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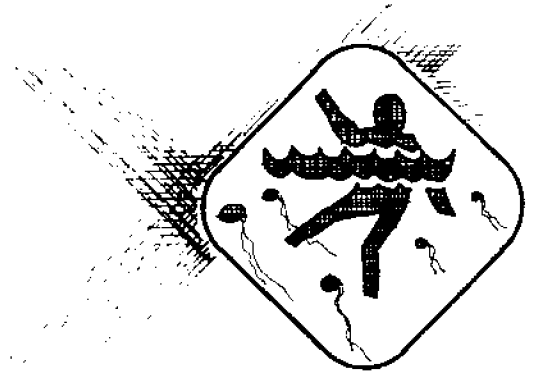
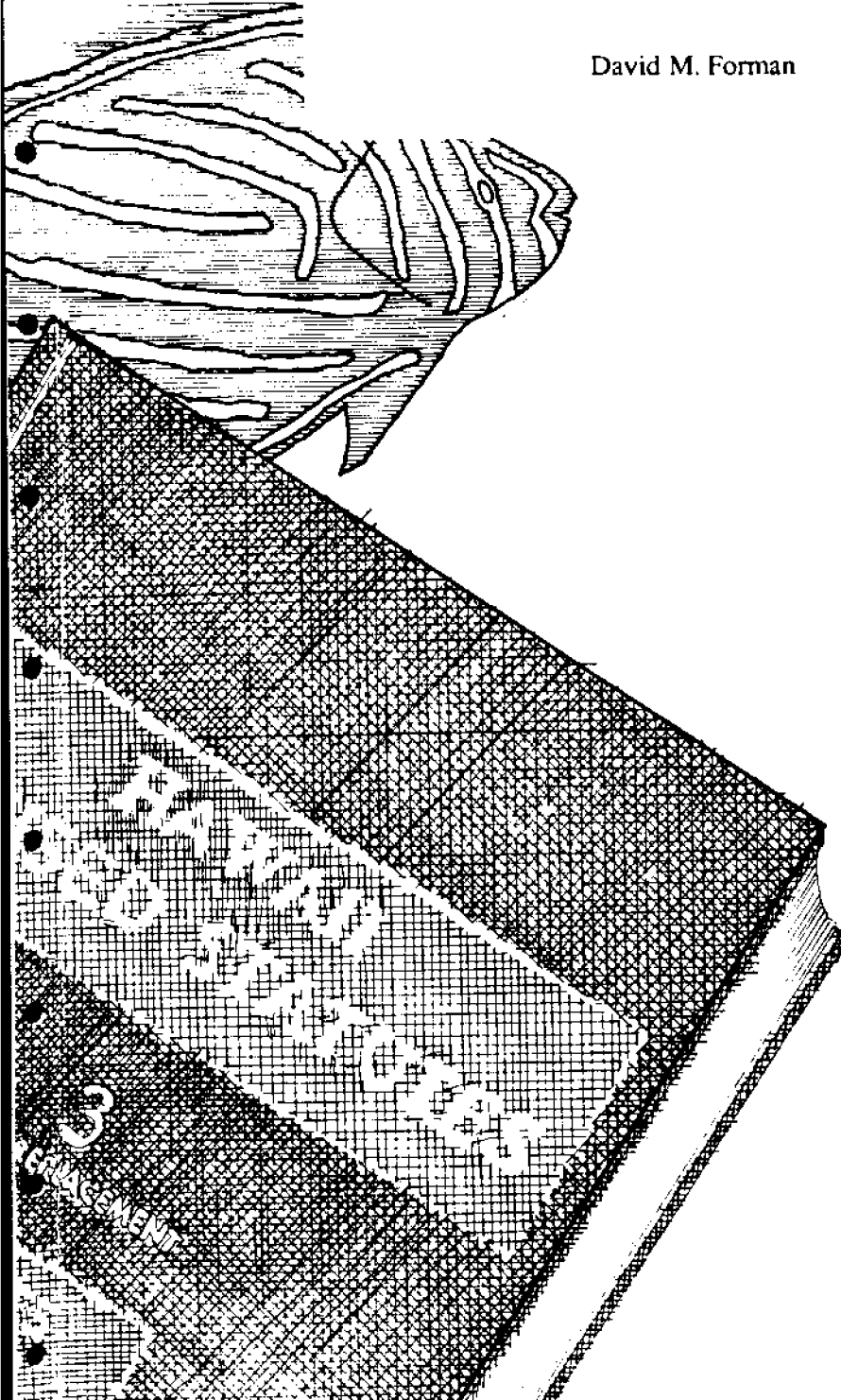
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LAWS, RULES, AND POLICIES GOVERNING OCEAN RECREATION IN HAWAII

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David M. Forman



**LAWS, RULES, AND POLICIES GOVERNING
OCEAN RECREATION IN HAWAII**

David M. Forman

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About the Author

David M. Forman is a student at The William S. Richardson School of Law, University of Hawaii, Honolulu, HI 96822.

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INTRODUCTION

This manual will introduce managers working in or around the water recreation industry to the regulatory laws and administrative rules that govern ocean recreation. The information presented here is designed for businesses (currently in operation or in the planning stages) that engage in activities that depend upon access to the ocean and water recreation facilities.

State and county regulations and rules, which have the force and effect of law, are presented along with functional plans and other documents that have been designed to influence and determine policy decisions regarding recreational water-use. Federal regulations are noted occasionally (these apply mostly to marine resource controls, including wildlife control, and boating rules), however, because the state and counties maintain jurisdiction over virtually all ocean recreation activities, this paper focuses on these areas.

