renewal notice to an applicant, prior to the expiration of the application, at the address the applicant has furnished to the department pursuant to subsection (c). However, the applicant is nonetheless responsible for the timely renewal of an application without receipt of a renewal notice from the department.
- (b) Review, and acceptance, or rejection of applications.

- (1) The department shall examine and determine the genuineness and regularity of each application and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.
 - (2) 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.
 - (3) An application shall not be accepted for consideration and shall be rejected if:
 - (A) The application fee is not paid at the time the application is made;
 - (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or
 - (C) The applicant has pending a citation for violation of any of the department's rules.
 - (4) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the application has not been accepted for consideration and has been rejected and the reasons therefore. An applicant may cure the defect and reapply.
- (c) Applicant required to furnish address and report changes; effect of failure to report changes.
- (1) An applicant shall include the applicant's address in the application to the department for a principal habitation permit.
 - (2) An applicant shall immediately notify the department in writing of any changes in the applicant's address in order to maintain the validity of his application.
 - (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a principal habitation permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.
- (d) Withdrawal of application; effect if application has become void, expires, or has been withdrawn.
- (1) An application may be withdrawn by an applicant upon written notice to the department.

- (2) An applicant who withdraws an application or whose application has expired, or become void, may submit a new application for acceptance by the department. Seniority begins on the date the applicant's new application is accepted for consideration as provided in subsection (a)(2)(A).

(e) Priority in the allocation of principal habitation permits. When the total number of vessels authorized by the department to be used as the principal habitation of the owners at Ala Wai or Keehi boat harbor is less than the maximum number of vessels authorized to be so used pursuant to the provisions of section 13-231-26(f), the department shall offer a principal habitation permit to the senior applicant eligible to receive such a permit.

(f) Notice to owner of available principal habitation permit. When an offer of a principal habitation permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this section at the post office address furnished to the department in writing by the applicant.

(g) Offer of principal habitation permit valid only fourteen days; written notice of intention; acceptance.

- (1) An applicant may decline an offer of a principal habitation permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this subsection shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's last refusal.

- (2) (A) If an applicant decides to accept the offer of a principal habitation permit, the applicant shall either:
- (i) Deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer; or
 - (ii) Accept the offer by securing a principal habitation permit, within fourteen days after the receipt of the offer.

- (B) The applicant's application for a principal habitation permit and the offer by the State of a principal habitation permit shall be void if the applicant fails to either secure a principal habitation permit or give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the permit shall then be offered to the next senior applicant pursuant to this section.
- (3) (A) An applicant who has not accepted the offer but has delivered a written notice of intention to accept to the department pursuant to paragraph (2) shall accept the offer by securing a principal habitation permit as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department.
- (B) Except as provided in paragraph (4) the applicant's application for a principal habitation permit, the offer by the State of a principal habitation permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a principal habitation permit within the fourteen days as prescribed herein, and the principal habitation permit shall then be offered to the next senior applicant in accordance with these rules.
- (4) The department may extend the deadline for acceptance prescribed in paragraph (2) if the applicant presents evidence 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 for compliance shall not exceed a period of sixty days from the date the department received from the applicant a written notice of intention to accept the offer of a principal habitation permit.
- (5) Since time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (f) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-28 Staying aboard vessels moored at Ala Wai or Keehi boat harbor. (a) Staying aboard a vessel moored at Ala Wai or Keehi boat harbor is prohibited except that:

- (1) Owners holding a valid regular mooring permit, the spouse of each, their legal dependents and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a use permit upon written notification to the department on or before the date of stay; provided that the period does not exceed any three nights in a week and a total of any ninety nights in a calendar year, including vessel use as a vacation site;
- (2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:
 - (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
 - (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
 - (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation and harbor resident permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year; or
 - (D) Harbor resident permit issued in accordance with section 13-231-26 (use of vessel as a place of principal habitation).

(b) When staying aboard in accordance with subsection (a)(1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.

(c) Each harbor resident or other person authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility key more than two times. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9)

§13-231-29 Vessel used as a vacation site. (a) Staying aboard a vessel moored in Ala Wai or Keehi boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse of each, their legal dependents, and nonpaying guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;
- (2) The vessel owner secures a vacation permit and a stay-aboard permit for each vacationer;
- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-30 Restrictions on multiple permits. The accumulation of more than two permits for a berth, mooring, or both by a co-owner, firm, corporation, trust, association, organization, institution, or lessee is prohibited in any one small boat harbor. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-31 Administrative hearing. (a) The procedures under this section shall be used for any administrative hearing conducted by the division of boating and ocean recreation as required by law.

(b) An administrative hearing officer shall be appointed by the chairperson. Upon setting the time for the hearing, the administrative hearing officer shall make a reasonable effort to transmit a notice to the owners or their attorneys, if any, last known address, containing the following:

- (1) The date, time, place and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a

member of a partnership may represent the partnership, or an authorized officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association.

(c) All parties shall be afforded an opportunity to present evidence and argument on all relevant issues involved.

(d) Any procedure in the administrative hearing may be modified or waived by stipulation of the parties and informal disposition may be made of any administrative hearing by stipulation, agreed settlement, consent order, or default.

(e) A tape recording may be made of the proceedings. No videotaping or other cameras shall be allowed during the hearing.

(f) Appeals from the decision may be made in accordance with chapter 91, Hawaii Revised Statutes.

[Eff 2/24/94] (Auth: HRS §§91.9, 200-16) (Imp: HRS §200-16)

§13-231-32 Rules of evidence; official notice. (a) The administrative hearing officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

(b) In administrative hearings:

- (1) Any oral or documentary evidence may be received, but the department shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The department shall give effect to the rules of privilege recognized by law.
- (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.
- (3) Every party shall have the right to conduct cross-examination as may be required for a full

and true disclosure of the facts, and shall have the right to submit rebuttal evidence at the time of the hearing.

- (4) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree of quantum of proof shall be a preponderance of the evidence. [Eff 2/24/94] (Auth: HRS §§91-10, 200-16) (Imp: HRS §200-16)

§13-231-33 to §13-231-39 (Reserved)

Subchapter 2 Boat Operation

- §13-231-40 General statement
§13-231-41 Navigation or mooring vessels in small boat harbors
§13-231-42 Interference with navigation
§13-231-43 Pilotage
§13-231-44 Vessel loading zone
§13-231-45 Marine inspections
§13-231-46 Vessel limitations
§13-231-47
to
§13-231-49 (Reserved)

§13-231-40 General statement. This subchapter shall govern the operation of vessels in small boat harbors. Nothing contained in this subchapter shall be construed to limit the authority of the federal government. (Refer also to subchapter 4, chapter 231 for provisions relating to specific area.) [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

§13-231-41 Navigation or mooring vessels in small boat harbors. Whenever a vessel enters a small boat harbor, its operator shall immediately come under the jurisdiction of these rules. Such vessels shall be operated, navigated, moored, or stored in accordance with reasonable directions of small boat harbor authorities. The department may designate areas for special boating activities. Each

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vessel is to be navigated within a state small boat harbor at a speed low enough that its wake will not disturb any other vessel or property. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

§13-231-42 Interference with navigation. Unless otherwise authorized, no log, boom, float, pier, dock, fence, pile, anchorage, or other obstruction shall be installed or placed in small boat harbors without a permit from the department. No person shall operate any vessel in a manner which will unreasonably interfere with other vessels or free and proper navigation of waterways. Anchoring in heavily travelled channels or main thoroughfares shall constitute such interference. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

§13-231-43 Pilotage. Every person operating a vessel in a small boat harbor or through channels or entrances leaving or approaching such harbor shall do so at this person's own risk. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

§13-231-44 Vessel loading zone. Vessel loading zone means a portion of a small boat harbor facility reserved for the exclusive use of vessels during fueling, loading, or unloading. No person shall stop or moor a vessel for any purpose other than for the expeditious loading, unloading, or fueling in any place marked as a vessel loading zone during the hours when the regulations applicable to such loading zone are applicable. Except when otherwise prescribed by signs, the use of a vessel loading zone by any one vessel shall not exceed thirty minutes. No person shall leave a vessel unattended at a vessel loading zone. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

§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 year.

(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.

(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.

(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)

§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 year.

(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.

(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

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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.

(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

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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)

§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).

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"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 year.

(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.

(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

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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.

(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)

§13-231-46 Vessel limitations. Due to the restricted entrance and turning area in Lahaina small boat harbor, No vessel of any size will be allowed to moor on the makai side of the Lahaina loading (fuel) dock from sunset to sunrise. Mooring from sunrise to sunset will be limited to fifteen minutes. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2) (Imp: HRS §§200-1, 200-2)

§13-231-47 to §13-231-49 (Reserved)

Subchapter 3 Commercial Activities

- §13-231-50 General statement
- §13-231-51 Business activities
- §13-231-52 Solicitations and advertisements
- §13-231-53 Signs
- §13-231-54 Commercial vessel; definition
- §13-231-55 Berthing commercial vessels at Ala Wai and Keehi boat harbors
- §13-231-56 Definitions, gross receipts
- §13-231-57 Berthing or using commercial vessels in state small boat harbors; signs and other structures

§13-231-50

- §13-231-58 Limitations on the number of commercial permits for vessels assigned permanent moorings
- §13-231-59 Limitations on commercial permits for vessels moored elsewhere
- §13-231-60 Allocation of commercial permits for vessels
- §13-231-61 Renewal of commercial permits
- §13-231-62 Transferability of commercial permits
- §13-231-63 Retention of berth upon termination of commercial permit
- §13-231-64 Fees and charges
- §13-231-65 Insurance requirements
- §13-231-66 Limitation on number of berths held by a commercial permittee
- §13-231-67 Limitations on commercial permits issued for the use of state boat launching ramps
- §13-231-68 Signs and other structures at a state small boat harbor
- §13-231-69 Multiple use of mooring facilities by commercial vessels
- §13-231-70 Water taxi operations
- §13-231-71 to
- §13-231-75 (Reserved)

§13-231-50 General statement. No regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public.

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

§13-231-51 Business activities. No person shall engage in any business or commercial activity at any small boat harbor or other small boat facility without:

- (1) Prior written approval of the department; or
- (2) The proper execution of an agreement with the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

§13-231-52 Solicitations and advertisements. Without limiting its generality, the words "business or commercial activity" as used in section 13-231-51 in-

cludes any solicitations and advertisements, intended for private gain or purposes. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

§13-231-53 Signs. No person shall post or display any signs at a small boat harbor without the prior written approval of the department, except that signs strictly pertaining to the sale of vessels and of maximum dimensions of three feet by three feet shall be permitted on the vessel without approval. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

§13-231-54 Commercial vessel; definition. "Commercial vessel" as used in this subchapter means a vessel engaged in any trade or business including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-10)

§13-231-55 Berthing commercial vessels at Ala Wai or Keehi boat harbor. (a) Commercial vessels shall not be moored nor shall any person be issued a permit to moor a commercial vessel at the Ala Wai or Keehi boat harbor, including the areas leased to Hawaii and Waikiki Yacht Clubs, except at the areas leased to Ala Wai Marine, Ltd.

and Texaco, Inc. for purposes authorized in their leases.

(b) The department may issue a temporary mooring permit authorizing the owner to temporarily moor at Ala Wai or Keehi boat harbor, provided the vessel is not engaged in commercial activities.

(c) This section is not applicable to a vessel used principally for recreational purposes (more than fifty per cent of its operating time) but licensed to engage in commercial fishing. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-10)

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§13-231-56 Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, and sales have a direct relationship to the vessel. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-10)

§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 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)

§13-231-58 Limitations on the number of commercial permits for vessels assigned permanent moorings. (a) The total number of valid commercial permits which may be issued for vessels assigned permanent mooring in Manele small boat harbor shall not exceed ten per cent of the available berths.

(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
(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

(c) Notwithstanding the provisions of subsections (a) and (b) limiting the number of commercial permits which may be issued, the owner of a commercial vessel holding a regular mooring permit and a valid commercial permit on the effective date of these rules for the above listed small

boat harbors may retain and apply for reissuance of the commercial permit, provided that all other requirements of these rules are met.

(d) Except for Lahaina Harbor, the provisions of subsection (b) limiting the number of commercial permits which may be issued for vessels moored in a small boat harbor shall not preclude the owner of a vessel moored elsewhere holding a commercial permit for that small boat harbor from being issued a regular mooring permit for the small boat harbor and retaining the commercial permit, provided that the total number of valid commercial permits for vessels moored elsewhere shall be reduced accordingly. The owner of a vessel issued a regular mooring permit and a valid commercial permit may, subject to prior approval of the department, relinquish the mooring permit and retain the commercial permit, provided that the total number of valid commercial permits for vessels moored in the small boat harbor plus the number of commercial permits for vessels moored elsewhere are not exceeded. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

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

§13-231-60 Allocation of commercial permits. (a) Commercial permits shall be issued to qualified applicants in the order in which applications are received by the department. Seniority begins on the date an application is received and accepted by the department. The allocation procedures specified in subchapter 5, Allocation of berths, shall also govern the allocation of commercial permits under this section; provided that waiting lists for commercial permits shall be established and maintained separately from waiting lists for berth assignment.

(b) The sale or transfer of any corporation or other business entity while on the waiting list which results in a change of the majority stockholder or person holding the majority interest in the business shall result in loss of seniority, and the applicant shall be placed at the bottom of the waiting list.

(c) The department may reject an application for a commercial permit if the type of commercial activity is determined by the department to be inappropriate for the facility or area for which the permit is being requested, in addition to the grounds for rejection of an application for a permit listed in section 13-231-82.

(d) When a commercial permit becomes available for a vessel moored elsewhere, the permit issued shall be of the same category as the commercial permit which was previously in effect. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-61 Reissuance of commercial permits.

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

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

- | | |
|---|-----------|
| (A) Vessels used for bare boat (demise) charters and charter sail boats | \$ 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; or
- (2) The permittee applies to the department in writing for reissuance of the permittee's commercial 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 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 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 the 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. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-62 Transferability of commercial permits. (a)
Commercial permits issued to individuals.

- (1) A commercial permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title or interest in the vessel identified in the commercial permit to another person by any arrangement, the commercial permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial permit;
- (2) An original permittee holding both a commercial permit and a regular mooring permit, upon written application and approval by the department may retain the commercial permit, provided that within thirty days the permittee moves into the small boat harbor another vessel owned by the permittee pursuant to the provisions of section 13-231-13; and
- (3) An original permittee holding a commercial permit and moored elsewhere may, upon written application to and approval by the department retain the commercial permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.

(b) The following rights, conditions, and restrictions apply to commercial permits issued to a corporation or other business entity.

- (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid commercial permit may transfer any or all stock or interest and retain the commercial permit and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a commercial permit. The department shall be notified within ten working days of:
 - (A) All transactions that amount to a transfer of ten per cent or more of the stock or interest in the firm by owners of record on the effective date of these rules;

- (B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and
 - (C) The business transfer fee is paid on or before the date of transfer; and
- (2) A commercial permit issued to a corporation or other business entity shall automatically expire:
- (A) Upon the voluntary or involuntary dissolution of the corporation or business entity;
 - (B) If the vessel or vessels operated under the commercial permit are sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
 - (C) If the permittee fails to operate the vessel for which the commercial permit is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the permittee provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-63 Retention of berth upon termination of commercial permit. The owner of a vessel moored in any of the above listed small boat harbors whose commercial permit has been cancelled at the owner's request, expired, or revoked by the department pursuant to the provisions of these rules may continue to moor the vessel in the small boat harbor in accordance with the owner's regular mooring permit and to utilize the vessel for non-commercial purposes if the vessel and the owner conform to the conditions set forth in these rules to renew or maintain a regular mooring permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-64 Fees and charges. Fees and charges for commercial vessels shall be as prescribed in chapter 13-234. (Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

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§13-231-65 Insurance requirements. A permittee issued a commercial permit shall, concurrently with the execution of the permit, tender to the department a copy of either a comprehensive

general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$300,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but less than twenty-six passengers; and not less than \$750,000 for vessels authorized to carry more than twenty-five passengers for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee for any injury or damage proximately caused by it. This insurance shall:

- (1) Be issued by an insurance company or surety company authorized to do business in the State and approved in writing by the department;
- (2) Name the State as an additional insured;
- (3) Provide that the department shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;
- (4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee, its officers, agents, employees, invitees, or licensees, in connection with the permittee's use or occupancy of the premises; and
- (5) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit. The permittee shall submit evidence to the department of renewals or other actions to indicate that the insurance policy remains in effect as prescribed herein. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

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§13-231-66 Limitation on number of berths held by a commercial permittee. No person holding a valid commercial vessel permit for a commercial vessel moored in any of the small boat harbors listed in section 13-231-57 shall be issued a use permit authorizing the person to moor more than two commercial vessels in one of these small boat harbors except temporarily

pursuant to section 13-231-57(c) or as provided by section 13-231-69; provided further, that any person holding valid use permits on the effective date of these rules authorizing the mooring of more than two commercial vessels in any of these small boat harbors may continue to moor the person's vessels in the small boat harbors subject to compliance with the conditions of the use permit and this chapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-67 Limitation on commercial permits issued for the use of state boat launching ramps. (a) State boat launching ramps were constructed for the primary purpose of providing access to the waters of the State for trailered boats. Therefore, commercial permits issued for the use of state boat launching facilities shall be restricted to boats that are regularly launched and recovered from boat launching ramps and used in the course of doing business. A commercial permit shall be required for any trailered vessel which is rented off-site, but launches or recovers from a state boat launching facility. The owner of a trailered vessel shall be required to obtain a commercial permit and comply with all other rules of the department governing commercial vessel activities. Notwithstanding the limitation of the number of commercial permits which may be issued for launching ramps in subsections (d)(3) through (d)(9) below, the owner may apply for and may be issued a commercial permit for the number of vessels owned and registered in furtherance of its commercial use by the business on the effective date of these rules. Vessels registered to boat dealers and manufacturers and used for the purpose of conducting sea trials and instruction of prospective owners shall be exempt from commercial permit requirements.

(b) No commercial permits for the use of state boat launching ramps shall be issued for the purpose of

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embarking or disembarking passengers by small craft or lighter from a vessel moored offshore.

(c) A commercial permit issued for the use of a state boat launching ramp shall also be valid for all other state boat ramps

on the same island at which commercial activities are permitted except those listed in subsection (d); provided that the permittee shall indicate which launching ramp is expected to be the location of primary use and the fees derived from two percent of gross revenues shall be paid to that account. No commercial permit shall be issued for a launching ramp located on an island other than the place of business of the permittee.

(d) 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
- (4) Maunalua Bay - 5
- (5) Mala - 15
- (6) Kihei - 15
- (7) Manele - 3
- (8) Kaunakakai - 5
- (9) Kukuiula - 6
- (10) All others - no limit. [Eff 2/24/94]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp:
HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-68 Signs and other structures at a state small boat harbor. (a) No person shall erect or place a sign, ticket booth, or any other structure in a state small boat harbor without the prior written approval of the department. All such structures shall only be erected or placed within a state small boat harbor if they are in conformity with state and county laws and ordinances, and prior approval of all appropriate governing agencies has been obtained.

