

CHAPTER 200
OCEAN RECREATION AND COASTAL AREAS PROGRAMS

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Cross References

Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks, see §663-1.56.

Enforcement, see §199-3.

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Recreational activity liability, see §663-10.95.

Case Notes

Mooring and anchoring fees imposed by state regulations not an unconstitutional duty of tonnage. 42 F.3d 1185.

No commerce clause violation by state anchoring and mooring regulations where State's interest in having regulations for public safety is substantial and there is little burden on interstate commerce. 42 F.3d 1185.

No implied preemption of state mooring and anchoring regulations where congressional intent to preempt state action is not clearly manifest, federal regulation has not occupied the field of navigation, and federal interest in navigation is not so dominant as to assume federal preemption of state laws. 42 F.3d 1185.

No preemption of state mooring and anchoring regulations by Submerged Lands Act where there was no actual conflict between federal Act and Hawaii's regulations. 42 F.3d 1185.

Small boat harbor mooring and anchoring regulations imposing higher fees on nonresidents than residents not violative of equal protection clause of Fourteenth Amendment. 42 F.3d 1185.

State regulation that prohibited commercial tour boat operators from operating their tour boats in Hanalei Bay, in conjunction with relevant federal shipping laws, violated the supremacy clause. 340 F.3d 1053.

Constitutionality of mooring regulations, discussed. 823 F. Supp. 766.

Hawaii regulatory scheme not preempted by federal law, where plaintiff failed to demonstrate that Congress intended to occupy entire field of navigation, and there was significant evidence to the contrary; and there was no actual conflict between the Hawaii regulations and federal law; Hawaii regulatory scheme did not implicate commerce clause. 57 F. Supp. 2d 1028.

State and department of land and natural resources immune from suit, where plaintiff sought to enjoin State and city and county of Honolulu from implementation or enforcement of any and all state statutes and city ordinances that might apply to the business that plaintiff claimed to be developing, involving a commercial boating activity on the Ala Wai canal; plaintiff

lacked standing; plaintiff's case not ripe for adjudication. 57 F. Supp. 2d 1028.

Division of boating and ocean recreation's assessment of a two per cent ocean recreation management area fee against vessel was an impermissible tax in violation of prohibition against tonnage duties; two per cent use fee assessed other vessel was not a prohibited duty of tonnage. 195 F. Supp. 2d 1157.

Having created a permit structure for commercial vessels, having issued and reissued such permits in the past, and having promised plaintiff renewal, division of boating and ocean recreation violated the due process clause by summarily withholding the promised "vessel moored elsewhere" permit for reasons that were undisclosed or tested through a fair administrative hearing process. 195 F. Supp. 2d 1157.

Two per cent use fee did not violate right to substantive due process of plaintiff, a corporation engaged in offering boating excursions from state boating facilities on the island of Kauai. 195 F. Supp. 2d 1157.

No private right of action for damages existed for commercial tour boat operators under Kauai county's special management area rules (Hanalei Estuary Management Plan) or under Hawaii administrative rules, chapter 256, entitled "Ocean Recreation Management Rules and Areas", as promulgated under chapter 205A and this chapter, respectively, where both rules were not promulgated with the objective of protecting business interests or competition, but rather with the objective of protecting and preserving the environment for the general public. 110 H. 302, 132 P.3d 1213.

"PART I. GENERAL PROVISIONS

§200-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Beaches encumbered with easements in favor of the public" means any lands which lie along the shores of the State which are now, or may hereafter be, encumbered by easements granted in favor of the public for bathing, swimming, or other similar or related purposes and for foot passage.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

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

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Sailing school vessel" means a vessel:

- (1) Less than five hundred gross tons, carrying six or more individuals who are sailing school students or sailing school instructors principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion;
- (2) Owned or leased by a corporation, association, organization, or other duly chartered entity determined under the Internal Revenue Code to be exempt from the federal income tax and operated for the purpose of providing sailing instruction and therapeutic, educational, recreational, vocational, or family counseling services to emotionally disturbed youth or to youth sentenced by the family court to a rehabilitative sailing program and their families; and
- (3) That is in compliance with title 46 Code of Federal Regulations part 169.