The information in this manual is derived largely from the Legislative Reference Bureau's Compendium of State Ocean and Marine Related Policies. For organizational purposes, the material has been separated into the following sections:

1. Beaches, Public Lands, and Public Access (including Shore Waters)
2. Fishing
3. Boating and Small Harbors
4. State, County, and National Parks and Park Lands
5. Tourism
6. Ocean Recreation Management Rules and Areas

Bills passed during the 1989 Hawaii legislative session have been included to give managers an idea of current attempts to develop rules, laws, and policy; likewise, adopted resolutions can serve to point out holes in present management of ocean recreation.

How To Use This Manual

Choose a topic heading. Look through the regulatory laws, administrative rules, and policy objectives that are listed in the section for examples of requirements and constraints placed on businesses. A selected portion of the many laws, rules, and policies are summarized in brief; for more detailed reference, consult the source documents. These may be any of the following:

1. Hawaii Revised Statutes (HRS)
2. Hawaii Administrative Rules (HAR)
3. Assorted policy documents
4. Specific federal legislation
5. Other relevant materials

The lieutenant governor's office is the repository for state department rules and regulations (HAR). Copies of the relevant chapters can also be picked up at the respective state offices.

Policy documents (Tourism Functional Plan, Ocean Management Plan, etc.) can be borrowed from the Legislative Reference Bureau Library, located on the bottom floor of the state capitol.

The National Marine Fisheries Service can be very helpful with regard to federal legislation, such as the Marine Mammal Protection Act and the Endangered Species Act. The U.S. Coast Guard is also a significant source of information for federal requirements.

This manual is designed as an aid to businesses and other interested individuals. It represents a survey of the laws, rules, and policies that are currently on the books. However, despite the author's attempts to present a thorough review of available information, the reader should not assume that the information provided herein exhausts ocean recreation policy in Hawaii. Laws, rules, and even policies are revised annually. This manual should serve as merely a guide to the authoritative references, aiming toward improved management within the ocean recreation industry. If businesses are aware of and comply with their duties and responsibilities, they will be better able to provide continued access to and a safe environment for ocean recreation.

I. BEACHES, PUBLIC LANDS, AND PUBLIC ACCESS

A. Regulatory Laws

Public access to the ocean is a well-established right in Hawaii. Lands below the high-water mark on the coastal shoreline, as evidenced by a line of vegetation or debris, are part of the public domain. Developers can be required to provide land for access to such areas, but it is normally the responsibility of the county to pay for the maintenance and improvement of public rights-of-way (See HRS §46-6.5, "Public Access"; HRS Chapter 115 §§1 to 8, "Public Access to Coastal and Inland Recreation Areas"; and HRS §171-26, "Rights of way to the sea, game management areas and public hunting areas".) When public land is sold or leased, the Board of Land and Natural Resources can apportion the cost of establishing and maintaining such rights-of-way between the state and the lessee prior to disposal (HRS §§171-26 and -36, "Lease restrictions").

These lands may not be leased for the construction or maintenance of any private sunbathing or swimming pier or for any similar use of such lands that excludes the public. Permitted uses are outlined in HRS §171-60, "Development through private developer".

B. Administrative Rules

The Hawaii Department of Transportation (DOT) has the authority to adopt rules concerning safety measures, requirements, and practices in or on the ocean waters, navigable streams, and beaches encumbered with easements providing public access. The department may also prohibit commercial activities; the storage; parking; and display of any personal property; the placement of structures or obstructions; and any other use that may interfere with public use of such areas. In addition, DOT has the authority to extend permits for use and to collect various rents and charges for demurrage, wharfage, mooring, discharge of passengers, etc. (Chapter 266, HRS).

DOT adopted the following rules:

- Chapter 81 General Provisions
- Chapter 82 Waikiki and Kaanapali Shore Waters
- Chapter 83 Enforcement, Penalties, Accidents, and Reports
- Chapter 84 Registration and Permit Fees
- Chapter 85 Local Shore Waters and Shores
- Chapter 86 Ocean Recreation Management Rules and Areas (see section 6 of this manual)
- Chapter 91 Waikiki Beach

1. Waikiki and Kaanapali Shore Waters

The rules primarily place controls on vessels.

In Waikiki and Kaanapali catamaran captains, canoe captains, and second captains carrying passengers for hire; surfboard and sailboard instructors; and commercial motorboat operators must obtain permits. The rules specify (1) who can obtain permits; (2) the procedures (including examinations) necessary to obtain permits; (3) that the permits be carried; and (4) that the department may suspend or revoke permits, require re-examination, or, in cases of renewals, waive the re-examination.

Other restrictions in the Waikiki and Kaanapali shore water areas include the following:

1. Operation of vessels according to the "rules of the road" (see "Boating" section).
2. Keeping vessels out of designated areas, reserved for swimming or other activities. In Kaanapali, ingress and egress corridors are specified in certain areas.
3. Prohibitions on operating vessels in a careless manner or by persons under the influence of liquor or drugs.

4. Specified crews for canoes and catamarans carrying passengers.
5. Prohibitions on soliciting business.

(HAR, Chapter 19-82.)

2. Waikiki Beach

The purpose of these rules is to further the public interest and welfare and to promote safety by keeping Waikiki Beach free and clear of business activities and obstructions and open for the use of the public as a bathing beach (HAR §19-91-1).