(b) Signs identifying commercial activities posted or displayed within a state small boat harbor shall be limited to twelve square feet maximum sign area and be designed in accordance with the guide for small boat harbor signs provided by the department. Structures for ticket booths shall be limited to thirty-six square feet maximum and be

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designed in accordance with the guide for ticket booths provided by the department.

(c) Signs and other structures placed or erected within Lahaina boat harbor shall also comply with the requirements of the Maui County Cultural Resources Commission.

(d) Fees for signs and ticket booths are set forth in

chapter 13-234. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

§13-231-69 Multiple use mooring facilities by commercial vessels. (a) Notwithstanding the provisions of section 13-231-4, a permittee holding a valid mooring permit for a commercial vessel may place another commercial vessel of the same size category that is owned by the permittee in the permittee's assigned berth when the commercial vessel for which the mooring permit is

issued is temporarily absent from the berth, provided that prior notification is provided to the department.

(b) The mooring permit for the assigned berth shall be issued for the largest commercial vessel to utilize the berth, and mooring fees charged in accordance with the fee schedule shown in section 13-234-25. The vessel name and registration or documentation number of each additional vessel expected to utilize the berth shall be listed as an addendum to the regular mooring permit issued for that berth. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-10.)

§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat harbors except Ala Wai and Keehi, provided that the owner of the water taxi operation has been issued a commercial use permit. For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels

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moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of

commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-71 to §13-231-75 (Reserved)

Subchapter 4 Special Area Rules

§13-231-76 Kewalo Basin
§13-231-77 Ala Wai Canal
§13-231-78
to
§13-231-79 (Reserved)

§13-231-76 Kewalo basin. The Kewalo basin is not a small boat harbor for the purpose of these rules. (See rules governing commercial harbors.) [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-77 Ala Wai canal. Operation of vessels in Ala Wai canal shall be accomplished in a manner that will not create a nuisance to area residents. All applicable provisions of these rules shall apply to Ala Wai canal. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-78 to §13-231-79 (Reserved)

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§13-231-80

Subchapter 5 Allocation of Berths

§13-231-80 General
§13-231-81 Application for a berth; seniority of application; period of validity; renewal of application
§13-231-82 Review, acceptance, or rejection of applications
§13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes

- §13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn
- §13-231-85 Priority and procedures in allocation of berths
- §13-231-86 Categories of berths; priority of allocation
- §13-231-87 Notice to owner of available berth
- §13-231-88 Offer of regular mooring permit valid only 14 days; written notice of acceptance
- §13-231-89 Offer of temporary mooring permit valid only 7 days; notification of intention; acceptance
- §13-231-90 Offer of category I (breakwater) berth
- Ala Wai harbor

§13-231-80 General. (a) This subchapter shall govern the allocation of berths as they become available in small boat harbors.

(b) It is the policy of the department to promptly assign an available berth on a first-come, first-served basis to the first qualified applicant, determined in accordance with the provisions of this subchapter, for the type of mooring requested provided that the proposed use by the vessel affords maximum, safe, convenient, and efficient utilization of facilities and provided that assignment is not contrary to public interests, or otherwise unlawful or contrary to these rules.

(c) Since each berth and each vessel presents unique ship handling and other peculiar berthing problems in relation to the small boat harbor, the department reserves the right to utilize its fair and impartial judgment, flexibility, and discretionary authority to allocate berths

based upon its knowledge of available facilities, prevailing small boat harbor conditions, safe boating practices, effective harbor management procedures, and other factors which must be thoroughly considered prior to acceptance of an application and allocating a berth to a vessel. The many factors that the department may take into consideration in accepting an application and allocating a berth include, but are not limited to, the applicant's vessel length, draft, beam, method of propulsion; the proposed vessel use and any other special or unique vessel handling problems in relation to the size of the available berth; berth location, water depth, prevailing winds and currents, and other pertinent factors relative to the

available berth.

(d) If berths of varying lengths are available for assignment in a small boat harbor then no regular mooring permit shall be issued which allocates a berth to a vessel, if the length of the berth to be assigned exceeds the vessel length overall by more than five feet; provided, however this provision does not apply:

- (1) When more than one vessel is assigned to and occupies a single berth end to end; or
- (2) In a small boat harbor with established categories of berths which may be assigned to designated classes of vessels, pursuant to section 13-231-86.

(e) A vessel with a length overall which exceeds the catwalk or pier length may be nonetheless allocated an available berth if the vessel may be safely moored in the berth and provided that the vessel, while moored in the berth, does not obstruct or hamper safe and convenient navigation within the small boat harbor.

(f) The department may establish categories of berths available to corresponding classes of vessels in a small boat harbor for allocation to applicants and shall place applicants in the most appropriate vessel classification to assure that vessels are allocated to suitable berths in order to promote the maximum, safe, convenient, and efficient utilization of facilities. Categories of berths and corresponding classes of vessels have been established in the small boat harbors enumerated in section 13-231-76. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

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§13-231-81 Application for a berth; seniority of applications; period of validity; renewal of application.

(a) The department shall allocate a berth to an applicant by issuing a use permit pursuant to this subchapter and sections 13-231-2 and 13-231-3 if:

- (1) A berth is vacant in the small boat harbor and is available for such assignment pursuant to this subchapter;
- (2) No prior valid application for such is pending.

(b) A person desiring to moor a vessel in a small boat harbor where no berths are available for allocation pursuant to this subchapter may apply for and be allocated a berth as prescribed in this subchapter when a berth suitable for the vessel becomes vacant in the future.

- (1) An application for a berth shall be made in writing to the department on a form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel the applicant proposes to moor, including but not limited to, the vessel's length overall, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the type of mooring desired, and if applicable, the category or categories desired, provided that except in small boat harbors where the department has not established categories of berths an applicant may modify at any time the material contained in the applicant's application relating to the type and characteristics of the vessel the applicant proposes to moor in the small boat harbor and retain seniority or priority over later applicants. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid, subject to the suitability of the berth which becomes available for allocation to the vessel to be moved into the berth by the applicant.

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Priority of applicants for mooring in small boat harbors with established categories of berths is set forth in section 13-231-86. No application shall be accepted until the applicant pays the application fee prescribed in these rules and review thereof has been conducted pursuant to section 13-231-82.

- (2) An application shall continue in full force and effect for a period ending one year from the effective date of the application except as provided in paragraph (3), unless sooner terminated in accordance with these rules. An application is void after the date of expiration indicated thereon.
- (3) An application may be renewed within a ninety-day

period preceding its expiration date. An application renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application.

- (4) It is the policy of the department to mail an application renewal notice to the applicant, prior to the expiration of this application, at the address the applicant has furnished to the department pursuant to section 13-231-83. However, the applicant is responsible for the timely renewal of an application without receipt of a renewal notice from the department.

[Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-82 Review, acceptance, or rejection of applications.

(a) The department shall examine and determine the genuineness and regularity of each application for a mooring or other small boat harbor use permit and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.

(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.

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(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;
- (3) The applicant has pending a citation for violation of any of the department's rules; or
- (4) The category or type of mooring requested is inappropriate for the vessel to be moored by the applicant and will not, therefore, afford maximum, safe, convenient, and efficient utilization of small boat harbor facilities as determined by the department pursuant to section 13-231-80.

(d) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the person's application has not been

accepted for consideration and has been rejected and the reasons therefor. 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. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes. (a) An applicant shall include the applicant's address in the application to the department for a berth.

(b) An applicant shall immediately inform the department in writing of any changes in the applicant's address in order to maintain the validity of the applicant's application.

(c) An application shall be void if the department is unable to notify the applicant of a vacancy at the address:

- (1) Appearing on the application; or
- (2) Furnished in writing to the department by the applicant; as a change of address subsequent to submitting the application. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

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§13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn. (a) An application may be withdrawn by an applicant upon written notice to the department.

(b) An applicant who withdraws an application or whose application has expired or becomes void may submit a new application for acceptance by the department. The applicant's seniority begins on the date the new application is accepted for consideration as provided in section 13-231-81.

(c) The application fee shall not be refunded if an applicant withdraws an application or if the application expires, or becomes void. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-85 Priority and procedures in allocation of berths.

(a) An unassigned berth (a berth that is not assigned to a permittee by a regular mooring permit) shall first be offered to the senior applicant holding a regular mooring permit authorizing the applicant to moor in the small boat harbor who has applied for movement to another berth within the same harbor, provided that the vacant berth is of the same characteristics, category, or type as the berth currently allocated to the applicant and assignment of the applicant's vessel to the vacant berth would not be contrary to public interest or otherwise unlawful or contrary to these rules.

(b) Except as provided in subsection (a) and except where allocation shall be made pursuant to section 13-231-86 in small boat harbors with established categories of berths, an unassigned berth shall be promptly offered to the senior applicant for a regular mooring permit subject to the limitations contained in these rules promoting maximum, safe, convenient, and efficient utilization of facilities. Therefore, when the department receives a notice of cancellation of a regular mooring permit pursuant to section 13-231-9; a regular mooring permit expires, becomes void or is cancelled; or an assigned berth is vacated, other than temporarily for any reason, the department shall commence the process of allocating the berth to the senior applicant for a regular mooring permit as expeditiously as possible as provided herein or in section 13-231-86.

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(c) If assignment of the senior applicant's vessel to the available berth would not afford maximum, safe, convenient, and efficient utilization of the facility as determined in accordance with the factors enumerated in section 13-231-80 or is contrary to public interest or is otherwise unlawful or contrary to these rules, the berth shall then be promptly offered to the next senior qualified applicant whose vessel is suitable for the berth.

(d) An assigned berth, temporarily vacant while the regular permittee's vessel assigned thereto is temporarily absent from the berth, or an unassigned berth that is temporarily vacant pending allocation to and occupancy by a regular permittee shall be temporarily allocated to applicants as follows subject to sections 13-231-23 and 13-231-24 and the suitability of the vessel for the berth as determined by evaluation of the factors enumerated in this subchapter in order to promote the maximum safe, convenient, and efficient utilization of the small boat harbor facilities.

(1) A nonrenewable temporary mooring permit authorizing

interim use of a temporarily vacant berth for a period not to exceed the anticipated period of temporary vacancy or in any event not to exceed thirty days, whichever period is shorter, shall be offered to the senior applicant for a temporary mooring permit for the berth available pursuant to subsection (2) if suitable for the applicant's vessel in accordance with the factors enumerated in this subchapter, to promote maximum, safe, convenient, and efficient utilization of the facility. If the senior applicant for a temporary mooring permit declines the offer of interim use of the berth, the applicant's application for a temporary mooring permit shall be void and the berth shall be offered to the next senior applicant for a temporary mooring permit.

(2) Priorities for allocation of temporarily vacant berths for interim use as they become available shall be as prescribed herein:

(A) First priority. The senior applicant to moor a transient vessel who applied in advance in writing for interim use of a temporarily vacant berth to begin at a specified time and whose application was received and accepted

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by the department shall have priority for use of the berth over other applicants for temporary moorings enumerated in this subsection; provided that a transient vessel shall be allocated to a berth that has been set aside and designated by the department for use by transient vessels only unless the transient berths available for allocation at that time are not suitable for the vessel, or no such transient berths have been set aside in that harbor.

(B) Second priority. If none of the vessels owned by the applicants, enumerated in paragraph (2)(A) are suitable for allocation to a temporarily vacant berth available for use, or if the eligible applicants decline an offer by the department to utilize a suitable berth, the senior applicant who applied in advance in writing to moor a vessel, other than a transient vessel, for an interim period

whose application was received and accepted by the department shall have priority for use of the berth over other applicant's enumerated in subparagraph (C).

- (C) Third priority. If none of the vessels owned by the applicants awaiting a berth, enumerated in subparagraphs (A) and (B), are suitable for allocation to a temporarily vacant berth, or the eligible applicants decline an offer by the department to utilize the berth, the berth shall be offered on a first-come, first-served basis.

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

§13-231-86 Categories of berths; priority of allocation.

(a) Categories of berths available to applicants for moorings in Ala Wai, Keehi, and Lahaina boat harbors are established as shown in subsections (b), (c), (d), and (e). In these small boat harbors an applicant for a berth shall be placed in an appropriate vessel class by

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the department and is eligible for the corresponding category of berths. Applicants may apply by separate application for more than one category; provided, that their vessel is eligible for assignment only to those categories which correspond to the vessel class in which they are placed. An available berth shall be allocated to the senior applicant eligible for assignment to that category of berth provided that the proposed assignment of the vessel to the berth affords maximum, safe, convenient, and efficient utilization of facilities, and provided that the assignment is not contrary to public interest or is otherwise unlawful or contrary to these rules. Allocation of a berth shall not be made if the length of the senior applicant's vessel is greater or less than the length limitations prescribed for each category as shown below. Each category of berths is subject to all the limitations prescribed by this section.

Allocation of temporary mooring permits shall be made in accordance with the categories as established by this section and pursuant to the terms and conditions of section 13-231-87(c).

(b) Ala Wai boat harbor. The following categories of berths are established at Ala Wai boat harbor.

<u>CATEGORIES</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	25' Floating piers	From 20' to 28' in length
B	30' Floating piers	" 28' to 34' " "
	30' Fixed piers	" 28' to 35' " "
C	40' Floating piers	" 35' to 44' " "
	40' Fixed piers	" 35' to 45' " "
D	50' Floating piers	" 45' to 54' " "
	50' Fixed piers	" 45' to 55' " "
	60' " "	" 55' to 65' " "
F	65' " "	" 60' to 70' " "
G	70' " "	" 65' to 75' " "
H	80' " "	" 75' to 85' " "
I	Bow stern berths 490 to 494	Multihull vessels exclusively of varying lengths

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<u>CATEGORIES</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
J	Bow stern berths Berths 801 to 835	Vessels of varying lengths up to 45'
K	Marginal wharf (Diamond Head End)	Hobie Cats and other small sailing vessels.
T	Bow stern Transient vessels berths 836 to 865	lengths up to 45'

(c) Keehi boat harbor. The following categories of berths are established at Keehi boat harbor.

<u>CATEGORIES</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	16' Fixed pier	From 18' to 25' in length
B	20' " "	" 20' to 27' " "
C	26' " "	" 25' to 35' " "
D	30' " "	" 30' to 40' " "

E	40' " " " 40' to 50' " "
F	48' " " " 46' to 55' " "
G	Alongside pier (former skiff mooring area) " 40' to 50' " "
S	Fore/aft skiff reserved exclusively for skiffs, open motorboats and similar vessels with low profiles, less than twenty-four feet in length.

(d) Lahaina boat harbor. The following categories of berths are established at Lahaina boat harbor.

<u>CATEGORIES</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	Old marginal wharf, berths 2-5	Commercial vessels Up to 65' in length
B	Catwalks, berths 6-21	Commercial vessels Up to 55' in Length

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<u>CATEGORIES</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
C	New marginal wharf, berths 22-100	Up to 50' in length

Commercial vessels holding valid mooring permits within Lahaina boat harbor shall load and unload passengers from the assigned berth, unless otherwise authorized by the department to load and unload passengers from the loading dock. The mooring of any vessel within Lahaina boat harbor shall be subject to sections 13-231-7, 13-231-80 and other applicable rules of the department.

(e) Heeia-Kea boat harbor. The following categories of berths are established at Heeia-Kea boat harbor.

<u>CATEGORIES</u>	<u>PIER/CATWALK BULKHEAD/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	Buoy moorings, berths and 300, 302	Up to 30' in length
B	200 Row, fore/aft cable moorings	Up to 25' in length

- | | | |
|---|--|---------------------|
| C | 200 Row, fore/aft
buoy moorings | Up to 28' in length |
| D | Fixed piers, odd-
numbered berths
303-319 | From 30' to 45' |
| E | Fixed piers, even-
numbered berths
304-320
[Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-10)
(Imp: HRS §§200-2, 200-3, 200-9, 200-10) | From 40' to 55' |

§13-231-87 Notice to owner of available berth. (a) When an offer of a regular mooring permit to use a berth, as provided for in this subchapter, the department shall deliver the offer or send it by certified mail, return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this subchapter at the post office address furnished to the department in writing by the applicant.

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(b) The department shall offer a temporary mooring permit to the applicant eligible to receive it by telephone, personal service, or first class mail, postage prepaid addressed to the applicant at the post office address furnished to the department in writing by the applicant. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of intention; acceptance.

(a) An applicant for a regular mooring permit may decline an offer to the applicant of a regular mooring permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this section, shall not be considered for a second offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's first refusal. If the applicant decides to accept the offer, the applicant shall either deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer or accept the offer by securing a use permit, complying with the requirements of section 200-9 and moving the applicant's vessel into the assigned

berth within fourteen days after the receipt of the offer. The applicant's application for a use permit and the offer by the department of a use permit shall be void if the applicant fails to either move the applicant's vessel into the small boat harbor or to give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the use permit shall then be offered to the next senior applicant pursuant to this subchapter. An applicant's application for a regular mooring permit shall also be void if the applicant fails to accept the second offer of a regular mooring permit to use a berth, and the berth shall then be offered to the next senior applicant. Since time is of the essence, the offer delivered or mailed pursuant to section 13-231-87 shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. For the purposes of this subsection an applicant who declines a berth offered to the applicant as provided herein after presenting conclusive evidence to the department that for reasons of safety or navigation the berth offered to the

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applicant is unsuitable for the applicant's vessel shall not be classified as "an applicant who has declined the offer of a berth".

(b) An applicant who has delivered a written notice of intention to accept the offer to the department shall accept the offer by:

- (1) Securing a use permit for use of the berth offered to the applicant as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department;
- (2) Otherwise complying with section 200-9, HRS, and sections 13-231-2 and 13-231-3; and
- (3) Moving the applicant's vessel into the assigned berth within fourteen days after the applicant mails or personally delivers the notice of intention to accept the offer to the department. Except as provided in subsection (c) the applicant's application for a use permit, the offer by the State of a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth within fourteen days as prescribed herein, and the use permit shall then be

offered to the next senior applicant in accordance with these rules.

(c) The department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence 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 for compliance shall not exceed a period of one hundred twenty days from the date the department received from the applicant a written notice of intention to accept the offer of a use permit. This exception is only applicable to an applicant who has been offered a regular mooring permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance. (a) An applicant for a temporary mooring permit to moor the applicant's vessel in a temporarily vacant berth who has been offered the use of a berth pursuant to this subchapter shall, within seven days

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after the offer was made by telephone, personal service, or mail, notify the department of the applicant's intention to accept, or decline the offer. If the applicant declines the offer the applicant's application for a temporary mooring permit shall be void and the berth shall be offered to the next senior applicant in accordance with these rules.