"Shoreline" means the upper reaches of the wash of the waves, usually evidenced by the edge of vegetation growth or by the upper limit of debris left by the wash of the waves. [L 1991, c 272, pt of §2; am L 1996, c 188, §3; am L 2012, c 27, §1]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§200-2 Board of land and natural resources, powers and duties.** (a) The board shall have the primary responsibility for administering the ocean recreation and coastal areas programs and performing the functions heretofore performed by the department of transportation and the department of public safety in the areas of boating safety, conservation, search and rescue, and security of small boat harbor environs.

(b) The board shall not transfer its jurisdiction, management, or operations of the small boat harbors to any other department or agency or any county in any manner unless expressly provided by law. [L 1991, c 272, pt of §2; am L 1996, c 296, §3; am L 2007, c 270, §2]

Cross References

Alien aquatic organisms, see §187A-32(b).

" **§200-2.5 Disposition of state boating facility properties.** (a) Notwithstanding any law to the contrary, the board may lease fast lands and submerged lands within an

existing state boating facility by public auction, a request for proposals, or by direct negotiation pursuant to section 171-59 and chapter 190D, for private development, management, and operation; provided that any lease of fast lands or submerged lands pursuant to a request for proposals shall be subject to section 200-2.6, regardless to which state boating facility the fast or submerged lands are attached.

As used in this section, the term "state boating facility" means a state small boat harbor, launching ramp, offshore mooring, pier, wharf, landing, or any other area under the jurisdiction of the department pursuant to this chapter.

(b) The permissible uses under any lease disposed of under this section shall be consistent with the purpose for which the land was set aside by the governor pursuant to section 171-11. Permissible uses may include any use that will complement or support the ocean-recreation or maritime activities of state boating facilities.

(c) Disposition of public lands of state boating facilities constructed, maintained, and operated in accordance with this chapter shall not exceed a maximum term of sixty-five years.

(d) All revenues due to the State derived from leases of state boating facilities shall be deposited in the boating special fund.

(e) The department shall adopt rules in accordance with chapter 91 to implement this section. [L 2001, c 299, §2; am L 2011, c 197, §4]

Note

Requirement for leases. L 2011, c 197, §8.

" **[§200-2.6] Ala Wai boat harbor; leases.** The fast lands and submerged lands of the Ala Wai boat harbor that may be leased include the following:

- (1) All fast lands and submerged lands described in the request for qualifications or request for proposals issued by the division of boating and ocean recreation of the department on November 25, 2008;
- (2) The fast land described as a portion of tax map key:
 - (1) 2-3-37-12, composed of approximately 112,580 square feet, presently used for harbor offices and permitted vehicular parking; and
- (3) The fast land described as a portion of tax map key:
 - (1) 2-3-37-12, which is a triangular area located Diamond Head of Mole B, presently used for permitted vehicular parking. [L 2011, c 197, §2]

Note

Requirement for leases. L 2011, c 197, §8.

" **§200-3 Ocean recreation and coastal areas programs.** The board shall assume the following functions of the department of transportation:

- (1) Managing and administering the ocean-based recreation and coastal areas programs of the State;
- (2) Planning, developing, operating, administering, and maintaining small boat harbors, launching ramps, and other boating facilities and associated aids to navigation throughout the State;
- (3) Developing and administering an ocean recreation management plan;
- (4) Administering and operating a vessel registration system for the State;
- (5) Regulating the commercial use of state waters and marine resources, including operations originating from private marinas;
- (6) Regulating boat regattas and other ocean water events;
- (7) Administering a marine casualty and investigation program;
- (8) Assisting in abating air, water, and noise pollution;
- (9) Conducting public education in boating safety;
- (10) Administering the boating special fund;
- (11) Assisting in controlling shoreline erosion;
- (12) Repairing seawalls and other existing coastal protective structures under the jurisdiction of the State; and
- (13) Removing nonnatural obstructions and public safety hazards from the shoreline, navigable streams, harbors, channels, and coastal areas of the State. [L 1991, c 272, pt of §2; am L 2012, c 289, §2]

Law Journals and Reviews

Wiping Out the Ban on Surfboards at Point Panic. 27 UH L. Rev. 303.