Business operations, soliciting prohibited. Storage, parking, and display of any thing or personal property for the purpose of engaging in, conducting, transacting, or soliciting business of any kind; provided that an outrigger sailing canoe or sailing catamaran registered by the department pursuant to Hawaii shore waters and shores rules may be placed, moored, or anchored below the mean high water mark. (HAR §19-91-6.)

A penalty of \$1,000 has been established for violations of these rules (HAR §19-91-7).

3. Enforcement, Penalties, and Accidents

Owners of vessels used for carrying passengers, for-rent surfboards and sailboards, motorboats for charter or rent, and water sports equipment for rent must register their equipment with the department (of transportation). The procedures for registration vary according to the type of equipment. The department also reserves the right to refuse to register equipment for a number of reasons, including the following:

1. Failure to furnish required information
2. Failure to furnish proof of financial responsibility
3. Possession of equipment that is illegal or cannot be navigated safely in the shore waters (a number of specific restrictions apply to catamarans)

4. Shore Water Rules — Other Areas

Shore water rules prohibit surfing, paipo boarding, and the use of similar equipment in areas where priority is given to swimming and bodysurfing. Areas where these types of controls apply are Makapuu, Kailua Bay, Brennecke Beach, and Point Panic (near Kewalo Basin). (HAR, Chapter 19-85.)

5. General Provisions

In addition to the area-specific rules, the department also has rules for shore water areas generally. Some of the provisions in the rules determine the following:

1. Operators have a duty to render aid, give information, and give assistance in accidents involving vessels and surfboards, that cause injury, death, or property damage. The accident must also be reported to a lifeguard or police department.
2. Operators must report damage to the owner of the property damaged.
3. Operators may not pollute or throw litter into the water.
4. Police and enforcement officers have the authority to make arrests for violations.
5. Fees will be paid for permits and registration of equipment.

(HAR Chapters 19-83 and 19-84.)

C. Policy Objectives

The following policy objectives may not have a direct impact on businesses in ocean recreation, however, a knowledge of the goals of the state can be useful when approaching local officials for their support of a particular entrepreneurial project.

The state, as a matter of policy, shall establish, preserve and maintain scenic, historic, cultural, park, and recreation areas, including the shorelines, for public recreational, educational, and scientific uses; the state shall also protect its shorelines from the encroachment of human-made improvements, structures, and activities (HRS §344-4).

The state shall have as a planning objective the achievement of adequate resources to accomodate diverse ... recreational needs for present and future generations. In order to achieve this objective the state, as a matter of policy, shall do the following:

1. Provide a wide range of activities and facilities to fulfill the recreational needs of all diverse and special groups effectively and efficiently
2. Enhance the enjoyment of recreational experiences through safety and security measures, educational opportunities, and improved facility design and maintenance
3. Promote the ... recreational potential of natural resources having scenic, open-space, cultural, historic, geological, or biological values, and ensure the preservation of those values
4. Ensure opportunities for all persons to use and enjoy Hawaii's recreational resources
5. Assure the availability of sufficient resources to provide for future ... recreational needs
6. Assure adequate access to significant natural and cultural resources in public ownership

(HRS §226-23.)

The state shall have as a priority guideline for land resource utilization the identification of critical environment areas, including ... scenic and recreational shoreline resources, open-space and natural areas, areas particularly sensitive to reduced ... water quality, and scenic resources (HRS §226-104).

D. Landowner Liability (See Chapter 520, HRS.)

Oceanfront businesses and potential developers should be familiar with issues of liability, particularly those related to public access and ocean recreation. Some information is provided in this manual, however, because the intricacies of the law are often obtuse, it is advised that concerned businesses consult further sources, for example, *An Introduction to Tort Law for Managers in the Water Recreation Industry*, a University of Hawaii Sea Grant College Program report by Mari J. Matsuda of the William S. Richardson School of Law.

Landowners have no duty (beyond that specified in HRS §520-6) to keep their premises, including any watercourses thereon, safe for entry or recreational purposes, nor shall they have a duty to warn any person of a dangerous condition, use, structure, or activity on such premises. Similarly, no landowner who directly or indirectly permits entry onto the landowner's premises shall thereby: (1) extend any assurance concerning the safety of the premises; (2) confer upon any person entering the legal status of an invitee or licensee toward whom the owner owes a duty of care; and (3) assume responsibility or incur liability for any injury to any person or property resulting from that person's act of omission or commission (HRS §520-3, §520-4.) However, the landowner liability law does not limit any landowner's liability for the following conditions or actions:

1. Willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity the owner creates, pursues, or perpetuates
2. Any injury to any person or property in any case where the landowner charges a fee for admission to the premises, provided that any rent or other consideration the owner receives from the state for land leased to it shall not constitute a charge of admission
3. Injuries a house guest may suffer while engaged in any recreational activity on the owner's premises

(HRS §520-5.)

Furthermore, the landowner liability law does not (1) create for a landowner a duty of care or grounds for liability for any injury to persons or property entering the landowner's premises; or (2) relieve any person using the owner's premises from any obligation to exercise care in the use of the land or from any legal consequence resulting, in the absence of any provision of the landowner liability law, from that person's failure to exercise such care (HRS §520-6).

The Department of Land and Natural Resources (DLNR) is granted (in HRS §520-8) the authority to adopt rules necessary to administer the landowner liability law. (No such rules have been adopted to date.)

The mere use of land for recreational purposes does not confer rights to any land by prescription or otherwise (HRS §520-7).

E. 1989 Legislative Session Action

1. Bills

House Bill No. 0160

This proposed law would have required environmental assessments for any proposed use of lands, including proposed agency plans, within shoreline management areas in Coastal Zone Management Areas (CZMAs). This bill was vetoed.