(b) An applicant who has notified the department of the applicant's intention to accept the offer shall accept the offer by:

- (1) Securing a temporary mooring permit for use of the berth offered within seven days after the date the offer was made;
- (2) Moving the applicant's vessel into the assigned berth within seven days after the date the offer was made by telephone, personal service, or mail, whichever event is earlier; and
- (3) Otherwise complying with the requirements of section 200-9, Hawaii Revised Statutes.

The applicant's application for a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth within seven days as prescribed herein and the use permit shall then be offered to the next senior applicant for the type berth available

in accordance with the rules. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

§13-231-90 Offer of category I (breakwater) berth - Ala Wai harbor. An applicant for a regular mooring permit may be offered a mooring buoy on the breakwater. The breakwater moorings have no water, electricity, roadway, or walkway. Access to the moorings is across the water from the 700 mole by boat. There is no way that emergency vehicles can reach the area, and the only toilet and shower facilities are located on the 700 mole. Principal habitation, stay aboard, and vacation permits are not available. The offer of a mooring buoy on the breakwater will follow the requirements of section 13-231-88 with the exception that acceptance or rejection of the mooring buoy on the breakwater will not alter the applicant's seniority for a regular mooring permit for any other category that the applicant enjoys. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

May 15, 1991

EXHIBIT "A"

CONTENTS DESCRIPTION OF THE AGREEMENT OF BOATOWNER
PURSUANT TO SECTION 13-231-2 OF THE SMALL BOAT
HARBORS REGULATIONS, INCLUDING
OFFSHORE MOORING

An agreement effectuating provisions of Section 13-231-2 of the small boat harbors rules, including offshore mooring, may contain the following terms, covenants and conditions:

1. The owner's certification of all information contained in the application and submitted by him, as being true.
2. The owner's covenant to abide by any and all provisions of the small boat harbors rules, including offshore mooring, and the incorporation by reference of such rules into the agreement.
3. The owner's authorization of the state to assign and reassign berths and spaces for his vessel in accordance with section 13-231-7 of the small boat harbors rules, including offshore mooring.
4. A provision stating that all persons signing the agreement shall be jointly and severally liable for the full performance of all terms, covenants and conditions thereof.
5. The owner's authorization of the state to board his vessel to effect reasonable inspection in the manner and pursuant to procedures set out in section 13-231-8 of the small boat harbors rules, including offshore mooring.
6. The owner's covenant to pay all applicable fees and charges, and his authorization of the state to assess collection and service charges for the delinquent payment thereof.
7. The owner's covenant to indemnify the state and its officers and employees for damages and injuries arising out of the owner's exercise of privileges granted by the use permit.
8. A provision that the term of the agreement and use permit shall terminate upon expiration of the period stated therein pursuant to section 13-231-5 of the small boat harbors rules, including offshore mooring, thereby requiring a renewal of the agreement and use permit in order that the owner

may continue to use the small boat harbor and its facilities.

9. A provision that the use permit with its attendant privileges is revocable and cancellable in accordance with sections 13-231-9 and 13-231-10 of the small boat harbors rules, including offshore mooring; and the owner's covenant to pay, upon his failure to promptly remove his vessel from the small boat harbor upon revocation, cancellation or termination of the use permit, a reasonable sum to be established between the parties and to be made a part of the agreement, as liquidated damages.
10. The owner's authorization of the state to reasonably effect the removal of his vessel pursuant to sections 13-231-10 and/or 13-231-17 of the small boat harbors rules, including offshore mooring.
11. The owner's covenant to pay all costs and attorney's fees, including costs of collection of delinquent fees and charges in the event the state is forced to institute a suit against the owner of his violation of any and all provisions of the small boat harbors rules, including offshore mooring, and/or the agreement, and is successful in such suit.
12. A provision stating that neither the agreement, use permit or the privileges attendant thereto is assignable nor in any way transferable, in part or in its entirety.
13. An open provision to enable the state and the owner to negotiate additional terms, covenants and conditions as may be proper under the particular circumstances, including but not limited to provisions requiring sufficient comprehensive liability insurance coverage and performance and/or compliance bonds in such amounts as may be warranted under the circumstances.
14. A provision that in the event the fees and charges which shall have accrued in favor of the department shall not be paid as provided in these small boat harbors rules, including offshore mooring, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment and furnishings, and may retain such possession until all charges then owing and any charges which shall thereafter accrue are fully paid and the remedy thus provided is in addition to and not in lieu of any other remedies which the department may have by virtue of statute or otherwise.

HAWAII ADMINISTRATIVE RULES

CHAPTER 232

SANITATION AND FIRE SAFETY

Historical note

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- §13-232-2 Standard
- §13-232-3 Garbage and other offensive matter
- §13-232-4 Flies
- §13-232-5 Rodents
- §13-232-6 Littering land areas - prohibited
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- §13-232-8 Marine toilets - restrictions
- §13-232-9 Permits required - waste outlets
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or state property
- §13-232-57 Dogs, cats or other domestic pets
- §13-232-58 Sleeping or camping prohibited
- §13-232-59 Assumption of risk
- §13-232-60 Serving, sale, and consumption of
liquor in state small boat harbors and
boat launching facilities

Historical note. This chapter is based on sanitation, fire safety and vessel equipment requirements, maintenance and storage, and conduct of the public of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the jurisdiction of the Department of

Transportation, Harbors Division to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

Subchapter 1 Sanitation

- §13-232-1 General statement; department of health
- §13-232-2 Standard
- §13-232-3 Garbage and other offensive matter
- §13-232-4 Flies
- §13-232-5 Rodents
- §13-232-6 Littering land areas - prohibited
- §13-232-7 Littering or polluting water - prohibited
- §13-232-8 Marine toilets - restrictions
- §13-232-9 Permits required - waste outlets
- §13-232-10 Backflow prevention device required on siphons and other connections to water line
- §13-232-11 to
- §13-232-19 (Reserved)

§13-232-1 General statement; department of health. Nothing contained in this subchapter shall be construed to limit the power and authority of the department of health. In case of conflict between any provision of this subchapter and any rule adopted by the department of health, the stricter rule shall control. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-2 Standard. All vessels and any property or facility used at a small boat harbor shall be kept at all times in a condition of reasonable cleanliness and sanitation so as not to constitute a common nuisance or potential danger to public health. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-3 Garbage and other offensive matter. No person shall have or keep on that person's vessel any refuse, garbage,

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decaying matter, or any other matter which gives off an offensive odor except when the same is being disposed of as garbage and is kept in a receptacle which shall be kept closed by a tight fitting cover at all times except when being filled or emptied. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-4 Flies. No person shall have or keep on that person's vessel any article, substance, or thing in which flies may breed, unless the same be kept securely protected from flies. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: §§200-2, 200-3)

§13-232-5 Rodents. No rubbish or waste of any kind shall be placed, left, dumped, or permitted to accumulate or remain on any vessel or in the vicinity of the same, in such a way as to constitute a breeding place for rodents. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-6 Littering land areas - prohibited. No person shall throw, place, leave, deposit, or abandon, or cause or permit to be thrown, placed, left deposited, or abandoned any litter within a small boat harbor, except in receptacles designated by the department for the disposal of such materials.

No person shall use refuse containers or other refuse disposal facilities in a small boat harbor for disposing of litter brought as such into the small boat harbor except when the litter is generated during and results from a vessel's voyage. Without limiting the generality of the foregoing, "litter" as used in this section means any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses, or any other nauseating or offensive matter or any machinery, appliance or automobile, or parts thereof, or any other substances which render small boat harbor lands or facilities unsightly, noxious, or otherwise unwholesome to the detriment of the public health and welfare or the enjoyment of the small boat harbor for recreational purposes. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-7 Littering or polluting water - prohibited.

No person shall place, throw, deposit, or discharge, or cause to be placed, thrown, deposited, or discharged into the waters of a small boat harbor any litter, sewage, or other gaseous, liquid, or solid materials which render the water unsightly, noxious, or otherwise unwholesome so as to be detrimental to the public health and welfare or to the enjoyment of the water for recreational purposes. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§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.

§13-232-8

"Readily available" as used in this section means within a walking distance of not more than two hundred feet.
 [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-9 Permits required - waste outlets. Notwithstanding the issuance of a permit pursuant to section 13-232-43, no person shall do any of the following at a small boat harbor without first having obtained a permit from the director of health:

- (1) Discharge any wastes into the waters of a small boat harbor so as to reduce the quality of the water below the standards of water quality adopted for such waters by chapter 11-25, department of health, State of Hawaii, which by reference are hereby incorporated into these rules and made a part hereof as though fully recited herein.
- (2) Construct, install, modify, alter, or operate any treatment works or part thereof or any extension or addition thereto.
- (3) Construct or use any new outlet for the discharge of any wastes into the waters of a small boat harbor.

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

§13-232-10 Backflow prevention device required on connections to water line - use of water operated de-watering device prohibited. (a) No person shall connect a vessel's water supply system to a small boat harbor portable water supply system, unless an approved backflow prevention device has been installed at the hose bib or other point of connection. An "approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

(b) No person shall use any water-operated siphon or other water operated de-watering device, equipment, or mechanism connected to a small boat harbor water supply system for the purpose of removing water or any liquid from the bilges of a vessel, provided such a device may be temporarily used when necessary during an emergency to prevent a distressed vessel from sinking if an approved backflow prevention

device has been installed in accordance with subsection (a).
 [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2,
 200-3)

§13-232-11 to §13-232-19 (Reserved)

Subchapter 2 Fire Safety and Vessel
 Equipment Requirements

- §13-232-20 General statement
- §13-232-21 Standard
- §13-232-22 Appliances and electrical wiring
- §13-232-23 Fire extinguishing equipment
- §13-232-24 Fueling
- §13-232-25 Smoking
- §13-232-26 Dumping of combustibles
- §13-232-27 Emergency exits
- §13-232-28 Open fires
- §13-232-29 Lifesaving equipment required
- §13-232-30 Fire signal for vessels in small boat harbor
- §13-232-31 Welding, burning and other hot work;
permits
- §13-232-32
- to
- §13-232-39 (Reserved)

§13-232-20 General statement. The provisions of this subchapter are not intended to limit the powers of any federal agency or the county fire department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-21 Standard. All vessels and all state property or facilities used at a small boat harbor shall be used in such a manner and maintained in such a condition as not to constitute a potential fire hazard. The failure to conform to any statute, rule, standard, or ordinance affecting fire safety may be

§13-232-21

considered by the department in determining any violation of this section. (Particular attention is directed to the Hawaii state boating law, chapter 200, Hawaii Revised Statutes and the state boating rules, department of land and natural resources, State of Hawaii. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-22 Appliances and electrical wiring. All cooking or heating appliances or any other machinery, equipment, utensil, or apparatus which is used at a small boat harbor and could be the cause of fire shall be so constructed, installed, wired, situated, maintained, and used so as to meet the standard set out in section 13-232-21; provided that, the approval of any machinery, equipment, utensil, or apparatus by the National Board of Fire Underwriters may be considered by the department in determining compliance with this section. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-23 Fire extinguishing equipment. All vessels on the waters of a small boat harbor shall be equipped with fire extinguishers approved by Underwriters Laboratories, Inc. or the United States Coast Guard, and as prescribed in chapter 13-243, Hawaii Administrative Rules. In addition a vessel shall also be equipped with at least one hand portable B-1 or larger fire extinguisher per each twenty-five feet or fraction thereof of vessel length before any person shall be issued a permit authorizing the use of the vessel as a place of principal habitation or vacation site. The fire extinguishers shall be readily accessible and maintained in good and serviceable condition for immediate and effective use at all times. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-24 Fueling. (a) The fueling of vessels at a small boat harbor where a marine fueling station has been established, shall be accomplished only at that station.

(b) Prior to fueling a vessel at a small boat harbor, the operator shall:

- (1) Securely moor the vessel;
- (2) Stop all engines, motors, fans, and devices liable to produce sparks;

- (3) Extinguish all fires; and
- (4) Close all ports, windows, doors, and hatches.
- (c) Persons fueling a vessel at a small boat harbor shall:
 - (1) Refrain from smoking, striking matches, or throwing switches; and
 - (2) Keep nozzle of hose, or can, in continuous contact with fuel opening to guard against static sparks.
- (d) After fueling is completed, the following actions shall be taken:
 - (1) Close fill openings;
 - (2) Wipe up all spilled fuel;
 - (3) Open all ports, windows, doors, and hatches;
 - (4) Permit vessel to ventilate for at least five minutes; and
 - (5) Check that there are no fuel fumes in the bilges or below deck spaces before starting machinery or lighting fires. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-25 Smoking. Smoking shall be prohibited at a small boat harbor when so prescribed by signs, and regardless of the department's failure to post signs, no smoking or lighting of a match or any other fire-creating device shall be permitted within fifty feet of any fueling operation. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-26 Dumping of combustibles. (a) No person shall dump, discharge, or pump oil, spirits, gasoline, distillate, any petroleum product, or any other flammable material into the waters of a small boat harbor or designated offshore mooring area.

(b) Any vessel equipped with an inboard motor which is moored in a small boat harbor or designated offshore mooring area shall maintain an oil absorbent pad in the bilge to separate petroleum products from bilge water. This requirement shall be included as an inspection item for the initial or annual vessel inspection that is a prerequisite for obtaining a regular mooring permit as prescribed by section 13-231-45. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-232-27

§13-232-27 Emergency exits. Each vessel shall be provided with adequate exits to afford sufficient paths of escape in case of emergencies. The number and location of such exits shall be commensurate with the size, type, and make of each vessel. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-28 Open fires. Charcoal grills and similar open fire cooking devices shall, while lighted, be attended at all times. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-29 Lifesaving equipment required. Any vessel utilizing the waters of a small boat harbor shall be equipped with approved lifesaving devices as prescribed in chapter 13-243, Hawaii Administrative Rules. The lifesaving equipment shall at all times be kept in good and serviceable condition for immediate and effective use and shall be so placed as to be readily accessible provided, that if any person is living aboard any vessel or contrivance, it shall be equipped with at least an approved type life preserver, ring life buoy, buoyant vest, special purpose water safety buoyant device, or buoyant cushion for each adult person on board. If there are any children living aboard, approved life preservers suitable for children shall be provided for each child living aboard. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-30 Fire signal for vessels in small boat harbors. Five prolonged blasts on a vessel's whistle, horn, or other sound producing device indicates:

- (1) A fire on board a vessel not underway; or
- (2) A fire at any facility to which the vessel may be moored.

The words "prolonged blast" used in this section mean a blast of from four to six seconds duration. This fire signal shall not be used for other purposes in any small boat harbor. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-31 Welding, burning and other hot work; permits. Before any welding, burning or other hot work can be done in a state small boat harbor or on a vessel moored thereto, the party

intending to do the work shall secure a permit from the harbor agent of the small boat harbor where the work is to be done. Applicants for permits to do hot work shall fill out fully a prescribed form, after which the application shall be presented to the harbor agent, who shall issue the necessary permit. The party intending to do the work shall also secure permits from any other governmental agencies as required by law and notify the county fire department of the intended work. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-32 to §13-232-39 (Reserved)

Subchapter 3 Maintenance and Storage

- §13-232-40 Standards
- §13-232-41 Storage
- §13-232-42 Special areas
- §13-232-43 Construction of structures
- §13-232-44 Gear lockers
- §13-232-45
- to
- §13-232-49 (Reserved)

§13-232-40 Standards. (a) Each vessel shall be examined by the department to determine that it is in acceptable condition and operational before assignment to a berth.

(b) Every vessel and all other personal property and facilities at a small boat harbor shall be kept in such a condition of repair, maintenance, neatness, and orderliness so as not to constitute a common nuisance, substantial danger to person or property, or obstruction to proper public use and to be in conformity with these rules, the Hawaii state boating law, the rules of the department of health, and all other applicable state and federal laws. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-41

§13-232-41 Storage. No person shall store, place, leave, deposit, or abandon any vessel, structure, supplies, material, equipment, gear, object, or substance on catwalks, piers, sidewalks, roads, parking areas, or any other public area at a small boat harbor, except vessels or objects may be stored:

- (1) In areas set aside by the department for storage purposes; or
- (2) Upon prior consent by the department.
[Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-42 Special areas. The department may designate areas to be used only for specific purposes or operations, which shall be designated by signs. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-43 Construction of structures. (a) No building structure, object, site improvement, landscape treatment, or other facility of any nature whatsoever shall be erected, constructed, reconstructed, altered, moved, installed, or demolished at a small boat harbor except in accordance with a department permit. The department may require plans, specifications, and other pertinent data to accompany or supplement any application.

(b) Upon completion, inspection, and acceptance of any mooring facilities constructed by others under the provision of this section, such facilities shall become the property of the State, provided, however that the State may grant preferential but not exclusive use of the facility to the permittee for a period that shall not exceed ten years. The permittee shall maintain the mooring facility while the permit remains in effect.

(c) The permittee shall, concurrently with the execution of the permit, deliver to the State a comprehensive general liability insurance policy or policies, or a certificate of insurance in lieu thereof, evidencing that such a policy has been issued and is in force, with minimum limits of not less than \$300,000 for bodily injury to one person and \$500,000 for bodily injury to more than one person per occurrence and \$100,000 for damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a

limitation of the liability of the permittee for any injury or damage. Such insurance shall:

- (1) Be issued by an insurance company or surety company authorized to do business in the State of Hawaii or approved in writing by the department;
- (2) Name the State of Hawaii as an additional insured;
- (3) Provide that the department of land and natural resources shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;
- (4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee, its officers, agents, employees, invitees, or licensees in connection with the permittee's use or occupancy of the premises; and
- (5) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit.