Act 356

This law changes the definition of CZMA to mean the waters from the shoreline to the seaward limit of the state's jurisdiction and adjacent land areas excluding those designated as state forest reserves.

2. Resolutions

H.R. No. 0083

This resolution supports and commends the Kauai water safety signage beach warning program.

S.R. No. 0214

The Department of Land and Natural Resources is requested to report on the ecological and environmental impact of certain activities in marine conservation areas.

S.R. No. 0243

The Department of Land and Natural Resources is requested to post signs and enforce laws against nudity in state parks, including Na Pali State Park on Kauai.

II. FISHING

Resource use in general, but fishing specifically, is a highly regulated activity (within as well as between nations). The rules and laws pertaining to fishing can be very complicated.

Potential businesses even remotely associated with fishing should be fully aware of their rights and obligations in all areas. Restrictions and permit requirements, for instance, carry significant fines that could interrupt a business' ability to offer services.

A. Regulatory Laws

1. General Provisions

The state of Hawaii controls all marine resources within its boundaries and archipelagic waters, and reserves all such rights beyond those boundaries not limited by federal or international law. The public has free access to all fisheries not located within a private fishpond or other areas subject to state regulation. (Hawaii State Constitution, article III, section 6)

The Department of Land and Natural Resources is authorized (HRS §171-3) to manage and administer public fishing areas. DLNR's Division of Aquatic Resources publication *Digest of Fishing Laws* (HAR Title 13), which is updated yearly, contains the current rules and regulations that apply to fishing in state waters. Some of these will be outlined in part B of this section.

In addition to those in the digest, there are many regulations in the Hawaii Revised Statutes with respect to fishing, (§171 "Public lands, Management and Disposition of"; §187A "Aquatic Resources"; and §188 "Fishing Rights and Regulations"). Some examples are outlined in the following sections. Specific sections are listed for more detailed information.

2. Specific Prohibitions and Enforcement

No person may offer vessel charter services for the taking of marine life within or outside the state without a commercial marine license from DLNR; licensees shall not permit the use of such licenses by any other person. All licenses shall expire 1 year following the date of issuance. (HRS §189-2.)

DLNR may board any vessel used in taking marine life any person refusing such right shall upon conviction be guilty of a petty misdemeanor and punished (HRS §189-14).

The Department of Land and Natural Resources can remove any persons or personal effects involved in illegal activities on, unlawful occupation of, or trespassing on public lands (including state waters) (HRS §171-7).

No person may possess or use on or near state waters any explosives, blasting fuse caps, electrofishing devices, or other device for taking aquatic life with electricity, or any of the poisonous substances listed in this section unless so permitted by the Department of Land and Natural Resources; the possession of any of these substances in or near fishing grounds shall constitute evidence of violation of this section (HRS §188A-23).

No person may pursue, take, or kill any turtle, crustacean, mollusk, aquatic mammal, or fish — other than tuna and billfish that have been caught and gaffed, and sharks — with any firearm within the waters of the state; neither may any person spear any crustacean — except freshwater prawn — turtle, or aquatic mammal. No person may spear or possess any speared fish smaller than the minimum size allowed for such species as defined in §188-40, HRS. (HRS §188-25) Any of the animals listed above that are taken, killed, or offered for sale in violation of this section may be confiscated and used as evidence of such violation.

No person may take aquatic life with a bullpen trap as defined in this section when such trap: (1) exceeds 2,000 feet in length, including the guides and pen; (2) lies in the same place for more than 16 hours; or (3) lies within 1,000 yards of the shoreline, except for areas seaward of the south shore of Molokai described in this section or as designated by the Department of Land and Natural Resources (HRS §188-28).

No person fishing with a gill net may leave that net unattended for more than 12 hours (HRS §188-30.2).

No person may sell fish taken under an aquarium fish permit unless that person sells such fish alive and for aquarium purposes (HRS §188-31).

No person may take aquatic life from the following:

1. The Waikiki reclamation canal, Oahu
2. The drainage canal constructed in connection with Kapiolani Boulevard, Oahu
3. The Kapalama drainage canal, Oahu
4. Heeia-Kea wharf, Oahu
5. Portions of Waialua Bay, Oahu
6. Portions of Pokai Bay, Oahu
7. The Kapaa and Waikanea canals, Kauai
8. Kailua Bay, Hawaii, in those areas designated by the Department of Land and Natural Resources by rule provided that:

1. Any person may fish from these areas with one line or one rod and line if the line has no more than two hooks;
2. Any person may take crab with not more than 10 nets, each measuring no more than 2 feet in diameter; and
3. Any person may take shrimp for bait purposes with a hand net that does not measure more than 3 feet in diameter.

More rules regarding specific species can be found in HRS §§188-35 to 49, 57, 58, and 68.

3. Department of Land and Natural Resources' Authority

The Department of Land and Natural Resources shall have the following authority:

1. Manage and administer the state's aquatic life
2. Establish, manage, and regulate public fishing areas, artificial reefs, fish aggregation devices, shoreline fishery management areas, and other areas
3. Enforce all laws concerning the protection, taking, and killing of aquatic life

Furthermore, the Department of Land and Natural Resources has the power to adopt rules delimiting size and bag limits, establishing open and closed fishing seasons, specifying the type and amount of fishing gear that may be used, prescribing the kind and amount of bait that may be used, and specifying conditions for entry into areas for taking aquatic life. (See HRS §187A-5 for this grant of authority; the specific regulations can be found in HAR Title 13.)

The Department of Land and Natural Resources may designate agents to sell fishing licenses. Such agents receive a 10% commission on license sales ... (HRS §187A-10).

The Department of Land and Natural Resources shall issue fishing licenses. Such licenses are nontransferable and shall expire 1 year following the date of issue, except for tourist licenses, which shall expire 30 days following the date of issue (HRS §188-50).

No county may require any person to obtain a fishing license from that county (HRS §445-15).

The director of the Department of Business and Economic Development administers the Hawaii loan programs for the purchase, construction, renovation, maintenance, and repair of large and small fishing vessels (HRS §§189-22, 23, 24, 43, 44).

B. Administrative Rules

As a reminder, HAR Title 13, or the Digest of Fishing Laws, is an important resource to consult for up to date rules governing fishing in the state of Hawaii.

See Chapter 13-73 for DLNR rules for fish aggregating devices (FADs). These rules prohibit (1) attaching any watercraft or other structure to FADs; or (2) damaging, destroying or removing any fish aggregating device, unless permission has been granted by DLNR.

DLNR established a kapu system for the Waikiki-Diamond Head shoreline fisheries management area (Session Laws of Hawaii 1986, Act 256).

DLNR has established marine fisheries management areas for the following:

1. Hilo Bay, Waiola River, and Wailuku River, Hawaii
2. Waikiki-Diamond Head shoreline, Oahu
3. Hanamaulu Bay and Ahukini recreational pier, Kauai
4. Waimea Bay and Waimea recreational pier, Kauai
5. Kahului Harbor, Maui
6. Kailua Bay, Hawaii
7. Manele Harbor, Lanai
8. Puako Bay and Puako Reef, Hawaii
9. The leeward (Northwestern) Hawaiian islands.

The general theme of the marine fisheries management areas is to restrict fishing activities by regulating the locations, equipment, and other factors involved in the taking of a particular species of marine life. The specific prohibitions vary from one area to the next. A sample of the various restrictions includes prohibitions on the following:

1. The use of traps, most types of nets, spears (for crabs), and taking certain types of fish during specified months (Hilo Bay)
2. Fishing with more than a specified number of poles, lines, hooks, or combinations thereof (Hilo Bay, Waimea recreational pier, Kailua Bay)
3. Using specified types of nets (Hilo Bay, Waimea Bay, Hanamaulu, Kahului, Kailua Bay, Manele, Puako)
4. Any fishing activity during specified periods (Waikiki-Diamond Head)
5. Commercial fishing, unless permits have been obtained (Leeward Hawaiian Islands)

(See Chapters 13-47 to 13-54, HAR for more detailed information.)

For restrictions on the taking, killing, removal, and sale of different varieties of marine life see Chapters 13-83 to 13-92 of the Hawaii Administrative Rules.

Marine life conservation districts have been established at (1) Hanauma Bay, Oahu; (2) Kealakekua Bay, Hawaii; (3) Manele-Hulope, Lanai; (4) Molokini Shoal, Maui; (5) Lapakahi, Hawaii; (6) Pupukea, Oahu; and (7) Wailea Bay, Hawaii. Activities therein, otherwise prohibited, are subject to permit by DLNR. (See Chapters 13-28 to 13-35, HAR.)

The operation of motorized vehicles in marine waters within the natural area reserves is prohibited except as otherwise provided in the boating rules adopted by the Department of Transportation (Chapter 13-209, HAR).

Of particular use to potential ocean recreation business are opportunities to conduct business in areas recognized for natural richness. Within conservation districts, DLNR has designated a number of subzones, including but not limited to Keahole Point, Anaehoomalu, Milolii, and Manuka Bay (some of which include the shoreline, parts of the ocean, or both).

In these conservation land use districts, certain areas designated as resource subzones permit activities such as commercial fishing; special subzones (Sea Life Park and Milolii-Hoopuloa) allow fishing activities, and educational, cultural, and recreational uses. (See Chapter 13-2, HAR.)

C. Policy Objectives

The state, as a matter of policy, shall develop instream flow standards and programs for windward Oahu to protect fishery uses of estuarine areas (HRS §176D-2 and §176D-3).

The state shall have as a planning objective the achievement of adequate resources to accommodate diverse ... recreational needs. To achieve this objective the state, as a matter of policy, shall promote the ... recreational potential of natural resources with ... biological value and ensure that those values are preserved. (HRS §226-23.)

DLNR has administrative control over the Hawaii Fisheries Coordinating Council (HFCC), which is designed to advise DLNR on matters concerning the coordination of fisheries activities among state, federal, and county agencies, and private industry. The HFCC can propose and prepare plans and policies, and promote governmental provision of financial and technical assistance. (HRS §188E-1 and §188E-2.)

D. 1989 Legislative Session Action

1. Bills

Act 174

This law requires that nets or traps must be portable and less than 10 feet in length and 6 feet in height or width. Netting with stretched mesh measuring less than 2 inches is prohibited. Also nets are prohibited if they are made with plastic, wire, coated wire or any other stiff material with rigid mesh less than 2 inches long by 1 inch wide. Such nets or traps registered by October 1, 1989 may be used until 1994.

House Bill No. 0434

The sale of stony coral of the taxonomic order, Madreoporaria, including the Fungidae or Pollicoporidae families, is prohibited after July 1, 1990. (The taking of live corals, such as those mentioned above, is already prohibited in HRS §188-68.) This bill was vetoed.

Act 345

The possession or use of any drift gill net in the waters of the state is prohibited.