(d) The permittee shall at all times with respect to the premises use due care for public safety and shall defend, hold harmless, and indemnify the State, its officers, agents, and employees from and against all claims, demands, or demands for damages, including claims for property damage, personal injury, or death:

- (1) Arising on the premises, or by reason of any fire or explosion thereon; or
- (2) Arising from, growing out of, or caused by any act or omission on the part of the permittee, its officers, members, agents, employees, invitees, or licensees, in connection with the permittee's use or occupancy of the premises. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-44 Gear lockers. No person shall construct a gear locker at a small boat harbor without prior written approval of the department as provided in section 13-232-43. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-45 to §13-232-49 (Reserved)

§13-232-50

Subchapter 4 Conduct of the Public

§13-232-50	General statement
§13-232-51	Smoking
§13-232-52	Restricted areas
§13-232-53	Lost, abandoned, or mislaid articles
§13-232-54	Swimming
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§13-232-56	Tampering with or damaging a vessel or state property
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§13-232-58	Sleeping or camping prohibited
§13-232-59	Assumption of risk
§13-232-60	Serving, sale, and consumption of liquor in state small boat harbors and boat launching facilities

§13-232-50 General statements. All penal laws of the State prescribed in the Hawaii Revised Statutes, and in the rules properly promulgated pursuant to provisions thereof, govern the conduct of any person coming upon or remaining at a small boat harbor. The following provisions of this part are intended to facilitate effective management of state property and facilities at a small boat harbor. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-51 Smoking. Smoking shall be prohibited at a small boat harbor when so prescribed by signs, and regardless of the department's failure to post signs, no smoking or lighting of a match or any other fire-creating device shall be permitted within fifty feet of any fueling operation. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-52 Restricted areas. Only authorized persons may enter or remain upon restricted areas of a small boat harbor set aside by the department and designated by signs, buoys, or other markings. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-53 Lost, abandoned, or mislaid articles. Any person finding lost, abandoned, or mislaid articles at a small boat harbor shall report or turn those articles over to the chief of police of the county in which the articles are found. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-54 Swimming. No person shall swim at a small boat harbor or boat launching facility or its channels where such activity is prohibited by signs, buoys, or other markers posted by the department. No person shall dive from docks, piers or other constructed facilities into a small boat harbor, boat launching facility, or its channels. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-55 Fishing. (a) No person shall fish at a small boat harbor, boat launching facility, or channels thereto by pole where that activity is prohibited by signs, buoys, or other markers posted by the department. Spearfishing and trolling from moving vessels is prohibited in small boat harbors, boat launching facilities, designated offshore mooring areas or channels. No person shall use any throw net, or draw, drag, seine, or any other type of net except crab net or hand-held dip net, except at locations designated by rules of the department of land and natural resources.

(b) A person with a bait fishing license issued by the department of land and natural resources may use nets to:

- (1) Take young mullet or pua (*Mugil cephalus*) for the purpose of stocking their pond; or
- (2) Take nehu, iao, or other bait fishes for which an open season has been declared for bait purposes only.

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

§13-232-56 Tampering with or damaging a vessel or state property. No person shall wilfully and maliciously destroy, injure, deface, disturb, or tamper with any state property, facility, or property belonging to another, including but not limited to, any vessel, signs, buoys, floats, notices, buildings, lawn, or any other property, real or personal. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-57

§13-232-57 Dogs, cats or other domestic pets. (a) This section is applicable only in Ala Wai and Keehi boat harbors. As used in this section, unless the context otherwise indicates:

"At large" means:

- (1) On a vessel not the property of the owner of the pet, without consent of the vessel owner; or
- (2) In any public place within a small boat harbor, except when under control of the owner by leash, cord, chain, or other similar means of physical restraint, provided that such leash, cord, chain, or other means is not more than eight feet in length.

"Owner" means any person owning, harboring or keeping a dog, cat, or other domestic pet, or having custody thereof.

"Stray" or "stray dog" means any dog running at large.

(b) This section shall not apply to:

- (1) Seeing-eye dogs trained to assist blind persons when the dogs are actually being used by blind persons for the purpose of aiding them in going from place to place;
- (2) Dogs trained and used by a law enforcement agency in law enforcement activities while the dogs are engaged in the performance of such work; or
- (3) An obedience trial, where tracking and show dogs are accompanied by their owners and are being trained or in competition, provided permission is first obtained from the department for such use.

(c) No person shall introduce or keep a dog aged three months or older in a small boat harbor unless the dog is licensed as prescribed in chapter 143, Hawaii Revised Statutes. Officers and employees of the department, and every other person authorized by law may seize any unlicensed dog found at large within a small boat harbor, and confine and dispose of the dog as provided in chapter 143, Hawaii Revised Statutes.

(d) No dog owner shall permit the owner's dog to become a stray. Any dog while being a stray within a small boat harbor may be seized by officers and employees of the department, or by any other person authorized by law, and shall be disposed of as provided in chapter 143, Hawaii Revised Statutes.

(e) No pet owner shall permit the owner's pet to excrete any solid waste in any public place or on any premises in a small boat harbor not the property of the pet's owner, provided no violation of this subsection shall occur if the owner promptly and voluntarily removes the animal waste.

(f) No person shall introduce or keep any animals except for birds, fish, or other common domestic pets within the confines of a small boat harbor.

(g) In any event no person shall introduce or keep a dog, cat, or other domestic pet any small boat harbor where dogs, cats, or other domestic pets are prohibited by a sign or other marker posted by the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-58 Sleeping or camping prohibited. Sleeping or camping in any small boat harbor is prohibited except on board a vessel moored in the small boat harbor with the proper authorization of the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-59 Assumption of risk. Any person visiting or using a small boat harbor or facility or offshore mooring area does so at the person's own risk. The department does not assume any responsibility for loss of or damage to property or for injury to or death of persons within a small boat harbor or facility or offshore mooring area and any person visiting or using a small boat harbor or facility or offshore mooring area does so at the person's own risk. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-232-60 Serving, sale, and consumption of liquor in state boat harbors and boat launching facilities. (a) Liquor, as defined in section 281-1, Hawaii Revised Statutes, shall not be consumed within any state small boat harbor or boat launching facility except on a vessel issued with a valid mooring permit, or unless otherwise permitted by the department.

(b) No person shall sell any liquor within a state small boat harbor or boat launching facility unless that person is licensed as required by chapter 281, Hawaii Revised Statutes. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

HAWAII ADMINISTRATIVE RULES

CHAPTER 233

MOTOR VEHICLE AND
PARKING RULES

Historical note

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Subchapter 3 Vessel Owner Parking Zones

- §13-233-40 Establishment of vessel owner parking zone
- §13-233-41 Designation of parking stalls
- §13-233-42 Vessel owner parking permits
- §13-233-43 Eligibility for parking permits; fee per
vehicle
- §13-233-44 Violations and penalties

Historical note. This chapter is based on motor vehicle and traffic rules, parking meter zones, and vessel owner parking zones of the small boat harbors rules, effective November 5, 1985, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction of recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

Subchapter 1 Motor Vehicle Rules

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- §13-233-2 Licensing and safety inspection
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- §13-233-13 Operation, parking, or storage of bicycles or play vehicles
- §13-233-14 Parking permits; Lahaina boat harbor
- §13-233-15 to
- §13-233-19 (Reserved)

§13-233-1 General statement; traffic code and county ordinances. The traffic code and any other applicable ordinances of the particular county in which a small boat harbor is located, shall apply to the operation of motor vehicles on the parking areas and roadways of a small boat harbor just as though the parking areas and roadways are a part of the public streets, roads, or highways of the particular county involved, and by reference, are incorporated in these rules and made a part hereof as though fully recited in these rules. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-233-2 Licensing and safety inspection. No vehicle shall be operated or parked at a small boat harbor unless such vehicle is currently licensed by the appropriate governmental agency and has the required evidence of safety inspection. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-233-3 Operation of motor vehicles. No motor vehicle shall be operated in a small boat harbor in a careless or negligent manner or in disregard of the rights and safety of others, or without due caution or circumspection, or at a speed or in a manner which endangers or is likely to endanger person

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or property, or while the operator thereof is under the influence

of intoxicating liquor, or narcotic or habit forming drugs, or if the vehicle is so constructed, equipped, loaded, or in a condition which would endanger or be likely to endanger other persons or other person's property. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-233-4 Traffic controls. All vehicular traffic shall comply with any lawful order, notice, signal, or direction of any regular or special police officer. When such traffic is controlled by signs and pavement markings, the signs and markings shall be obeyed unless a regular or special police officer directs otherwise. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3) (Imp: HRS §§200-2, 200-3)

§13-233-5 Speed restrictions. (a) Basic rules and maximum limits.

- (1) No person shall drive a vehicle on a roadway or in any parking lot maintained within a small boat harbor at a speed greater than is reasonable and prudent under the conditions and without regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the roadway or parking lot in compliance with legal requirements and the duty of all persons to use due care.
- (2) Except when a special hazard exists that requires lower speed for compliance with paragraph (1) the limits specified in this section or established as authorized by this section shall be maximum lawful speeds, and no person shall drive a vehicle on a roadway or in any parking lot within a small boat harbor at a speed in excess of these maximum limits.
 - (A) Ten miles per hour. Any pier, wharf, other structure, or parking lot.
 - (B) Fifteen miles per hour. Any roadway eighteen feet or less in width.
 - (C) Twenty five miles per hour on a roadway where the speed limit has not been otherwise established.

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- (3) The maximum speed limits set forth in this section may be altered as authorized in subsection (b).
- (4) The driver of every vehicle shall, consistent with the

requirements of paragraph (1), drive at an appropriate reduced speed when approaching and going around a curve, when traveling upon any narrow or winding roadway, when a special hazard exists with respect to pedestrians or other traffic by reason of weather or road conditions, and unless directed to stop by a police officer or traffic control device, when approaching and crossing an intersection.

- (5) Whenever the department shall determine upon the basis of an engineering and traffic investigation that any maximum speed limit established in this section is greater than is reasonable or safe under the conditions found to exist at any horizontal or vertical curve upon any part of a roadway, the department may post a recommended safe speed thereat which shall serve as a guide to vehicle drivers at all times when they are using the road.

(b) Establishment of speed zones. Whenever the department shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is less than is reasonable under the conditions found to exist at any part of a small boat harbor roadway system, the department may determine and declare a reasonable and safe maximum limit thereat, which shall be effective when appropriate signs giving notice thereof are erected. The maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate signs.

(c) Special speed limitation.

- (1) No person shall drive any vehicle equipped wholly or partly with solid rubber tires at a speed greater than ten miles per hour.

- (2) No vehicle transporting any explosive as cargo or part of a cargo shall be operated upon any roadway in a small boat harbor at a speed in excess of twenty miles per hour.

(d) Speed contest. It shall be unlawful for any person to engage in, or to aid or abet by whatever means, any motor vehicle speed contest or exhibition of speed within a small boat harbor.

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(e) Speed restrictions not applicable to emergency vehicles. The speed restrictions set forth in this section shall not apply

to an authorized emergency vehicle when responding to an emergency call, or when used in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-6 Parking. Except as otherwise authorized by the department, no person shall stop, park, or permit to remain halted, a motor vehicle in a small boat harbor:

- (1) In front of a driveway or land side of a launching ramp;
- (2) For the purposes of washing, polishing, greasing, or repairing of a vehicle except for those minor repairs necessary to remove the vehicle to an authorized area or from a small boat harbor;
- (3) Other than in accordance with officially posted signs; or
- (4) For more than seventy-two hours. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-7 Public parking. As may from time to time be prescribed by the department, no person shall use any public parking area without payment of parking fees and charges in areas where the fees and charges are properly designated by posted signs. The department may establish such areas as convenient and efficient public use of a small boat harbor may dictate. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-8 Removal of vehicles. The department shall have the authority to detain, tow, move, or cause to be moved to an impounding area, at the owner's risk and expense and without liability for any damage which may result, any motor vehicle:

- (1) For nonpayment of parking charges when the vehicle is parked in parking areas operated by the department in a small boat harbor;
- (2) Which has been parked continuously in a vehicular parking area operated by the department in a small boat

- harbor for a period of more than seventy-two hours, except when prior arrangements have been made therefor;
- (3) When the position or location of the vehicle in a small boat harbor creates a nuisance or a hazard; provided, that any detention, towing, or moving, done or caused to be done by the department, of any vehicle legally parked at a small boat harbor, shall not be at the owner's risk and expense; and
 - (4) When parked in violation of section 13-233-6.
[Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-9 Application. These rules shall apply with equal force to motor vehicles on lease, rent, or loan to any person. The owner or operator of any motor vehicle using facilities or space within a small boat harbor shall be subject to all charges, rules, and conditions as prescribed by these rules.
[Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-10 Parking in construction areas and on special occasion. The chairperson may whenever in the chairperson's judgment it is deemed necessary, prohibit or restrict the parking of any vehicle on either or both sides of any roadway, parking lot, or other location or portion thereof, constituting all or part of an area affected by construction, repairs, or maintenance activities, a part of the route of a parade or a procession, or on any special occasion, and also upon any roadway, parking lot, or other location adjacent thereto by the erection or placement of temporary signs setting forth such restrictions. When the signs are erected or placed prior to construction, repairs, maintenance, parade, procession, or special occasion, it shall be unlawful to park or leave unattended any vehicle in violation of the signs. The department may remove or cause to be removed at the owner's expense, any vehicle left unattended or parked in violation of the signs. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-11 Vehicles or equipment, size, weight, and load restrictions. (a) Scope and effect of this section.

- (1) No person shall drive, transport, or move nor the owner cause, allow, knowingly permit or suffer to be driven, transported, or moved upon any roadway, bridge, pier,

wharf, or other structure any vehicle, equipment, object, contrivance, or combination of such dimensions or weight including loads or both which exceed the limitations stated in this section or otherwise in violation of this section.

- (2) The provisions of this section governing dimensions, weight, and load shall not apply to a vehicle, equipment, object, or contrivance driven, transported, or moved under the terms of a special permit issued pursuant to this section.
 - (3) The department may conduct an investigation of any roadway, bridge, wharf, pier, or other structure to determine the dimensions, or weight including load, or both, that the roadway, bridge, wharf, pier, or other structure can with safety to itself withstand and if the dimensions, weight, or load limitations set forth in this section are less than is reasonable under the conditions found to exist the department may determine and declare a reasonable and safe maximum limit thereat, which shall be effective when appropriate signs giving notice thereof are erected. The maximum dimensions, weight, or load limits may be declared to be effective at all times or such times as are indicated upon the said signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe dimensions, weight, or loads which shall be effective when posted upon appropriate signs.
- (b) Weight and load limitations.
- (1) No vehicle, equipment, object, contrivance, or combination of such which exceeds the allowable maximum weights or imposes a total gross load upon a roadway in excess of the limitations contained in chapter 291, Hawaii Revised Statutes, shall be operated or moved upon any small boat harbor roadway, except as in this section.
 - (2) No vehicle, equipment, object, contrivance, or combination of such which imposes a total gross weight in excess of the following limitations shall be driven, transported, or moved upon any wharf, except those wharves provided listed below:
 - (A) Reinforced concrete wharves. Two hundred pounds per square foot over the areas supported by piles, cylinder,

or seawalls. one thousand pounds per square foot over areas supported by land or fill.

- (B) All wharves other than reinforced concrete. two hundred fifty pounds per square foot over the areas supported by piles or wooden structures. One thousand pounds per square foot over areas supported by land or fill.

(c) Size, width, height, and length limitations. No vehicle, equipment, object, contrivance, or combination of such having an overall width, height, or length in excess of the limitations contained in chapter 291, Hawaii Revised Statutes, shall be driven, transported, or moved upon any roadway, except as provided in this section.

(d) Permit to move vehicles or equipment of excessive size or weight.

- (1) The department may upon application in writing, if good cause appears, issue a special permit in writing authorizing the applicant to drive, transport, or move over any roadway, bridge, wharf, pier, or other structure a vehicle, object, contrivance, or equipment or combination of such dimensions or weights including loads of both which exceed the limits of subsections (b) and (c).
- (2) All applications for permits required under this section shall be made in writing to the department, and shall contain the following:
 - (A) Description of the vehicle, object, contrivance, or equipment and load to be moved;
 - (B) Complete designation of the route to be followed within a small boat harbor;
 - (C) Times at which the movement of the same will commence and terminate; and
 - (D) Certified statement that the applicant has examined the route and determined that there will be a clearance of at least one foot on each side of the vehicle, equipment, and load and any possible obstructions existing along such route.
- (3) No permit shall be issued unless:
 - (A) The applicant shall have secured and presents to the issuing officer all clearances required by any law, ordinance, or regulations;
 - (B) There is more than one foot clearance on each side of the vehicle, equipment, and load along the route to be followed;

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- (C) The issuing officer shall be satisfied that there are available sufficient pull out areas for use in case of delay or breakdown; and
 - (D) In the case of loads of excessive widths the applicant shall have filed with the department a certificate of any insurance carrier certifying that there is a comprehensive automobile liability insurance policy covering the applicant and the applicant's authorized agents, executors, administrators, heirs, and assigns for liability in the minimum amount of \$100,000 for bodily injury to, or death of, one person in any one accident, and in the amount of \$300,000 for bodily injury to, or death of, two or more persons in any one accident, and in the amount of \$50,000 for damage to, or destruction of, property of others in any one accident.
- (4) If the permit is issued, the department may limit the number of trips, or establish seasonal or other time limitations within which the vehicle, equipment, object, or contrivance may be driven, transported, or moved on the roadways or structures indicated on the application, or prescribe conditions of operations of the vehicle, equipment, object, or contrivance when necessary to assure against undue damage to the road foundation, surfaces, or structures and may require such undertaking or other security as may be deemed necessary to protect the roadways and structures from injury, or to provide indemnity for any injury resulting from the operation.
 - (5) A permit shall be valid for one year from date of issuance unless an earlier date of expiration is provided by its terms or unless sooner revoked by the department.
 - (6) Every permit shall be carried in or on the vehicle, equipment, object, or contrivance to which it refers and shall be open for inspection by any police officer, or authorized agent of the department and no person shall violate any of the terms or conditions of the permit.
- (e) Liability for damage to roadway or structure.
 - (1) Any person driving, moving, or transporting any vehicle, equipment, object, or contrivance upon any roadway or structure shall be liable for all

damage which the roadway or structure may sustain as a result of the operation, driving, transporting, or moving such vehicle, equipment, object, or contrivance notwithstanding the issuance of a special permit as provided in this section.

- (2) Whenever the driver is not the owner of such vehicle, equipment, object, or contrivance, but is so operating, driving, transporting, or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any such damage. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-12 Restrictions as to tire equipment. (a) Every solid rubber tire on a vehicle to be operated or moved upon a roadway within a small boat harbor shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No tire on a vehicle to be operated or moved upon a roadway within a small boat harbor shall have on its periphery any block, stud, flange, cleat, or spike or any protuberance of any material other than rubber which projects the tread of the traction surface of the tire.

This section shall not apply to traction engines, or other vehicles of the track-laying type when the portions of the movable tracks in contact with roadway surface present plane surfaces of sufficient area to prevent damage thereto. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-13 Operation, parking, or storage of bicycles or play vehicles. (a) This section is applicable only in Ala Wai and Keehi boat harbors. As used in this section, "bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

- (b) Effect of section.
- (1) The parent of any child or the guardian of any ward shall not authorize or knowingly permit the child or ward to violate this section.
- (2) This section applicable to bicycles and play vehicles shall apply whenever a bicycle or play vehicle is ridden, operated, parked, or stored within the confines of a small boat harbor.

(c) Bicycle tax. No bicycle shall be used for conveyance of any person within the confines of a small boat harbor unless the annual tax has been paid and a valid license tag is attached to the bicycle in accordance with section 249-14, Hawaii Revised Statutes.

(d) Riding on sidewalks or piers. The department may erect signs on any sidewalk, roadway, pier, wharf, catwalk, or other location prohibiting the riding of bicycles thereon, and when such signs are in place, no person shall disobey the same.

(e) Parking or storage of bicycles. No person shall park, store, place, or leave a bicycle on catwalks, piers, sidewalks, roads, parking areas, or any other public area except in bicycle parking racks.