Act 122

The conservation and resources enforcement program of DLNR is amended to authorize the conduct of searches on probable cause and seizure of any equipment, article, instrument, vehicle, vessel, business records, or natural resources used or taken in violation of the historic preservation or conservation resources laws. Seized property is subject to forfeiture and may be disposed of by the department. Defines natural resources to include any archaeological artifacts, minerals, or aquatic life or wildlife.

2. Resolutions

H.C.R. 0153

DLNR is requested to study the feasibility of requiring that fishing nets be made of biodegradable materials.

H.C.R. 0204

DLNR is requested to evaluate options for servicing and maintaining fish aggregating devices.

III. BOATING AND SMALL BOAT HARBORS

A. Regulatory Laws

No person may moor a vessel in a state small boat harbor without a permit and without proof of ownership. The Department of Transportation shall issue or renew a mooring permit to an owner upon application; such application shall include evidence of (1) a marine surveyor's inspection less than 2 years old certifying that the vessel meets departmental standards and (2) proof of ownership. The owner shall pay the department moorage fees for harbor use as provided in this section, which shall be deposited in the special boating fund. Live-aboard fees shall also be paid if a recreational vessel is used as a principal habitation. Commercial and noncommercial fishing vessels may be transferred between personal and corporate or business ownership without losing the right to moor. No permittee shall be allowed to moor a leased vessel in a berth unless the terms of the lease are set at fair market value. The department may designate space within the harbors for commercial fishing vessels. (HRS §266-21.1.)

The Department of Transportation Harbors Division has the authority to develop rules, organize a comprehensive program, and develop standards, permits, and fees for moorage for state small boat harbors and recreational boating within the state (HRS §266-21.4).

DOT shall interpret the boating laws in the manner that best effects unity between the laws of the state, of other states, and of the United States (HRS §267-14).

B. Administrative Rules

DOT Small Boat Harbor Rules can be found in Title 19 of the Hawaii Administrative Rules.

1. General Provisions

A person using a small boat harbor must have been a continuous Hawaii resident for not less than 12 months before applying for a harbor berth (HAR §§19-61-22 through 19-61-29).

Use permits are valid for 1 year and may be renewed, cancelled, or revoked. Use permits automatically expire if the vessel is absent for more than 14 days, unless the owner clears such absences with the department.

2. Operation of Boats

The operation of boats within small boat harbors is regulated by §§19-62-40 to 19-62-46, HAR. The rules have the following requirements for boat operators:

1. Navigate at speeds that will not disturb other boats and property in the boat's wake
2. Operate their vessels or install objects in them in a way that does not interfere with navigation
3. Operate their vessels at their own risk, although the services of port pilots are available
4. Obey time limits on the use of vessel loading zones
5. Allow inspections by marine surveyors
6. Obey limitations on moorage at the Lahaina loading dock

The general philosophy behind the regulation of commercial activities is that the regular or extensive use of state property or facilities for private gain is prohibited unless there is a corresponding and reasonable benefit returned to the public. The restrictions include the following:

1. Prohibiting the unloading of passengers or cargo at most small boat harbors unless the boat owner has mooring and a commercial permit, although the department may make exceptions for transient vessels
2. Issuing commercial permits on the basis of seniority and renewing them if the permittee has a minimum amount of specified gross receipts
3. Providing that commercial permits are nontransferable

4. Requiring permittees to carry specified amounts of insurance
5. Allowing more than one commercial vessel to use the same berth.

(HAR §§19-62-50 to 19-62-58.)

Other rules for small boat harbors are as follows:

1. §§19-62-70 to 19-62-80: procedures for allocating berths, generally first-come-first-served, although there is a system of priorities, categories, and specific procedural rules
2. §§19-63-1 to 19-63-44: sanitation, fire safety, and storage
3. §§19-63-50 to 19-63-59: Public conduct, including restrictions on:
 - a. swimming and fishing;
 - b. sleeping and camping;
 - c. visitors (assume risk); and
 - d. liquor in City and County of Honolulu harbors
4. Chapter 19-65: Fees and charges

3. Boating Rules — Numbering Boats

The rules establish a system for assigning numbers; procedures for obtaining required numbers, certificates, decals, and other required records; making fees and charges; and appointing “vessel registration agents” to conduct the registration of vessels. (Chapter 19-72, HAR).

4. Boating Rules — Accidents (See also HRS §267-8 and §267-9.)

Operators of vessels involved in boating accidents must:

1. render aid to affected persons and identify themselves and their vessels;
2. take the appropriate steps to notify the owner if they strike an unattended vessel or property;
3. provide immediate notice of accidents resulting in the death, serious injury, or disappearance of any person to harbor officials or police; and
4. submit a written report to DOT.

Departmental enforcement officers may:

1. investigate accidents;
2. stop vessels for inspection;
3. order the correction of unsafe conditions, and, if necessary, order the vessel returned to mooring until the problem is corrected;

4. arrest any person without a warrant if the officer observes the violation;
5. issue summons or citations; and
6. take legal custody of vessels upon making an arrest. If the operator refuses to navigate the vessel back to shore, the vessel may be towed at the operator's expense.

(Chapter 19-73, HAR)

5. Boating Rules — Equipment

Equipment requirements apply to all recreational boats (including those propelled by sails, oars, paddles, and poles) except racing shells, rowing sculls, and racing kayaks.

Vessels carrying passengers for hire cannot use liquified petroleum gas or any inflammable liquids prohibited by federal regulations; and vessels equipped with internal combustion engines must have mufflers.

State enforcement officers will not inspect vessels bearing a decal indicating a U.S. Coast Guard Auxilliary Courtesy Marine Examination, unless they have a reason to believe that the vessel is being operated in violation of any laws or rules (Chapter 19-74, HAR).

6. Boating Rules — “Rules of the Road”

“Rules of the Road” for boating specify the following:

1. A requirement of general prudence and good seamanship
2. Distress signals
3. Speed restrictions
4. Prohibitions on vessel operation by persons under the influence of drugs or alcohol, or incapable of operating the vessel because of physical or mental incapacity
5. Prohibitions on unreasonably interfering with navigation, overloading a vessel, equipping it with a motor beyond its safe power capacity, operating in restricted areas, and riding on the bow or gunwales unless there are adequate safety devices
6. Restrictions on using motorboats to tow persons on water skis, aquaplanes, or similar contrivances

The rules also limit or prohibit the operation or mooring of vessels in specified shore water areas, including Waikiki, Makapuu, Kealakekua Bay, Kailua Beach Park, Ahihi-Kinau, Pokai Bay, Ala Moana Beach Park, Kaanapali, and the Manele-Hulopoe marine life conservation district. Each of the areas has specific exceptions. For example, outrigger canoes are allowed in approximately half of the areas, while the other areas allow vessels for search and rescue operations. (Chapter 19-75, HAR.)

Persons are prohibited from defacing, damaging, destroying, or mooring vessels or rafts to any waterway markers (Chapter 19-76, HAR).

C. 1989 Legislative Session Action

1. Bills

Act 342

The Department of Transportation is required to adopt rules for time periods during which thrill craft may be operated and parasailing is permitted. A year-long moratorium is imposed on the issuance of original certification of number for any thrill craft for commercial use or for any vessel used for parasailing. All commercial use and operator permits are prohibited from being transferrable during this time. (Testimony from the National Marine Fisheries Service has prompted DOT to consider adopting a ban on thrillcraft operation from December 15 to May 15, the whale calving period.)

2. Resolutions

H.R. 0135

DOT is requested to study the feasibility of reconstructing a recreational boat ramp previously destroyed by a storm at Kaiona Beach Park in Waimanalo, Oahu.

S.R. 0247

DLNR is requested to discontinue issuance and/or removal of landing permits for commercial boating activities at Tunnels Beach on the North Shore of Kauai and consider designating Tunnels Beach a marine life conservation district.

IV. STATE, COUNTY, AND NATIONAL PARKS AND PARK LANDS

A. Regulatory Laws

The United States has jurisdiction over Hawaii National Park territory (Hawaii National Park Act, Section 1).

DLNR administers and manages all state parks, including historic sites (HRS §26-15, §171-3).

The counties shall control, manage, and maintain those parks and public recreation areas within their jurisdictions that do not belong either to the City and County of Honolulu or to the state park system (HRS §46-65).

The Board of Land and Natural Resources shall classify as lands for recreational use those lands suitable for development and use as parks, playgrounds, historical sites, natural areas, campgrounds, wildlife refuges, scenic sites, or other such uses (HRS §171-10).

DLNR is to adopt rules concerning the use and protection of state parks and public monuments and of private lands to which the owner has granted the state rights of entry; access to these areas or their use as recreational sites; and the enforcement of rules for such purposes. The department may confer police powers for the enforcement of laws and rules by citing or arresting (HRS §184-5, §184-5.1.)

B. Administrative Rules

These rules are administered by the Department of Land and Natural Resources. (See HAR, Chapter 13).

Due to the “imminent peril to the health and safety of the public using Hawaii’s state parks as a result of the inability to enforce Chapter 13-145, within state parks” the Board of Land and Natural Resources has readopted Chapter 13-145 on an emergency basis.

1. General Provisions

§13-145-2 Penalties. Violators of these rules are liable for restoration and restitution and shall be guilty of a petty misdemeanor; objects involved in the violation are subject to confiscation.

2. Permitted and Prohibited Uses

§13-145-11 Boating.

§13-145-35 Swimming; nudity. Prohibited swimming areas will be designated by the posting of signs. Public nudity is prohibited. Flotation devices are prohibited when signs are posted. Surfboards and similar devices are prohibited within the limits of designated swimming beach areas.

§13-145-39 Wildlife. Disturbing, injuring, and many other interactions are generally prohibited.

3. Permits

§13-145-50 General Provisions.

§13-145-54 Special Use Permits. Permits are required for uses including but not limited to regattas, shows, sport events, and other spectator attractions that are open to the general public or to restricted groups. Requirements for the granting and denial of permits are listed therein.

4. Commercial and Private Operations

§13-145-65 Advertisements. Advertisements are prohibited except with prior written permission of the board or its representative.

§13-145-66 Business Operations. Business operations also require written permission.

§13-145-67 Commercial Photography. Written permission is required for any motion picture, television production, or soundtrack by any person other than bona fide newsreel or news television personnel. Still photography for commercial purposes also requires written permission.

V. TOURISM

Business related to the tourist industry is heavily supported by the state of Hawaii. The ocean recreation industry depends heavily upon the attraction of tourists to its businesses. It is conceivable, then, that ocean recreation managers would benefit from an understanding of government policies relating to tourism. State objectives and plans outline areas where the state might be receptive to business-sponsored development; direct application to the ocean recreation industry could be through granting of special permits or possibly provision of financial assistance.

Policy Guidelines

The state shall, as a priority guideline, promote the economic health and quality of the visitor industry, and the encouragement of visitor industry practices and activities that respect, preserve, and enhance Hawaii's significant natural, scenic, historic, and cultural resources (HRS §226-103).