(f) Traffic and bicycle equipment laws applicable to persons riding bicycles. Every person riding a bicycle within the confines of a small boat harbor shall be granted all the rights and shall be subject to all the duties applicable to the bicycle operator and to the driver of a vehicle by chapter 291C (Statewide Traffic Code), Hawaii Revised Statutes, which by reference is hereby incorporated in these rules and made a part hereof as though fully recited herein, except as to those provisions of chapter 291C which by their nature can have no application to a bicycle operator. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-14 Parking permits; Lahaina boat harbor. (a) This section is applicable at all times within Lahaina boat harbor. Parking, stopping, or standing within the Lahaina boat harbor is restricted to stalls established, marked, and designated by the Maui district manager, division of boating and ocean recreation.

(b) Parking, stopping, or standing in the stalls is limited to vehicles displaying a valid regular or temporary parking permit issued by the department; provided that a person may stop or stand any vehicle in a parking stall or elsewhere in the harbor

for a period not to exceed ten minutes for the purpose of and while actually engaged in loading or unloading the vehicle.

(c) Regular parking permits, not to exceed one hundred eighty at any time, shall be allocated as follows:

- (1) First priority. The owner, co-owner, or master of a registered or documented vessel moored in Lahaina boat harbor in accordance with a valid regular mooring permit who applies for a parking permit shall have priority for one parking permit over other applicants for a parking permit on a one-to-a-boat basis. Fee per vehicle shall be \$12 per calendar quarter except the fee shall be \$30 per calendar quarter if the permittee also has a commercial mooring permit.
- (2) Second priority. If all of the applicants with a priority for a parking permit pursuant to paragraph (1) have been issued permits, the owner, co-owner, or master of a registered or documented vessel not moored in Lahaina boat harbor but principally used in the waters surrounding the Island of Maui, who applies for a parking permit, shall have priority for one parking permit over other applicants enumerated in paragraph (3). The eligible individual shall personally apply, presenting proof of vessel ownership or designation as master of the vessel at the time. Fee per vehicle shall be \$15 per calendar quarter except the fee shall be \$30 per calendar quarter if the permittee also has a commercial mooring permit.
- (3) Third priority. If all of the applicants for parking permit enumerated in paragraphs (1) and (2) have been issued permits and the number of permits issued does not exceed one hundred eighty, the owner or employee of a person, firm, business, or organization:
 - (A) Operating a vessel, moored in the small boat harbor or adjacent waters, engaged in any trade or business; or
 - (B) Operating an activity under the provisions of a lease or other agreement authorizing a business or commercial activity at the small boat harbor who applies for a parking permit shall have priority for one parking permit over other applicants enumerated in paragraph (4). Fee per vehicle shall be \$30 per calendar quarter.
- (4) Fourth priority. If all of the applicants for a parking permit enumerated in paragraphs (1), (2), and (3) have

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been issued permits and the number of permits issued does not exceed one hundred eighty, one parking permit in addition to the permit issued to the owner, co-owner, or master pursuant to paragraph (1) may be offered to the spouse or legal dependent of an owner, co-owner, or master of a registered or documented vessel moored in Lahaina boat harbor in accordance with a valid regular mooring permit, who applies for a parking permit. Fee per vehicle shall be \$12 per calendar quarter except the fee shall be \$30 per calendar quarter if the permittee also has a commercial mooring permit.

- (5) Permits shall be issued on a first-come, first-served basis to applicants on a chronological waiting list established for each priority category.

(d) A temporary parking permit, valid for up to seventy-two hours, may be secured by the owner of a vessel, other than a vessel engaged in a trade or business, who holds a valid use permit authorizing the owner to moor the vessel in the small boat harbor, for use by bona fide guests. The temporary parking permit card or device issued by the department shall be displayed in or on the vehicle so as to be clearly visible from the outside during the period that the vehicle is parked at the small boat harbor. Fee per vehicle shall be \$2 per twenty-four hour period or fraction thereof.

(e) Fees for a regular parking permit issued after the first month of a calendar quarter shall be prorated on a monthly basis, a fraction of a month being considered a full month. No permit shall be issued until the prescribed fee is paid.

(f) Each person holding a regular parking permit shall be issued not more than one parking permit card or device for each parking permit held. The parking permit card or device issued by the department shall be displayed in or on the vehicle so as to be clearly visible from the outside when the vehicle is parked in the small boat harbor during the period that the parking restrictions are in effect as prescribed in subsection (j)(1).

(g) If a valid parking permit card or device becomes lost, destroyed, stolen, mutilated, or illegible, the permittee shall immediately:

- (1) Notify the department in writing describing the circumstances of the loss or destruction and certifying to its loss; or

- (2) Deliver to the department any mutilated or illegible permit card or device. If this is done, a replacement permit card or device may be issued to the permittee upon application and payment of a fee of \$1.

(h) A parking permit may be canceled by a permittee upon thirty days written notice to the department. The parking permit card or device issued by the department is the property of the State. Upon cancellation by a permittee, no credit or refund for any unexpired month or months shall be given unless the permit card or device is returned to the department. No credit or refund shall be given for portions of a month upon cancellation or revocation of a permit.

(i) The department reserves the right to further restrict the issuance of parking permits to those who observe the small boat harbors rules and make full and timely payments of fees and charges. A parking permit may be revoked as provided in section 13-233-6. Upon revocation, the permittee shall surrender the parking permit card or device issued by the department.

(j) It shall be a violation of this section for any person:

- (1) To cause, allow, or permit any vehicle within the person's control to be parked, stopped or standing within the small boat harbor except as provided in subsection (b).
- (2) To park, stop, or stand any vehicle across any line or marking of a parking stall or in such a manner that the vehicle shall not be entirely within the stall designated by such lines or markings.
- (3) To permit another person not entitled thereto, to use or have possession of a parking permit card or device issued by the department.
- (4) To alter, forge, counterfeit, or imitate a parking permit card or device issued by the department.
- (5) To possess or use a parking permit card or device, knowing it to have been altered, forged, counterfeited, or imitated.
- (6) To avoid or attempt to avoid compliance with this section by displaying in or on a vehicle, a parking permit card or device not authorized or issued by the department for the vehicle.
- (7) To enclose, obstruct, or cause to be enclosed or obstructed any parking stall or portion thereof unless a permit has been obtained from the department.

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(8) To disregard any official direction, instruction or restriction indicated by or on an official sign posted in a parking zone.

(k) A person who has violated this section may be fined as provided in section 13-230-4. In addition, violations of this section may result in revocation of a parking permit pursuant to section 13-231-6. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-15 to §13-233-19 (Reserved)

Subchapter 2 Parking Meter Zones

§13-233-20 Establishment of parking meter zones
§13-233-21 Designation of parking meter stalls
§13-233-22 Placement and design of parking meters
§13-233-23 Method of parking
§13-233-24 Parking time limits and meter operating hours
§13-233-25 Operation of parking meters
§13-233-26 Charges for parking
§13-233-27 Charges for enclosure or obstruction of parking meter stalls, incidental to construction, etc
§13-233-28 Harbor tenants - parking permits
§13-233-29 Eligibility for parking permits; fee per vehicle
§13-233-30 Replacement of mutilated stickers
§13-233-31 Transfer of permits
§13-233-32 Cancellation of permits
§13-233-33 Revocation of parking permits
§13-233-34 Violations and penalties
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to
§13-233-39 (Reserved)

§13-233-20 Establishment of parking meter zones. Parking meter zones are hereby established at the small boat harbors in the areas more particularly described in Exhibit 1 and shown on

Exhibit 2, January 26, 1985, located at the end of this chapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-21 Designation of parking meter stalls. The chief of the division of boating and ocean recreation shall establish, mark, and designate individual parking stalls for the parking of a single vehicle in each stall of appropriate size, in the parking meter zones. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-22 Placement and design of parking meters. The parking meters installed in the parking meter zones shall be placed immediately adjacent to the individual parking stalls. Each parking meter shall be placed or set and clearly marked in such manner as to indicate the parking meter into which a coin or coins must be deposited to legally park in the stall. The parking meter shall be so designed to show or display by a signal:

- (1) The amount of unexpired time remaining for legal use of the stall; or
- (2) The expiration of the time during which the stall may legally be used. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: §§200-2, 200-4)

§13-233-23 Method of parking. When a parking stall in any parking meter zone is parallel with the adjacent curb or sidewalk, any vehicle parked, stopped, or standing in the parking stall shall be situated so that the foremost part of the vehicle shall be nearest to the parking meter; when a parking stall in any parking meter zone is diagonal or perpendicular to the adjacent curb or sidewalk, any vehicle parked, stopped, or standing in the parking stall shall be situated with the foremost part of the vehicle nearest to the meter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-24 Parking time limits and meter operating hours. Time limitations and meter operating hours for legal parking in the following listed zones are as follows:

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<u>Parking meter zone</u>	<u>Parking time limit</u>	<u>Meter operating hour</u>
A	4 hours	24 hrs. per day 7 days per week
B	8 hours	24 hrs. per day 7 days per week
C	4 hours	24 hrs. per day 7 days per week
D	8 hours	24 hrs. per day 7 days per week
E	8 hours	24 hrs. per day 7 days per week

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

§13-233-25 Operation of parking meters. Except in a period of emergency determined by the department or an officer of a county fire or police department, or in compliance with the directions of a police officer or traffic control sign or signal, when any vehicle shall be parked, stopped, or standing in any parking stall alongside or next to which a parking meter is located, during meter operating hours the operator of the vehicle shall, upon entering the said parking stall, immediately deposit or cause to be deposited in the meter such proper coin of the United States as is required for the parking meter and as is designated by proper directions on the meter or signs and when required by the direction on the meter, the operator of the vehicle after the deposit of the proper coin or coins, shall also set in operation the timing mechanism on the meter in accordance with directions properly appearing thereon. Upon the deposit of the coin (and the setting of the timing mechanism in operation when so required) the parking stall may be lawfully occupied by the vehicle during the period of time which has been prescribed for the area in which the parking space is located; provided that any person placing a vehicle in a parking stall adjacent to a meter which indicates that

unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin so long as that person's occupancy of the stall does not exceed the indicated unused parking time.
[Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-26 Charges for parking. Charges will be made and collected for parking, stopping, or standing a vehicle in parking meter zones at the rate of forty cents per hour during meter operating hours. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-27 Charges for enclosure or obstruction of parking meter stall, incidental to construction, etc. (a) Before any person, other than any governmental agency, shall enclose, obstruct, or cause to be enclosed or obstructed any parking stall or portion thereof, incidental to erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure, or for other reasons, that person shall obtain a permit from the department and pay to the department a sum calculated at the rate of \$2 for each such parking meter stall for each day or fraction thereof, during which the stall shall be so enclosed or obstructed.

(b) No permit to enclose or obstruct a parking stall shall be issued to any person to whom the foregoing provision is applicable until the person shall have made a deposit of the calculated sum, based on the estimated number of days during which the parking stall shall be so enclosed or obstructed. The person shall notify the department immediately upon termination of the enclosure or obstruction. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-28 Harbor tenants - parking permits. Notwithstanding any other provisions of this subchapter to the contrary, a person may park a motor vehicle in a parking stall in a parking meter zone, in excess of the time limit and without depositing coins in the parking meter located adjacent to the parking stall, if the person has been issued a parking permit and displays a valid

parking sticker (decal) issued to that person by the department, on the left hand side of the rear bumper or as near thereto as the configuration of the motor vehicle permits, or has been issued a temporary parking permit and displays this temporary parking permit in or on the vehicle so as to be clearly visible from the outside.
[Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-29 Eligibility for parking permits; fee per vehicle. (a) Persons eligible for the parking permits described in section 13-233-28 and the fees for the permits are as follows:

<u>Eligible persons</u>	<u>Fees Per Vehicle</u>
(1) An owner holding a valid use permit (permittee) authorizing the mooring of the owner's vessel at the small boat harbor, and any co-owner of the vessel.	\$5 per quarter
(2) The master, spouse of each owner and their legal dependents 18 years of age or older.	\$15 per quarter
(3) An owner or co-owner holding a valid use permit authorizing the mooring of the owner's vessel at the small boat harbor may secure a temporary parking permit which in no event shall exceed 72 hours, for use by bona fide guests accompanying the owner on board the vessel on a voyage outside the confines of the small boat harbor.	\$2 for each 24-hour period or fraction at thereof
(4) An owner or employee of a firm, business, or organization operating under a lease or other	\$30 per quarter

agreement authorizing
the owner, employee,
firm, business, or organi-
zation to engage in
a business or commercial
activity at the small boat
harbor.

(b) Fees for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

(c) Except as provided in subsection (a)(2), not more than one parking permit shall be issued to a person eligible for a parking permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-30 Replacement of mutilated stickers. The eligible holder of a parking sticker that becomes mutilated or illegible shall apply for and be issued a replacement sticker if the mutilated or illegible sticker is surrendered to the department. A fee of \$1 shall be paid prior to the issuance of a replacement sticker. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-31 Transfer of permits. The holder of a parking sticker may upon surrender of a parking sticker apply for and be issued another parking sticker to be applied to another vehicle owned by the holder. A fee of \$1 payable in advance shall be paid prior to the issuance of a new sticker. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-32 Cancellation of permits. The holder of a valid parking permit who disposes of the vehicle for which the permit was issued or who otherwise desires to cancel a parking permit may obtain a credit or refund as appropriate for any remaining unexpired month or months, upon surrender of the parking sticker to the department. No credit or refund shall be given for portions of a month. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-33

§13-233-33 Revocation of parking permits. The department reserves the right to further restrict the issuance of parking permits to those who observe the small boat harbors rules and make full and timely payments of fees and charges. A parking permit may be revoked as provided in section 13-231-6. Upon revocation the permittee shall surrender the parking sticker issued by the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-34 Violations and penalties. (a) It shall be a violation of this part for any person:

- (1) To cause, allow, permit, or suffer any vehicle within that person's control to be parked, stopped, or standing in any parking stall for a consecutive period of time in excess of the parking time limit specified in section 13-233-24 for the parking meter zone in which the meter is located, irrespective of the number or amounts of the coins deposited in the meter, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department.
- (2) To permit a vehicle within the person's control to be parked, stopped, or standing in any parking stall during meter operating hours in the parking meter zone in which the meter is located while the parking meter for the stall indicates by signal that the lawful parking time in the stall has expired, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department. This provision shall also not apply during the act of parking or during the necessary time which is required to deposit immediately thereafter a coin or coins in the meter.
- (3) To fail to deposit the proper coins and to set the timing mechanism in operation as required under sections 13-233-25 and 13-233-26, unless the vehicle occupying the parking stall displays a valid parking sticker or temporary parking permit issued by the department.

- (4) To park, stop, or stand any vehicle across any line or marking of a parking meter stall or in such position that the vehicle shall not be entirely within the stall designated by the lines or markings, except that a vehicle which is of a size too large to be parked within a single designated parking meter stall shall be permitted to occupy two adjoining parking meter stalls when coins shall have been deposited in the parking meter stalls so occupied as is required in this subchapter for the parking of other vehicles in the stall.
 - (5) To park, stop, or stand a towing vehicle with a boat trailer attached in any parking meter stall.
 - (6) To permit another person not entitled thereto, to use or have possession of a parking sticker.
 - (7) To alter, forge, counterfeit, or imitate a parking sticker.
 - (8) To possess or use a parking sticker, knowing it to have been altered, forged, counterfeited, or imitated.
 - (9) To avoid or attempt to avoid compliance with this section by affixing to a vehicle, a parking sticker not authorized by the department.
 - (10) To enclose, obstruct, or cause to be enclosed or obstructed any parking meter stall or portion thereof unless a permit has been obtained from the department as required in section 13-233-27.
 - (11) To deface, injure, tamper with, open or willfully break, destroy, or impair the usefulness of any parking meter installed under the provisions of this part.
 - (12) To deposit or cause to be deposited in any parking meter any slugs, device or metal substance, or other substitute for lawful United States coins.
 - (13) To disregard any official direction, instruction, or restriction indicated by or on official signs posted in a parking meter zone.
- (b) A person who has violated this section may be fined as provided in section 13-230-4. [Eff 2/24/94]
(Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-40

Subchapter 3 Vessel Owner Parking Zone

§13-233-40	Establishment of vessel owner parking zone
§13-233-41	Designation of parking stalls
§13-233-42	Vessel owner parking permits
§13-233-43	Eligibility for parking permits; fee
	per vehicle
§13-233-44	Violations and penalties

§13-233-40 Establishment of vessel owner parking zone. Vessel owner parking zone 1 is established at the Ala Wai boat harbor in the area described in Exhibit 3 and shown on Exhibit 2, dated January 26, 1985, located at the end of this chapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-41 Designation of parking stalls. The chief of the division of boating and ocean recreation, shall establish, mark, and designate individual parking stalls for the parking of a single vehicle in each stall of appropriate size, in vessel owner parking zone 1. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-42 Vessel owner parking permits. The vessel owner parking zone 1 is designated for vehicles displaying a valid parking sticker (decal), issued by the department, on the left-hand side of the rear bumper or as near thereto as the configuration of the motor vehicle permits or displaying a valid temporary parking permit in or on the vehicle so as to be clearly visible from the outside. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-43 Eligibility for parking permits within the vessel owner parking zone; fee per vehicle. (a) The persons eligible for parking permits pursuant to section 13-233-29 and the fees for the permits are:

- (1) Permittees holding valid use permits to moor their vessels at a small boat harbor, their spouses, vessel master, and their legal dependents eighteen years of age or older. The fee per vehicle per calendar quarter shall be:
 - (A) \$5 for each owner or co-owner; and
 - (B) \$15 for other eligible persons; and
- (2) The fee for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

Not more than one parking permit shall be issued to a person eligible for a parking permit. [Eff 2/24/94]
 (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-233-44 Violations and penalties. (a) It shall be a violation of this subchapter for any person:

- (1) To cause, allow, permit, or suffer any vehicle within that person's control to be parked, stopped, or standing within vessel owner parking zone 1 unless the vehicle displays a valid parking sticker or temporary parking permit issued by the department.
- (2) To park, stop, or stand any vehicle across any line or marking of a parking space or in such position that the vehicle shall not be entirely within the stall designated by such lines or markings.
- (3) To permit another person not entitled thereto, to use or have possession of a parking sticker.
- (4) To alter, forge, counterfeit, or imitate a parking sticker.
- (5) To possess or use a parking sticker, knowing it to have been altered, forged, counterfeited, or imitated.
- (6) To avoid or attempt to avoid compliance with this subchapter by affixing to a vehicle, a parking sticker not authorized by the department.
- (7) To disregard any official direction, instruction, or restriction indicated by or on official signs posted in the vessel owner parking zone.

(b) A person who has violated this subsection may be fined as provided in section 13-230-4. [Eff 2/24/94]
 (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

EXHIBIT "1"

PARKING METER ZONES ALA WAI SMALL BOAT HARBOR

- (a) Parking zone "A." Beginning near the Ala Wai Canal at the northernmost corner of the end of the roadway leading to the work dock, zone "A" is defined approximately by the following boundaries:
- (1) 155 feet in the Diamond Head direction along the edge of the roadway, thence
 - (2) 135 feet in the mauka direction along the edge of the roadway, thence
 - (3) 50 feet in the Diamond Head direction across the roadway, thence
 - (4) 175 feet in the makai direction along the edge of the roadway, thence
 - (5) 435 feet in the Diamond Head direction along the edge of the roadway, thence
 - (6) 50 feet in the makai direction, thence
 - (7) 180 feet in the Diamond Head direction along the edge of the roadway, thence
 - (8) 20 feet in the makai direction across the roadway, thence
 - (9) 730 feet in the Ewa direction along the seawall, thence
 - (10) 80 feet in the mauka direction along the seawall, thence
 - (11) 130 feet in the Ewa direction along the seawall, thence
 - (12) 20 feet in the mauka direction along the Ala Wai Canal to the point of beginning.
 - (13) A 20-foot wide strip on the mauka side of the access road adjacent to the Ilikai Hotel. It begins at the corner of the access road and Hobron Lane, runs in the Diamond Head direction for 260 feet, and follows the curve in the

roadway for approximately 230 feet.

EXHIBIT "3"

VESSEL OWNER PARKING ZONE, ALA WAI BOAT HARBOR

Vessel owner parking zone 1.

Beginning mauka of the boat launching ramp at the northernmost corner along a 50-foot radius curve on the Diamond Head edge of the roadway, parking zone 1 is defined approximately by the following boundaries.

- (1) 90 feet in the Diamond Head direction along the edge of the roadway, hence
- (2) 100 feet in the makai direction, hence
- (3) 140 feet in the Ewa direction, hence
- (4) 48 feet in the mauka direction to and ending at the 50-foot radius curve.

HAWAII ADMINISTRATIVE RULES

CHAPTER 234 FEES AND CHARGES

Historical note

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- §13-234-2 Payment, delinquency and liens
- §13-234-3 Mooring rates
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- §13-234-26 Passenger fees
- §13-234-27 Fees for copies of rules
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- §13-234-30 Application fee for approved marine surveyor
- §13-234-31 Fees for commercial use of boat launching ramps and other boating facilities
- §13-234-32 Small boat harbor facility - key deposits
- §13-234-33 Business transfer fee
- §13-234-34 Fee for use of state boat launching ramps
- §13-234-35 Fees for signs and ticket booths

Historical note: This chapter is based on the schedule of fees and charges of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities were transferred from the Department of Transportation, Harbors Division to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

§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.

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(b) Nothing contained in this subchapter shall be construed to limit the authority and power of the department to waive any fees, 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 therefor, 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)

§13-234-2 Payment, delinquency and liens. (a)
Security deposit and method of payment:

- (1) Security deposit. A permittee upon being issued a use permit, shall in addition to paying fees and charges as they become due, deposit with the State in legal tender or in such other form as may be acceptable to the State, an amount equal to two months' fees and charges at the rate prescribed in the rules in effect on the date of issuance of the permit as security for the faithful performance on the permittee's part of all the terms and conditions, specified therein. On the effective date of any increase in fees and charges, the permittee shall deposit such additional amount to cover the increase. The State shall refund any excess deposit if the fees and charges are reduced. The deposit will be returned, without interest, to the permittee upon the termination of the permit only if the terms and conditions have been faithfully performed to the satisfaction of the department. In the event the permittee does not so perform, the department may declare the deposit forfeited or apply it as an offset to any amounts owed by the permittee to the State under the use permit, or to any damages or loss caused to the State by the permittee. The exercise of the permittee's option is without prejudice to the right of the State to institute action for debt or damages against the permittee or to take any other or further action against the permittee as may be

§13-234-2

provided by law or these rules for the enforcement of the rights of the State under the use permit.

- (2) Advance payment required. As a prerequisite to the issuance of a use permit the permittee shall make a security deposit pursuant to section 13-234-2, pay the permit processing fee, one month's fees and charges, and any other fees and charges that may be due and payable to the State; provided that if the effective date of the use permit is other than the first day of the month, charges shall be properly prorated for the balance of the month and these prorated charges shall be paid.
- (3) Method of payment of fees and charges. The following fees and charges shall be paid in advance without notice or demand on the first day of each and every month during the life of the use permit, except that the amounts due for the first month shall be paid prior to the issuance of the permit as described in section 13-234-2:
- (A) Mooring;
 - (B) Residence;
 - (C) Electricity;
 - (D) Shower;
 - (E) Dry storage;
 - (F) Gear locker;
 - (G) Facilities constructed by others; and
 - (H) Rent and other fixed recurring fees and charges.

(b) Permit processing fees are due and payable in advance.

(c) All other fees and charges are due and payable on the first day of the month after they are incurred.

(d) Fees and charges for the last month shall be properly prorated. If the termination is at the owner's option, unless a written notice of intent to vacate has been received by the department from the boat owner at least thirty days in advance of the termination date as prescribed in section 13-231-9 the owner shall be liable for the full amount of the monthly fees and charges.

(e) All fees and charges shall become delinquent thirty days after they become due and payable. All delinquent accounts will be referred to the Credit Bureau Services if they remain unpaid on the day the account becomes delinquent._

(f) Without prejudice to any other remedy available to the State, interest and, regardless of the amount of the delinquency, a \$25.00 per month service charge shall be assessed on all delinquencies. The interest shall be computed at a rate of one per cent per month, annual percentage rate of twelve per cent, on the the delinquent amount. The interest and service charges shall continue to be assessed until the delinquency is paid in full.

(g) In the event the fees and charges which shall have accrued in favor of the department shall not be paid as provided in these rules, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain such possession until all charges then owing and any charges which shall thereafter accrue are fully paid. The remedy thus provided in this section is in addition to and not in lieu of any other remedies which the department may have by virtue of statute or otherwise.
 [Eff 2/24/94] (Auth HRS §200-10) (Imp HRS §§200-2, 200-3, 200-10)

§13-234-3 Mooring rates. (a) The following mooring rate schedule shall become effective on the first day of the calendar month following the effective date of the amendments of this chapter. The mooring rate schedule in this subsection is per foot of vessel length overall per month.

<u>TYPE OF MOORING</u>	<u>HARBORS</u>		
	<u>ALA WAI</u>	<u>KEEHI</u> <u>LAHAINA</u> <u>MAALAEA &</u> <u>HONOKOHAU</u>	<u>ALL OTHERS</u>
(1) Alongside catwalk:	\$3.40	\$2.95	\$2.50
(2) Bow/stern mooring:			
On state buoy,			
anchor or cable:	\$2.70	\$2.30	\$2.00
Minimum fee:	\$35.00	\$35.00	\$25.00

<u>TYPE OF MOORING</u>	<u>HARBORS</u>		
	<u>ALA WAI</u>	<u>KEEHI</u> <u>LAHAINA</u> <u>MAALAEA &</u> <u>HONOKOHAU</u>	<u>ALL OTHERS</u>
On owner's buoy or anchor:	\$1.75	\$1.50	\$1.30
Minimum fee:	\$28.00	\$28.00	\$20.00
(3) In harbor basin:			
On state cable, buoy, or anchor:			\$1.20
Minimum Fee:			\$20.00
On owner's buoy or anchor:			\$.80
Minimum Fee:			\$13.00
(4) Skiff moorings (Fore and aft, all types):	\$1.15	\$1.10	\$1.00
Minimum Fee:	\$17.50	\$16.00	\$12.50
(5) Work docks (Per foot of vessel length per day):	\$.35	\$.30	\$.25
Minimum Fee:	\$9.00	\$7.00	\$5.00

The following mooring rate schedule shall be implemented on the first day of the calendar month twelve months following the effective date of the rates listed above.

<u>TYPE OF MOORING</u>	<u>HARBORS</u>		
	<u>ALA WAI</u>	<u>KEEHI</u> <u>LAHAINA</u> <u>MAALAEA &</u> <u>HONOKOHAU</u>	<u>ALL OTHERS</u>
(1) Alongside catwalk:	\$4.10	\$3.50	\$2.80
(2) Bow/stern mooring:			
On state buoy, anchor or cable:	\$3.40	\$2.85	\$2.50
Minimum fee:	\$43.50	\$43.50	\$31.00

<u>TYPE OF MOORING</u>	<u>HARBORS</u>		
	<u>ALA WAI</u>	<u>KEEHI</u> <u>LAHAINA</u> <u>MAALAEA &</u> <u>HONOKOHAU</u>	<u>ALL OTHERS</u>
On owner's buoy or anchor:	\$2.20	\$1.85	\$1.60
Minimum fee:	\$34.75	\$34.75	\$24.80
(3) In harbor basin:			
On state cable, buoy, or anchor:			\$1.50
Minimum Fee:			\$24.80
On owner's buoy or anchor:			\$1.00
Minimum Fee:			\$16.10
(4) Skiff moorings (Fore and aft, all types):	\$1.45	\$1.35	\$1.25
Minimum Fee:	\$21.70	\$19.85	\$15.50
(5) Work docks (Per foot of vessel length per day):	\$.45	\$.40	\$.30
Minimum Fee:	\$11.15	\$8.70	\$6.00

(b) The mooring rate schedule in subsection (a) shall apply to single-hulled vessels, except as otherwise prescribed in this section, or in sections 13-234-5, 13-234-7 and 13-234-25.

(c) A multi-hulled vessel shall be charged mooring fees in proportion to berths used in increments of one, one and one-half, or two times the fee prescribed in subsection (a) for a single-hulled vessel of equal length.

(d) When more than one vessel occupies a single berth end to end, the charge shall be computed at the rate prescribed in subsection (a).

(e) Except for subsection (a)(5) which sets out the minimum charges per day, the amounts set out in the mooring rate schedules in subsection (a) are the minimum charges per month.

(f) If the assigned berth/mooring under subsection (a)(1) and (a)(2) is not provided with electricity, the fee prescribed shall be decreased by \$.05 per foot per month. [Eff 2/24/94]
(Auth: HRS §§200-6, 200-10) (Imp: HRS §§200-6, 200-10, 200-12)

§13-234-4

§13-234-4 Mooring rates for offshore mooring and anchoring.

(a) The following mooring rate schedule shall become effective on the first day of the calendar month following the effective date of this section. The mooring rate schedule is per foot of vessel length overall per month:

(1) On state buoy, anchor or cable:	
vessel length	rate
0 - 30'	\$1.05
31 - 40'	\$1.15
41 - 50'	\$1.25
51 - 60'	\$1.35
61 - 70'	\$1.45
71 - 80'	\$1.55
81 - 90'	\$1.65
over 90'	\$1.75
Minimum monthly fee:	\$25.00

(2) On owner's own buoy or at anchor:	
vessel length	rate
0 - 30'	\$0.70
31 - 40'	\$0.80
41 - 50'	\$0.90
51 - 60'	\$1.00
61 - 70'	\$1.10
71 - 80'	\$1.20
81 - 90'	\$1.30
over 90'	\$1.40
Minimum monthly fee:	\$16.50

(b) The fee for barges and other commercial vessels over fifty feet in length having no operating means of propulsion shall be two times the rate listed in subsection (a).

(c) The fee for vessels anchored or moored without a permit issued by the department shall be at the rate specified in section 13-234-5. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-234-5 Mooring fees for vessels assigned temporary moorings or occupying moorings without permission. (a) Visitors and others assigned a berth for a temporary period of more than thirty days shall make the security deposit and pay mooring fees as prescribed in this chapter.

(b) Those assigned a berth for a period of thirty days or less shall not be required to make the security deposit referred to in section 13-234-2, as they shall pay fees in advance.

(c) The fees prescribed in subsection (d) shall apply for the entire period the vessel is in the small boat harbor.

(d) The mooring fees for a vessel assigned a berth for thirty days or less shall be:

Vessel length	Rate per 24 hours or fraction thereof	
	<u>At Berth</u>	<u>At Anchor or moored</u>
(1) Less than 20 feet	\$3.45	\$2.25
(2) 20 feet or more but less than 30 feet	\$4.60	\$3.00
(3) 30 feet or more but less than 40 feet	\$5.75	\$3.75
(4) 40 feet or more but less than 50 feet	\$6.90	\$4.50
(5) 50 feet but less than 60 feet	\$7.95	\$5.75
(6) 60 feet but less than 70 feet	\$9.20	\$7.50
(7) 70 feet but less than 80 feet	\$10.35	\$8.50
(8) 80 feet but less than 90 feet	\$11.50	\$9.25
(9) 90 feet but less than 100 feet	\$12.65	\$11.50
(10) 100 feet or more	\$13.80	\$13.00

(e) The mooring fees for a vessel moored in a small boat harbor without permission of the department or in violation of section 13-231-17 shall be:

- (1) 30 days or less - to] 1-1/2 times the fees stated in subsection (d) above
- (2) 31-60 days - 2 times the fees stated in subsection (d) above for the period over 30 days
- (3) More than 60 days-3 times the fees stated in subsection (d) for the period over 60 days

(f) In addition to any civil remedy or criminal action available to the department, vessels moored without permission shall be liable for the payment of fees chargeable to such moorage. The acceptance of the payment shall not waive the nature of trespass or ratify or permit the unlawful or illegal mooring. [Eff 2/24/94] (Auth: HRS §§200-6, 200-10) (Imp: HRS §§200-6, 200-10, 200-12)

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§13-234-6 Fees for vessel absent for more than fourteen days. Any holder of a use permit who has applied as prescribed in section 13-231-11 to retain the permit to use the assigned berthing space and any other related use permits upon the permittee's return, and whose application has been approved by the department, shall continue, during any absence of thirty days or less from the assigned berth, to pay fees for the berthing space and any other use permits designated in the application at the rate established in section 13-234-3 and other applicable sections of these rules. Where the absence permitted under section 13-231-11 exceeds thirty days, then for the period in excess of thirty days the mooring fees for the berth retained, and the fees prescribed in these rules for any facilities or services actually utilized by the permittee during the permittee's absence, shall be due and payable to the department. During such absence, the department may issue a temporary use permit for the use of the berthing space by another vessel and charge mooring fees from the temporary permittee at the rate prescribed in these rules and credit a portion of such fees collected to the account of the permanent permittee amounting to fifty per cent of the regular mooring fee, prorated on a daily basis, for the period that temporary mooring fees are collected for the use of the berth. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-10, 200-12)

§13-234-7 Mooring fee for vessels owned by nonresident. The mooring fee for vessels owned by nonresidents, assigned a permanent berth in any state small boat harbor, shall be ten per cent higher than the mooring rate schedule in section 13-234-3 (a) and (b)(1). [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-10, 200-12)

§13-234-8 Stay-aboard or principal habitation fee. (a) The owner of a vessel moored in a state small boat harbor and authorized to be used as a place of principal habitation, shall pay, in addition to mooring or any other applicable fee or charge, a principal habitation fee computed according to vessel length (not vessel length overall) which is:

- (1) \$5.25 per foot of vessel length per month if the owner is a state resident; and
- (2) \$7.80 per foot of vessel length per month if the owner is a non-resident;

provided that for any calendar year beginning after January 1, 1987 upon thirty days prior written notice from the department, the principal habitation fees established by this subsection shall be increased based on this increase in the annual cost of living index (U. S. Department of Labor, U. S. City Average Urban Consumer Price Index for "all items"), but the increase for any calendar year shall not exceed five per cent.

(b) The owner or operator of a transient vessel, or visiting vessel, shall pay a stay-aboard fee of \$2.00 per person staying aboard a vessel, in addition to mooring or any other fees and charges, for each and every night that any person remains on board the vessel while the vessel is moored in a state small boat harbor. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-9 Stay-aboard or principal habitation fee for offshore mooring or anchoring. The owner of a vessel or houseboat moored or anchored outside a small boat harbor and authorized to be used as a principal place of habitation or for staying aboard shall pay, in addition to any other applicable fee or charge, a principal habitation fee, or a stay-aboard fee as appropriate, which shall be one-half the rate specified in section 13-234-7. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-6, 200-10) (Imp: HRS §§200-1, 200-2, 200-6, 200-10)

§13-234-10 Electricity fee. The monthly fee for the use of electricity when furnished by the State at a small boat harbor shall be as follows:

- (1) When no person lives aboard....\$5.75
 - (2) When no person lives aboard but electricity is used for refrigeration..... \$11.00
 - (3) When persons live aboard but electricity is not used for cooking or refrigeration. \$11.00
 - (4) When persons live aboard and use electricity for cooking or refrigeration..... \$25.00
- [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-11 Shower fee. Showers with hot water, when provided, are intended primarily for the use of persons having vessels moored in the small boat harbor. If sufficient shower facilities are available, the department may permit, if reasonable under the circumstances, persons who are authorized to conduct business on small boat harbor premises pursuant to section 13-231-51 to utilize such facilities. A monthly fee of \$6.00 shall be assessed for each such persons using the showers, except those under the age of four and those paying residence service fees. No persons shall utilize the aforementioned shower facilities unless that person has secured a use permit from the department authorizing use of the facilities. Each person authorized by the department to utilize the shower facilities, except those under the age of four, may secure one shower facility key. The person shall deposit the following amount with the State prior to receiving the key, as security for prompt return of the key upon termination of the use permit:

- (1) \$20 if the use permit is valid for a period of more than ninety days.
- (2) \$30 if the use permit is valid for a period of ninety days of less.

This deposit shall be forfeited in the event the permittee does not return the key to the department on or before the termination of the use permit. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-12 Dry storage and vessel repair. (a) A person, holding a valid use permit allowing the person to moor a vessel in a small boat harbor, may be authorized by the department to use a designated location on land within such harbor for a period not to exceed ten days in any calendar year to refurbish or repair such vessel without payment of a dry storage fee; provided that suitable space is available and any such storage will not unduly interfere with maximum and efficient public utilization of a small boat harbor facilities. The permittee shall however, not be entitled to a reduction in the mooring fees applicable to the temporarily vacated berth. Saturdays, Sundays, and state holidays shall be excluded in the computation of the ten days free time.

(b) Vessels, vessels upon trailers, or empty boat trailers may, upon approval of the department be stored on land at a small boat harbor; provided that suitable space is available and such storage will not unduly interfere with maximum and efficient public utilization of small boat harbor facilities. Except as provided in subsection (a), the fee for the storage of vessels or boat trailers on land at a small boat harbor shall be as follows:

	<u>Ala-Wai and Keehi Boat Harbors</u>	<u>All others</u>
(1) Vessels stored on land, per foot of vessel length, cradle length, or trailer length, whichever is greater per month		
paved area	\$1.25	\$1.15
unpaved area	\$1.15	\$1.00
(2) Empty boat trailer per month	\$20.00	\$15.00
(3) Minimum monthly charge for vessel storage	\$20.00	\$15.00
(4) The charges for one-half month or less shall be one-half of the monthly rate.		