The state shall have as a planning objective the development and maintenance of a well-designed and adequately serviced visitor industry and related developments in keeping with the needs and aspirations of Hawaii's people; tourism development must be cognizant of the state's limited land and water resources and competing uses for these resources for ... agriculture and recreation. In order to achieve this objective the state, as a matter of policy, shall do as follows:

1. Encourage greater cooperation between the public and private sectors in developing and maintaining well-designed and adequately serviced visitor industry developments...
2. Ensure that developers carefully plan visitor facilities and destination areas in consideration of existing neighboring communities and activities in the following manner...

(Hawaii Tourism Functional Plan, Objective B.)

The state shall have as a planning objective the development of better relations and mutual awareness and sensitivity between the visitor industry and the community. In order to achieve this objective the state, as a matter of policy, shall ... foster visitor's understanding of ... the unique and sensitive character of Hawaii's cultures and values ... (Hawaii Tourism Functional Plan, Objective D.)

The state shall have as a planning objective the provision of coastal and ocean recreational opportunities for ... visitors consistent with concerns for public safety; the conservation of natural, cultural, and historic resources; and conflicts with other ocean activities (Hawaii Ocean Management Plan, Objective II.A).

VI. OCEAN RECREATION MANAGEMENT RULES AND AREAS

Chapter 19-86 of the Hawaii Administrative Rules was adopted on September 19, 1988. It is currently being updated by the Department of Transportation; the format will probably remain the same, but the annual amendments should always be consulted for changes in detail.

These rules are derived from the recommendations of a report by Aotani & Associates, which implemented a user survey in areas of user conflict to reach their conclusions. (A copy of this report can be obtained from the Department of Transportation or in the Legislative Reference Bureau library.)

The subchapters of Chapter 19-86 cover (1) General Provisions and the following Ocean Recreation Management Areas:

- (2) North Shore Kauai
- (3) South Shore Kauai
- (4) North Shore Oahu
- (5) Windward Oahu
- (6) South Oahu
- (7) West Maui
- (8) South Maui
- (9) North Maui
- (10) East Hawaii Island
- (11) West Hawaii Island

Maps and descriptions are given for each of the management areas, including subzones within each area where prohibitions and requirements vary.

The purpose of these rules is to reduce conflicts among ocean water users, especially in areas of high activity. All other waters of the state within 3,000 feet seaward of the baseline

of the territorial sea are established as nondesignated ocean recreation management areas subject to this chapter. (HAR §19-86-1.)

In areas designated for a specific use, if another use is not specifically restricted, that use is presumed to be allowed in addition. (HAR §19-86-2)

License and registration requirements are listed in §§19-86-3 and 19-86-4, HAR.

Insurance for commercial vessels shall be not less than \$50,000 for property damage and not less than \$500,000 personal liability for vessels authorized to carry one to 25 passengers, and not less than \$1,000,000 for more than 25 passengers. The liability insurance shall name the state as additional insured. (HAR §19-86-5.)

Registration fee is prescribed in §19-84-1, operator permit fee in §19-84-2, and commercial use permit fee in §19-65-23.

Permanent moorage is prohibited. Rafts and platforms must be removed daily from state waters or located in a designated anchorage or harbor in accordance with a department permit (HAR §19-86-9).

These rules do not apply in cases of emergency, to search and rescue vessels, or to vessels with event permits issued by the department or the U.S. Coast Guard (HAR §19-86-10).

Commercial vessels may not land, embark, or discharge passengers at any state or county facility, or at public beaches except where an appropriate permit has been issued by the Department of Transportation, the Board of Land and Natural Resources, or within designated ingress/egress zones (HAR §19-86-11).

No person under 15 years of age may operate a thrill craft (HAR §19-86-12).

Commercial use permits for thrill craft are limited. Commercial thrill craft operations are limited to within a 200-foot radius of the permitted designated location. No more than six rental units and two chase or rescue craft are permitted in each operating area. Access to department authorized areas may only be from harbors and ramp facilities. (An accompanying fee would logically be required.) Operators must proceed at a speed of slow-no-wake by the most direct route consistent with safety considerations. Thrillcraft operators must not exceed this slow-no-wake speed when within 300 feet of the shoreline. (HAR §19-86-14.)

Parasailing activities must comply with the rules and regulations promulgated by the U.S. Coast Guard in addition to the following provisions: access to department-designated areas only from harbors or ramp facilities by the most direct route consistent with safety considerations; vessels using state-owned facilities must have a commercial harbor use permit (these are limited); and no parasailing is permitted within 300 feet of the shoreline or any marked channel entrance. (HAR §19-86-15)

Windsurfing ingress/egress to the shoreline shall be by the most direct route dictated by wind conditions. Maneuvering shall be consistent with rules of the road pertaining to sailing vessels (see Navigation Rules, COMDINST M16672.2A, Rule 12). Sailboard operators shall approach no closer than 200 feet to a dive flag, which indicates dive activity in progress (HAR §19-86-16).

Ultralight float equipped aircraft are prohibited on ocean waters of any department-designated ocean recreation management area. The use of shuttle vessels in support of ultralight float equipped aircraft operations are prohibited on the ocean waters of the state (HAR §19-86-17).

The North Shore Kauai Ocean subsection is very specific in its requirements and prohibitions. §§19-86-21 to 19-86-40 should be consulted carefully when planning commercial activity in this area.

The other areas contain special restrictions in some cases that diverge from the selected general provisions discussed above. Commercial ventures in each area should carefully research their obligations in all areas of activity.