(c) Boating equipment or other items used in connection with boats moored in small boat harbors, upon approval of the department, may be stored at such harbors if it can be done without unduly interfering with small boat harbor operations. The charges for use of such storage space shall be:

	<u>Ala-Wai and Keehi Boat Harbors</u>	<u>All others</u>
(1) Open storage on paved areas, per square foot per month	\$.35	\$.25
(2) Open storage on unpaved areas, per square foot per month	\$.25	\$.15

Ala-Wai and
Keehi Boat
Harbors

All others

- (3) The minimum charge per month \$15.00 \$8.00
- (4) For less than one-half month, the charge will be one-half of the above full monthly rate.

(d) A person who does not hold a valid mooring permit for a particular small boat harbor may be permitted by the department to use a designated location on land within that harbor for a period not to exceed six months to repair or refurbish a vessel, provided that suitable space is available and such storage will not unduly interfere with maximum and efficient public utilization of small boat harbor facilities. The charge shall be the same as specified in subsection (c).

(e) The department shall not be responsible for any claim for loss or damage by reason of theft, fire or any other cause in connection with any personal property stored in the designated storage area. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-13 Gear locker fee. (a) The charge for the use of gear lockers provided by the State shall be:

- (1) Standard wood locker .. \$5.50 per month
- (2) Triangular fiberglass locker \$3.00 per month

(b) In the event that permission is given by the department for a boat owner to provide a personal gear locker pursuant to section 13-232-44, the charge, while the permit remains in effect, shall be thirty per cent of the rate established in subsection (a). [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-12)

§13-234-14 Mooring fees - facilities constructed by others. Where a mooring facility is constructed by others pursuant to section 13-232-43 the mooring rate shall be thirty per cent of the fee established in section 13-234-3 for a period of time as established by the department which will allow the permittee to amortize the capital cost of the improvements. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-12)

§13-234-15 Waiver of fees. The department reserves the right to waive or reduce any fees or charges contained in this chapter. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-4, 200-7, 200-12)

§13-234-16 Permit processing fees. The charge for the processing of a use permit shall be as follows:

- (1) Initial issuance of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-3) .. \$5; initial issuance of commercial permit .. \$25;
- (2) Renewal of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-5) .. \$5; renewal of commercial permit .. \$15;
- (3) Revision of permit:
 - (A) At owner's request .. \$5; or
 - (B) By department's action (see section 13-231-7) .. no charge; and
- (4) All other use permits listed in section 13-231-3:
 - (A) Initial issuance \$5;
and
 - (B) Renewal of permit \$3.

If a permittee utilizing any property or facility fails to renew a use permit on or before the date on which it expires, the applicable renewal fee plus a penalty fee of \$1 per month shall be collected from the permittee for each month or fraction of a month the permittee is late in applying for renewal of a permit and any other penalty fees provided by these rules. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-12)

§13-234-17 Fees for vessels moored at yacht club berths and other areas covered by specific agreements. Owners of vessels moored or anchored in areas or portions of state small boat harbors covered by specific agreements or other arrangements with the State, as in the case of yacht clubs and the like, and who are paying mooring charges to the lessees or other parties of such agreements or arrangements, shall be exempt from the mooring fees set out in section 13-234-3; provided that the owners shall enter into an agreement and obtain use permits as required in section 13-231-3 and all fees and charges other than

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mooring fees shall be assessed as the same shall properly apply. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-12)

§13-234-18 Excessive water usage fee. A fee of \$10 per day for each day or fraction thereof will be charged for excessive use or waste of fresh water; such as the use of water for the prolonged operation of ejectors to pump water out of vessels and permitting hoses to run unattended. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-12)

§13-234-19 Parking fees - reserved space. (a) The fee for parking a vehicle in a space reserved by the department for the exclusive use of any person shall be as follows:

- (1) Reserved parking, covered \$30 per month.
- (2) Reserved parking, uncovered \$20 per month.

(b) The establishment of reserved parking spaces normally does not permit maximum efficient public utilization of parking facilities. Therefore, parking spaces shall not be designated for the exclusive use of any person, other than when necessary for the parking of government or other official vehicles, unless suitable space is available and such use will not interfere with maximum and efficient public utilization of small boat harbor facilities. Any reserved spaces established shall be assigned on a "first-come, first-served" priority system. The following shall be eligible for assignment to any reserved parking space that is established for use by the public:

- (1) A person holding a valid use permit authorizing the person to moor that person's vessel at the small boat harbor, the vessel owner, co-owner, and master; and
- (2) An owner or employee of a business or organization operating under the provisions of a lease or other agreement authorizing the owner or employee or the business or organization to engage in a business or commercial activity at the small boat harbor.

(c) No person shall park a vehicle in a reserved parking space so designated by a posted sign unless authorized by the department. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-7) (Imp: HRS §§200-2, 200-4, 200-7)

§13-234-20 Salvage fee. The owner of a vessel in danger that is saved, rescued, or secured pursuant to section 13-231-19 shall be charged a fee for services and materials based on prevailing commercial rates plus ten per cent. [Eff 2/24/94] (Auth: HRS §§200-2, 200-4, 200-7) (Imp: HRS §§200-2, 200-4, 200-7)

§13-234-21 Principal habitation application fee. Prior to filing or renewing an application for the issuance of a principal habitation permit as provided in section 13-231-27(a)(2) the applicant shall pay to the department an application fee of \$15. The fee is not refundable. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-10, 200-12)

§13-234-22 Exemption from fee differential. Nonresident members of the United States Armed Forces on active duty stationed or on order to be stationed in Hawaii and their dependents are exempted from payment of the nonresident fee differential prescribed in this subchapter during the period they are on active duty and stationed in Hawaii if they submit relevant proof to the department as may be necessary to the determination of such status as prescribed in section 13-230-16. [Eff 2/24/94] (Auth: HRS §200-10) (Imp: HRS §§200-2, 200-10, 200-12)

§13-234-23 Application fee for moorage. If all suitable berths in a small boat harbor have been allocated to others a person may apply, subject to the payment of application fees, for a future vacancy or to move in the future to another berth in the same harbor, as prescribed in section 13-231-5. In small boat harbors where categories of berths have been established pursuant to section 13-231-5 only a single application fee or fee for renewal of an existing application shall be levied if any applicant applies for or renews applications for more than one category of berth, provided that all applications were submitted on the same date.

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- (1) The application fee or fee for renewal of an existing application for a regular mooring permit shall be \$15 for any person who is a resident and \$100 for all other persons.
- (2) The application fee or fee for renewal of an existing application for a temporary mooring permit or an application to transfer in the future to another berth with the same characteristics in the same harbor shall be \$5.
- (3) No application for moorage, renewal of such application, or for berth transfer shall be accepted until the applicant has paid the prescribed fee. The fee is not refundable, provided the application for moorage fee paid, less a \$5 service charge, shall be returned to an applicant if the department rejects the applicant's application or a renewal thereof pursuant to section 13-231-82. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-10, 200-12)

§13-234-24 Fee for residency status appeal; refund if status determination reversed. The fee for filing an appeal concerning classification as a nonresident as provided in section 13-230-2 shall be \$15. No petition shall be accepted until the prescribed fee has been paid. This fee shall be promptly refunded if as a result of the appeal, the department reverses its original determination that the petitioner was a nonresident. In addition, in such instances any nonresident fee and charge differential paid by the petitioner shall be promptly refunded for the appropriate period. [Eff 2/24/94] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-10, 200-12)

§13-234-25 Fees and charges for commercial vessels at state small boat harbors. (a) The provisions of section 13-234-3 notwithstanding, the following fees and charges shall be assessed for mooring in, or use of, state small boat harbor facilities and services by a commercial vessel:

- (1) For vessels with a commercial and regular mooring permit. The fee per month, per vessel, for mooring of and use of the small boat harbor or any of the facilities by a commercial vessel in these harbors shall be two times the mooring fees prescribed in section 13-234-3 or two per cent of the monthly gross receipts, whichever is greater. In addition to the aforementioned fee for mooring a commercial vessel in these small boat harbors,
the permittee shall also pay fees and charges in the amounts prescribed in these rules for any other facilities and services utilized in the small boat harbor.
- (2) For vessels with a commercial permit only, the fee per month, per vessel for the use of these small boat harbors or any of their facilities by a commercial vessel moored elsewhere shall be the greater of \$100 or two per cent of the monthly gross receipts.
- (3) The report of gross receipts shall be received by the department not 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 shall be cause for termination of the commercial permit.
- (4) For vessels which have been issued a valid commercial permit for the use of more than one small boat harbor, the permittee shall designate the small boat harbor of principal use, and the two per cent of monthly gross receipts shall be paid to that account. The fees for commercial permits issued for other small boat harbors shall be the minimum amount specified in paragraph (2)
- (5) For vessels issued a temporary mooring permit and a commercial permit, the fee per month shall be the greater of the temporary mooring fees required by section 13-234-5 or two per cent of the monthly gross receipts.
- (6) Audit. The department reserves the right to conduct an audit as necessary to determine the fees owing to the department, and any other information necessary and proper to

enforce these rules.

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(b) The department may, by lease, permit, or mooring permit, in accordance with state statutes grant the use or possession of small boat harbor facilities. The leases or permits shall provide for payments of rentals, fees and charges, and other conditions in accordance with law, in lieu of and notwithstanding the provisions for fees and charges specified in these rules. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-26 Passenger fees. (a) Any passenger or cruise vessel which is used for private gain and does not have a valid mooring permit or commercial permit and which uses state small boat harbors property or facilities shall pay the following fees in addition to any other fees required by this chapter:

- (1) Per passenger (includes in transit)--
embarking to or from shore to ship.....\$2
- (2) Passengers in transit on a vessel
on a continuous trip whose point
of origin and termination is a
state small boat harbor, a total
of disembarking and embarking at
each port per passenger.....\$1.50
- (3) Passengers embarking and disembarking
on occasional and infrequent use on
special charter when approved in
advance of voyage as provided in
section 13-231-57(c)(3).....\$1.50

(b) Any passenger vessel using a dock, pier or wharf in a state small boat harbor for disembarking and embarking passengers by means of any boat or lighter while moored offshore, shall pay a fee per passenger for disembarking and embarking at each small boat harbor as follows:

- (1) Passenger vessels engaging only
in interisland commerce:.....\$.30
- (2) Passenger vessels engaging in international
or inter-state commerce:.....\$1.00

Vessels operated by a federal or state agency are exempt from the provisions of this subsection.

(c) A report shall be filed with the department on a form acceptable to the department within thirty days after the date of embarking or disembarking of passengers over state facilities and the charges due shall be remitted along with the report. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-27 Fee for copies of rules. The fee per copy of these rules shall be \$5. A copy of these rules shall be furnished to any person applying for the same upon payment of the prescribed fee, except no fee shall be charged for copies furnished to federal, state, or local governmental agencies or organizations, or for revisions to these rules. The fee may be waived in other instances at the discretion of the chairperson when a waiver is in the public interest. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-234-28 Negotiable instruments; service charge.

(a) The service charge for any dishonored check, draft, certificate of deposit or other negotiable instrument is \$12.

(b) Payment to and acceptance by the department of the service charge for a check, draft, certificate of deposit or other negotiable instrument, shall not be construed as a waiver of any violation of the Hawaii Penal Code, chapters 701 to 713, Hawaii Revised Statutes, or of these rules. [Eff 2/24/94] (Auth: HRS §200-2) (Imp: HRS §200-2)

§13-234-29 Vessel inspection fee. The fee for a vessel inspection performed by the department prior to the issuance or reissuance of a regular mooring permit shall be \$15. The fee is not refundable. A vessel owner shall make an appointment with the harbor agent not less than five working days prior to having the vessel inspected. A fee of \$10 shall be charged if notice of cancellation by the vessel owner is not given to the harbor agent not less than two working days prior to the scheduled inspection. The fee for vessels exempted from numbering in section 13-231-2, Hawaii Administrative Rules, and open skiffs and dinghies less than thirteen feet in length shall be \$5.

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§13-234-30 Application fee for approved marine surveyor. Prior to filing or renewing an application for approved marine surveyor by the department as provided in section 13-231-45, the applicant shall pay to the department an application fee of \$15. The fee is not refundable. [Eff 2/24/94] (Auth: HRS §200-13) (Imp: HRS §200-13)

§13-234-31 Fee for commercial use of boat launching ramps and other boating facilities. The fee for the use of state launching ramps, wharves, or other state boating facilities except state small boat harbors shall be \$75 per month or two per cent of gross receipts, whichever is greater. The single fee assessed for the use of a state launching ramp shall entitle the permittee to use any other state launching ramp on the same island without additional charge, except for those launching ramps listed in section 13-231-67. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§226-2, 200-4)

§13-234-32 Small boat harbor facility key deposits.

(a) Each person authorized to secure a shower facility key shall deposit the following amount with the State as security for prompt return of the key upon termination of expiration of the use permit.

- (1) \$30 if the use permit is valid for a period of more than thirty days; or
- (2) \$50 if the use permit is valid for a period of thirty days or less;

(b) Each person authorized to secure a key for other harbor facilities, such as security gates or restrooms, shall deposit the following amounts with the department prior to receiving the key:

- (1) \$10 if the use permit is valid for more than thirty days; or
- (2) \$25 if the use permit is valid for thirty days or less.

(c) The key deposit shall be forfeited in the event the permittee does not return the key to the department on or before the termination of the use permit, or when the permittee is required to replace a key which has been lost or stolen. [Eff 2/24/94] (Auth: HRS 200-200-10) (Imp:

§13-234-33 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial permit sells or transfers ten per cent or more of the stock or interest in the firm, either as a single transaction or an aggregate of several transactions, to any person who is not a stockholder or owner of record on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee based on the passenger-carrying capacity of the vessel, and shall be as follows:

- (1) Vessels used for bare boat (demise) and sailing charters carrying six or less passengers.....\$ 2,500
- (2) Vessels registered by the State or documented by the U. S. Coast Guard to carry six passengers or less, used for charter fishing or other commercial purpose.....\$ 5,000
- (3) Vessels certified by the U. S. Coast Guard to carry seven to twenty-five passengers.....\$10,000
- (4) Vessels certified by the U. S. Coast Guard to carry twenty-five to forty-nine passengers.....\$15,000
- (5) Vessels certified by the U. S. Coast Guard to carry fifty to seventy-four passengers.....\$25,000
- (6) Vessels certified by the U. S. Coast Guard to carry seventy-five to ninety-nine passengers.....\$40,000
- (7) Vessels certified by the U. S. Coast Guard to carry one hundred to one hundred forty nine passengers.....\$75,000

(b) When less than one hundred per cent of the interest in the corporation is transferred, the business transfer fee shall be based upon a like percentage of the business transfer fee provided in subsection (a). [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-234-34 Fee for use of state boat launching ramps.

(a) An annual fee of \$25 shall be paid by owners of trailered vessels using state launching ramps and other

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boating facilities for recreational and fishing purposes to gain access to the waters of the State for the purpose of defraying costs of maintenance of the state boating facilities and use of water.

(b) Owners of trailered commercial passenger vessels who pay the commercial fee for use of state launching ramps and other boating facilities under the provisions of section 13-234-31 are exempt from the requirements of subsection (a).

(c) This annual fee shall be paid at the time of initial registration or registration renewal, in addition to the vessel registration fee.

(d) The owner shall be furnished a set of decals by the department upon payment of this fee which shall be affixed to the forward end of the trailer tongue as evidence of payment. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-234-35 Fees for signs and ticket booths. (a) The fee for commercial signs in small boat harbors shall be \$1 per square foot per month with a minimum fee of \$5 per month.

(b) The fee for ticket booths in small boat harbors shall be \$250 per month. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

HAWAII ADMINISTRATIVE RULES

CHAPTER 235 OFFSHORE MOORING RULES AND AREAS

Historical note

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Subchapter 2 Offshore Mooring Areas

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Historical note. These rules are based on Offshore Mooring Rules and Areas, effective February 2, 1992, under the jurisdiction of the Department of Transportation, Harbors Division. These rules were transferred from the jurisdiction of the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

Subchapter 1 General Provisions

- §13-235-1 Purpose and scope
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- §13-235-18 Safety and enforcement
- §13-235-19 Standards
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- to
- §13-235-30 (Reserved)

§13-235-1 Purpose and scope. (a) The purposes of this chapter are:

- (1) To designate offshore mooring areas;
- (2) To establish procedures for the licensing and registration of vessels, houseboats, and other contrivances, and the issuance of permits for offshore anchoring and mooring of vessels, houseboats and other contrivances;
- (3) To establish guidelines for living or staying aboard vessels, houseboats or other contrivances while they are anchored or moored within the ocean waters or navigable streams of the State; and
- (4) Any other matter relating to the health, safety and welfare of the general public.

[Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-2 Interpretation. (a) If any section of these rules is inconsistent with any federal or state law or any rule or standard established pursuant thereto, the federal or state law, rule or standard shall govern. Nothing contained in these rules shall be construed to limit the powers of any department or agency of the State.

(b) These rules shall be construed liberally and consistent with the purposes stated in section 13-235-1. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-3 Mooring permit required. (a) No person shall anchor or moor a vessel on the ocean waters or navigable streams of the State surrounding the island of Oahu without a permit issued by the department. This section shall not apply to recreational or fishing vessels temporarily anchored for a period of less than seventy-two hours, or as otherwise provided in this chapter.

(b) No person shall anchor or moor a houseboat, or live aboard any vessel or use any vessel as a principal place of habitation except as provided in section 13-235-31

for Ke'ehi Lagoon, provided that staying aboard or use of a vessel as a vacation site may be permitted in accordance with the provisions set forth in sections 13-231-22, 13-231-28, and 13-231-29. This section shall not apply to a caretaker or watchman retained on board commercial vessels.

(c) An owner of a vessel desiring to moor or anchor on the ocean waters or navigable streams of the State shall apply for an offshore mooring permit from the department. Assignment of a location to moor or anchor shall be in accordance with procedures set forth in chapter 13-231.

(d) No permit issued for mooring or anchoring shall be valid for a period exceeding one year from the date of issuance.

(e) No new permit shall be issued unless the conditions of the original permit have been met, all federal and state laws have been complied with, and all fees and charges due the State have been paid.
[Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6)
(Imp: HRS §§200-1, 200-2, 200-3, 200-6)

13-235-4 Fees. The fees for anchoring or mooring on the ocean waters and navigable streams of the State shall be as prescribed in section 13-234-4. [Eff 2/24/94]
(Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-5 Owners required to report change in ownership, address and other changes. (a) It shall be the responsibility of an offshore mooring permittee to notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel, houseboat or contrivance;
- (2) All or any interest in the vessel, houseboat, or contrivance is transferred to or assigned to another person or business entity; or
- (3) The owner's address or telephone number changes.

(b) Failure to comply this section will result in automatic termination of the offshore mooring permit.

(c) "Transfer" as used in this section means any sale, agreement of 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.

(d) "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 mooring permit issued under this subchapter. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-6 Mooring application denied on basis of adverse environmental impact on State's marine life. An application for mooring or anchoring at a location which is found to be detrimental to the habitat or spawning ground of marine life by the National Marine Fisheries Service or the department of land and natural resources shall be denied. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-7 Revocation. (a) The department may immediately revoke an offshore mooring permit without the necessity for a hearing for any activity which does or may endanger health or safety of the public.

(b) The department may revoke any offshore mooring permit issued pursuant to this chapter for violation of any state or federal law or rules of the department if, after seventy-two hours written notice of the violation by the department, the permittee fails to cure the violation or provide satisfactory evidence of compliance to the department. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-8 Mooring hardware, maintenance and inspection. (a) A vessel owner shall be responsible for maintaining the vessel's mooring hardware except where mooring buoys are installed and maintained by the State.

(b) A vessel owner shall inspect the mooring hardware for safety and security no less than semi-annually and provide notice to the department of the date of the inspection.

(c) The department may conduct inspections of the mooring hardware for compliance with the rules.

(d) No person shall remove, alter or replace any mooring hardware installed by the State without prior written permission of the department.

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(e) The vessel owner is responsible for installing and maintaining chafing gear on all mooring lines.

[Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6)

(Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-9 Restrictions on anchoring or mooring outside of a designated offshore mooring area.

(a) No person shall anchor or moor a vessel outside of a State offshore mooring area without a permit issued by the department, provided that recreational and commercial fishing vessels shall not be required to obtain an offshore mooring permit to moor or anchor for a period not to exceed seventy-two hours except in areas where anchoring or mooring is prohibited.

(b) No person shall anchor or moor a houseboat on the ocean waters or navigable streams of the State outside of a designated mooring area.

(c) No person shall live aboard any vessel or use any vessel as a principal place of habitation on the ocean waters or navigable streams of the state outside of a designated mooring area, provided that staying aboard or use of a vessel as a vacation site may be permitted in accordance with provisions set forth in sections 13-231-22, 13-231-28, and 13-231-29.

(d) The owner of a vessel desiring to moor a vessel outside a designated mooring area may be issued a permit by the department, subject to compliance with all other provisions of this chapter, provided that:

- (1) There is no designated mooring area within a reasonable distance of the desired location specified in the permit application;
- (2) A permit for installation of a mooring at that location is approved by the board of land and natural resources; and
- (3) In the case of commercial vessels, a permit is also approved for installation of the mooring by the U. S. Army Corps of Engineers.

(e) Transient or visiting vessels may be issued a temporary permit to anchor outside of a designated mooring area for a period not to exceed ninety days.

[Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6)

(Imp: HRS §§200-1, 200-2, 200-3, 200-6)

13-235-10 Removal of a vessel or contrivance. (a) The department may remove a vessel or contrivance from its moored or anchored location in accordance with section 13-231-10, Hawaii Administrative Rules and chapter 200, Hawaii Revised Statutes respectively.

(b) Any administrative hearing shall follow the procedures as set forth in sections 13-231-31 and 13-231-32. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-11 Multiple mooring or rafting. No more than one vessel shall be moored to a single mooring buoy or anchor within a designated offshore mooring area, except for tenders, dinghies and work rafts. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-12 Exchange of moorings. The exchange of moorings may be permitted in accordance with section 13-231-25, upon prior approval by the department. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-13 Fresh water. Use of fresh water by a vessel moored or anchored on the ocean waters or navigable streams of the State is included in the mooring fee required by section 13-235-4. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-14 Sanitation. No person shall anchor, moor or stay aboard a vessel except those equipped with an approved marine sanitation device in proper working condition, or those vessels exempt from marine sanitation device requirements in accordance with U. S. Coast Guard regulations. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-15 Mooring of rafts and platforms. No raft or platform shall be located in a designated offshore mooring,

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anchorage, navigable stream or small boat harbor without a valid permit issued by the department. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-16 Tenders and dinghies. (a) Tenders and dinghies, if not issued a certificate of number, shall be identified with the name of the host vessel.

(b) A tender or dinghy shall be either tied alongside or tethered not more than one and one-half times its length from any part of the host vessel. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-17 Inspections. Any vessel anchored or moored in or on the ocean waters and navigable streams of the State shall be subject to inspection by the department or any law enforcement officer of the State or its political subdivisions at any time when necessary and proper for the purpose of ensuring compliance with federal or state laws or these rules. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-18 Safety and enforcement. The restrictions cited in this chapter shall not apply in the event of an emergency to law enforcement or rescue craft, or to vessels participating under a valid ocean waters event permit issued by the department or the U.S. Coast Guard. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-19 Standards. All vessels anchored or moored on the ocean waters and navigable streams of the State shall be maintained in a reasonable condition of cleanliness and repair so as not to constitute a hazard to navigation, a common nuisance, or a danger to public health. Any articles or materials stacked or placed on deck of any unattended vessel shall be secured to avoid the possibility of their loss overboard. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-20 to §13-235-30 (Reserved)

Subchapter 2 Offshore Mooring Areas

- §13-235-31 Ke'ehi Lagoon mooring area
- §13-235-32 Ke'ehi Lagoon anchorage area
- §13-235-33 Kapua Channel mooring area
- §13-235-34 Maunalua Bay mooring area
- §13-235-35 Kaneohe mooring areas "A", "B", "C" and "D"
- §13-235-36 to
- §13-235-50 (Reserved)

§13-235-31 Ke'ehi Lagoon mooring area. (a) The Ke'ehi Lagoon mooring area means the area confined by the boundaries shown for that mooring area on Exhibit "C", dated, July 15, 1990, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the water measured by azimuth clockwise from True South, 185 degrees for a distance of one hundred five feet from the Kalihi Channel Entrance rear range Light; then 154 degrees for a distance of three thousand three hundred ninety-four feet; 250 degrees for a distance of eight hundred three feet; 334 degrees for a distance of three thousand five hundred four feet; 021 degrees for a distance of six hundred feet; 080 degrees for a distance of five hundred thirty feet; then on a straight line to the point of beginning.

(b) The mooring permit shall contain a statement, signed by the owner, certifying that the owner has been informed that the Ke'ehi Lagoon mooring area lies within the airport traffic area of the Honolulu International Airport, and shall include a covenant to hold harmless the U. S. Government and the State of Hawaii from any liability or inconvenience that may arise from overflight by aircraft.

(c) No person shall anchor or moor a vessel or houseboat within Ke'ehi Lagoon except at a location and in accordance with a mooring permit issued by the department under the provisions of sections 13-231-2 and 13-231-17.

(d) No person shall operate, anchor, or moor a vessel, contrivance, or other object in Ke'ehi Lagoon where any part of the vessel, contrivance or other object exceeds or projects beyond a height above the elevations in the height restrictions of structures and improvements as shown on Exhibit "B" dated August 31, 1990, located at the end of this chapter.

(e) No person shall install, maintain or permit the installation or maintenance of any lights or electromagnetic devices on a vessel, contrivance or other object which may interfere with aircraft operating to or from Honolulu International Airport or which may adversely affect the safe and efficient use of Honolulu International Airport.

(f) No person shall sink, or allow to be sunk, any vessel, contrivance or other other object in Ke'ehi Lagoon. If a vessel, contrivance or other object is operated or moored so as to be in danger of wreckage, damaging other property, or sinking, it shall be declared derelict in accordance with chapter 200, HRS, and section 13-231-19 shall apply.

(g) No person shall abandon any vessel, contrivance or other object in Ke'ehi Lagoon. Abandoned vessels shall be disposed of pursuant to provisions of chapter 200, HRS. Abandoned contrivances or other objects shall be disposed of in accordance with applicable laws and rules.

(h) No person shall anchor or moor a houseboat within Ke'ehi Lagoon, except that a person who owns and is residing aboard a houseboat located within Ke'ehi Lagoon mooring area on February 3, 1992 and who first obtained a permit by May 1, 1992, may apply for and be issued a permit to moor the houseboat at a location designated by the department, subject to the following conditions:

- (1) Any structure extending above the main deck shall conform to minimum safety standards used in the marine construction industry; and
- (2) The houseboat must be equipped with a U. S. Coast Guard approved type III marine sanitation device, which has the overboard discharge closed and sealed. Compliance with condition (1) shall be accomplished within one hundred twenty days from

February 3, 1992, provided that the department may extend the time period for compliance upon acceptance of a plan presented by the owner to accomplish any necessary modifications within a reasonable period of time. Compliance with condition (2) shall be accomplished within thirty days of the date that a sewage pump-out facility is installed and available for use at Ke'ehi small boat harbor. No new applications to anchor or moor a houseboat within Ke'ehi Lagoon shall be accepted after February 3, 1992.

(i) No person shall live aboard or use any vessel or houseboat as a place of principal habitation within Ke'ehi Lagoon, except that a person who owns and is residing aboard a vessel or houseboat located within Ke'ehi Lagoon on February 3, 1992 and who first obtained a permit by May 1, 1992, may apply for and be issued a principal habitation permit, subject to the following conditions:

(1) The vessel is equipped with a U. S. Coast Guard approved marine sanitation device, (MSD) or in the case of a houseboat, the requirements of subsection (h) are met. No overboard discharge of untreated sewage from the MSD is permitted. The overboard discharge valve shall be closed and sealed while anchored or moored within the Ke'ehi Lagoon designated mooring area, subject to the availability of an operational sewage pump-out facility.

(2) No person shall reside aboard a vessel for which a principal habitation permit is issued except for the owner, co-owner, immediate family members and legal dependents or other person residing on the vessel (except those paying rent) on February 3, 1992.

(k) No persons shall stay aboard a transient or visiting vessel anchored or moored in Ke'ehi Lagoon without first obtaining a stay aboard permit. A stay aboard permit may be issued to the owner, master, crew or passengers of a transient or visiting vessel for a period or periods not to exceed a total of one hundred twenty days in a calendar year.

(l) All vessels moored within the Ke'ehi Lagoon mooring area shall be equipped with fire extinguishing equipment in accordance with section 13-232-23.

(m) Mooring categories within the Ke'ehi Lagoon mooring area are single point moorings for vessel lengths as follows:

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- (1) Category A Vessels less than 30 feet in length overall;
 - (2) Category B Vessels 31 to 40 feet in length overall, single point mooring;
 - (3) Category C Vessels 41 to 50 feet in length overall, single point mooring;
 - (4) Category D Vessels 51 to 60 feet in length overall, single point mooring;
 - (5) Category E Vessels 61 to 65 feet in length overall, single point mooring.
- [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-32 Ke'ehi Lagoon anchorage area. (a) The Ke'ehi Lagoon anchorage area means the area confined by the boundaries shown for said mooring area on revised Exhibit "D", dated January 14, 1994, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the water located by azimuths measured clockwise from True South, 059 degrees for a distance of three hundred yards from the Kalihi Channel rear range light (USCGLL#29250), then 155 degrees for a distance of nine hundred yards to a point intersecting the minus five bathymetric line; then counterclockwise on a line following the minus five foot bathymetric line to the point of beginning.

(b) The Ke'ehi Lagoon anchorage area is designated for the anchoring of vessels not in excess of sixty-five feet in length and not exceeding seven feet in draft. The vessel owner shall assume the responsibility of anchoring at a location within this area which is suitable for the draft of the vessel. Vessels eligible to anchor in this area shall be limited to transient vessels temporarily visiting the State while enroute to another destination, a vessel assigned a berth elsewhere in the State and temporarily visiting the area, or a vessel on the waiting list for a regular mooring permit for a mooring within the Ke'ehi Lagoon offshore mooring area, houseboats authorized by section 13-235-31(h), and those vessels that the department determines cannot safely be assigned a Ke'ehi Lagoon offshore mooring. A regular mooring permit for this area shall automatically terminate upon the offer of a Ke'ehi Lagoon offshore mooring or upon the offer of a slip in the Ke'ehi Small Boat Harbor. A permit for anchoring

within this area is required in accordance with section 13-235-31. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-33 Kapua Channel mooring area. (a) The Kapua Channel mooring area means the area designated and shown on Exhibit "E", dated July 15, 1990, which is located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark of the tip of the rock groin fronting the Northwest boundary of the Colony Surf Hotel by azimuths measured clockwise from true South 040 degrees for a distance of one hundred twenty feet; 328 degrees for a distance of four hundred fifty feet; 48 degrees 21 minutes for a distance of one hundred fifty-one feet; 146 degrees 49 minutes for a distance of five hundred eighteen feet; 252 degrees 34 minutes for a distance of one hundred sixty-eight feet to the point of beginning.

(b) Kapua Channel mooring area is limited to recreational sail and manually-propelled watercraft less than twenty-two feet in length, to include Hawaiian canoes not to exceed forty-eight feet in length. Motorized vessels are prohibited except for one rescue and safety vessel owned and operated by the Outrigger Canoe Club.

[Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6)
(Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-34 Maunalua Bay mooring area. (a) The Maunalua Bay Mooring Area means the area confined by the boundaries shown for said mooring area on Exhibit "F", dated, July 15, 1990, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the water measured by azimuth clockwise from True South, 188 degrees for a distance of four hundred thirty-five feet from a point located at the Southwest tip of the West bridge pilings of the Hawaii Kai Bridge at the entrance to Kuapa Pond; then 353 degrees for a distance of six hundred seventy-seven feet; 083 degrees for a distance of two hundred ninety-four feet; 172 degrees for a distance of seven hundred twelve feet; then on a straight line to the point of beginning.

(b) No permanent moorings shall be permitted in the Maunalua Bay designated mooring area.

(c) No more than ten temporary mooring permits shall be in effect at any time.

(d) No mooring permit shall be issued for a period in excess of thirty days.

(e) Access to the mooring area is permitted only from Hawaii Kai Marina or the Maunalua Bay launching ramp except for an owner of private beachfront property whose vessel may be moored in the area. [Eff 2/24/94] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-35 Kaneohe Bay designated mooring areas "A", "B", "C" and "D". (a) The Kaneohe Bay designated mooring areas "A", "B", "C" and "D" means the areas confined by the boundaries shown for said mooring areas on Exhibits "G" and "H", dated, October 28, 1991, located at the end of this subchapter. The boundaries are as follows:

(1) Kaneohe Bay designated mooring area "A".

Beginning at a point on the water measured by azimuth clockwise from True South, 206 degrees for a distance of one thousand seven hundred fifty-five feet from the northern tip of the Heeia Kea Small Boat Harbor Pier; then 180 degrees for a distance of eight hundred twenty-five feet; 090 degrees to the coral head, then along the thirty-foot depth line in a south westerly direction around the coral head; then a direct line to the reef following along the thirty-foot depth line along the reef to a point on the reef 150 degrees for a distance of two hundred ten feet from daybeacon R"2" of the Heeia Kea Small Boat Harbor channel; then on a straight line to the point of beginning.

(2) Kaneohe Bay designated mooring area "B".

Beginning at a point on the water measured by azimuth clockwise from True South, 267 degrees for a distance of one thousand five hundred feet from the northern tip of the Heeia Kea Small Boat Harbor Pier; then 270 degrees for a distance of nine hundred feet; 360 degrees for a distance of one thousand five hundred seventy-five feet; 090 degrees for a distance of nine hundred feet; then on a straight line to the point of beginning.

- (3) Kaneohe Bay designated mooring area "C"
 Beginning at a point at the "marker" measured by azimuth clockwise from True South, 078 degrees for a distance of one thousand four hundred seventy feet from the northwestern end of the Kaneohe Yacht Club Pier; then 040 degrees to a "marker" at the five-foot depth line on the reef; then following the five-foot depth line in a southeasterly direction around to the point of beginning.
 - (4) Kaneohe Bay designated mooring area "D"
 Beginning at a point on the water measured by azimuth clockwise from True South, 145 degrees for a distance of three hundred seventy feet from the northwestern end of the Kaneohe Yacht Club Pier; then 174 degrees to a "marker" at the five-foot depth line on the reef; then following the five-foot depth line in a southwesterly direction around to the point of beginning.
- (b) All vessels within Kaneohe Bay ocean waters shall be moored or anchored within a designated mooring area, except:
- (1) Vessels moored in accordance with a permit approved by the board of land and natural resources and a U. S. Army Corps of Engineers permit as provided in section 13-235-9;
 - (2) Vessels moored in privately-dredged channels fronting private residences on February 3, 1992;
 - (3) Skiff and other small craft moored on fringing reefs or mud flats; and
 - (4) Vessels temporarily anchored for less than seventy-two hours in the immediate vicinity of Ahu o Laka Island (the "sand bar").
- (c) Compliance is required within sixty days of receipt of written notice to the owner of a vessel to relocate to a designated mooring area.
- (d) No person shall navigate, moor or anchor a commercial vessel providing service on a fee basis in a designated mooring area unless the vessel has been registered and the owner has a valid commercial use permit issued by the department to operate from Heeia Kea Small Boat Harbor, or is operating from a private boating facility or location for which an ingress or egress corridor has been established by the department.

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(e) No permanent mooring shall be installed within the designated mooring area except by permit issued by the department.

(f) No application for mooring for areas "C" and "D" shall be accepted unless the applicant can demonstrate acceptable public or private access to the shoreline, including adequate parking provisions. [Eff 2/24/94]
(Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

§13-235-36 to §13-235-50 (Reserved)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Title 13, Subtitle 11, Part 1, Small Boat Harbors, Hawaii Administrative Rules, containing Chapters 230 through 235, was adopted on August 13, 1993, by the Board of Land and Natural Resources, following a public hearing held on June 30, 1993, at Farrington High School Cafeteria, after public notice was published in the Honolulu Advertiser and Honolulu Star Bulletin on May 31, 1993; the Garden Island News on June 1, 1993; Hawaii Tribune Herald, on June 1, 1993; Lahaina News on June 17, 1993; Maui News, on May 23, 1993; Molokai Advertiser News on May 26, 1993; and West Hawaii Today on June 1, 1993.

Additionally, Title 13, Subtitle 11, Part 1, Small Boat Harbors, Hawaii Administrative Rules, Chapters 13-230, 13-231, 13-234 and 13-235, were revised and adopted on January 28, 1994, by the Board of Land and Natural Resources, after public hearings were held at the Lihue Video Conference Center and Hilo Video Conference Center on December 20, 1993; Lanai Community Public Library Conference Room and Kihei School on December 21, 1993; Mitchell Pauole Center Conference Room and Farrington High School Cafetorium on December 22, 1993, after notice was published in the Honolulu Advertiser and Honolulu Star Bulletin on November 19, 1993; The Hawaii Tribune Herald on November 19, 1993; The Maui News on November 17, 1993; The Molokai Advertiser-News on November 17, 1993; and West Hawaii Today on November 19, 1993.

Title 13, Subtitle 11, Part 1, Small Boat Harbors, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Keith W. Ahue, Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

APPROVED:

John D. Waihee, Governor
State of Hawaii

Dated:

Filed