" **§200-4 Rules.** (a) The chairperson may adopt rules necessary:

- (1) To regulate the manner in which all vessels may enter the ocean waters and navigable streams of the State and moor, anchor, or dock at small boat harbors,

- launching ramps, and other boating facilities owned or controlled by the State;
- (2) To regulate the embarking and disembarking of passengers at small boat harbors, launching ramps, other boating facilities, and public beaches;
 - (3) For the safety of small boat harbors, launching ramps, and other boating facilities, and the vessels anchored or moored therein;
 - (4) For the conduct of the public using small boat harbors, launching ramps, and other boating facilities owned or controlled by the State;
 - (5) To regulate and control recreational and commercial use of small boat harbors, launching ramps, and other boating facilities owned or controlled by the State and the ocean waters and navigable streams of the State;
 - (6) To prevent the discharge or throwing into small boat harbors, launching ramps, other boating facilities, ocean waters, and navigable streams, of rubbish, refuse, garbage, or other substances likely to affect the quality of the water or that contribute to making the small boat harbors, launching ramps, other boating facilities, ocean waters, and streams unsightly, unhealthful, or unclean, or that are liable to fill up, shoal, or shallow the waters in, near, or affecting small boat harbors, launching ramps, and other boating facilities and the ocean waters and navigable streams of the State, and likewise to prevent the escape of fuel or other oils or substances into the waters in, near, or affecting small boat harbors, launching ramps, or other boating facilities and the ocean waters and navigable streams of the State from any source point, including but not limited to any vessel or from pipes or storage tanks upon land, including:
 - (A) Requirements for permits and fees for:
 - (i) The mooring, docking, or anchoring of recreational and commercial vessels or the launching of recreational or commercial vessels at small boat harbors, launching ramps, and other boating facilities; or
 - (ii) Other uses of these facilities;
 - (B) Requirements for permits and fees for use of a vessel as a principal place of habitation while moored at a state small boat harbor;
 - (C) Requirements governing:

- (i) The transfer of any state commercial, mooring, launching, or any other type of use or other permit, directly or indirectly, including but not limited to the imposition or assessment of a business transfer fee upon transfer of ownership of vessels operating commercially from, within or in any way related to the state small boat harbors; and
 - (ii) The use of state small boat harbors, launching ramps, or other boating facilities belonging to or controlled by the State, including but not limited to the establishment of minimum amounts of annual gross receipts required to renew a commercial use permit, and conditions under which a state commercial, mooring, launching, or any other type of use or other permit may be terminated, canceled, or forfeited; and
 - (D) Any other rule necessary to implement this chapter pertaining to small boat harbors, launching ramps, and other boating facilities belonging to or controlled by the State;
- (7) To continue the ocean recreational and coastal areas programs and govern the ocean waters and navigable streams of the State, and beaches encumbered with easements in favor of the public to protect and foster public peace and tranquility and to promote public safety, health, and welfare in or on the ocean waters and navigable streams of the State, and on beaches encumbered with easements in favor of the public, including:
 - (A) Regulating the anchoring and mooring of vessels, houseboats, and other contrivances outside of any harbor or boating facility, including:
 - (i) The designation of offshore mooring areas;
 - (ii) 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; and
 - (iii) The living aboard on vessels, houseboats, or other contrivances while they are anchored or moored within ocean waters or navigable streams of the State.

The rules shall provide for consideration of environmental impacts on the State's aquatic resources in the issuance of any permits for offshore mooring;

- (B) Safety measures, requirements, and practices in or on the ocean waters and navigable streams of the State;
 - (C) The licensing and registration of persons or organizations engaged in commercial activities in or on the ocean waters and navigable streams of the State;
 - (D) The licensing and registration of equipment utilized for commercial activities in or on the ocean waters and navigable streams of the State;
 - (E) For beaches encumbered with easements in favor of the public, the prohibition or denial of the following uses and activities:
 - (i) Commercial activities;
 - (ii) The storage, parking, and display of any personal property;
 - (iii) The placement of structures or obstructions;
 - (iv) The beaching, landing, mooring, or anchoring of any vessels; and
 - (v) Other uses or activities that may interfere with the public use and enjoyment of these beaches; and
 - (F) Any other matter relating to the safety, health, and welfare of the general public;
- (8) To regulate the examination, guidance, and control of harbor agents and their assistants; and
- (9) To regulate commercial activities in state waters including operations originating from private marinas; provided that no new or additional permits shall be required for those commercial activities regulated by any other chapter.

For the purposes of this paragraph:

"Commercial activity" means to engage in any action or attempt to engage in any action for compensation in any form. The action or actions may include providing or attempting to provide guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

"Compensation" means money, barter, trade, credit, and other instruments of value, goods, and other forms of payment.

(b) All rules shall be adopted in accordance with chapter 91 and shall have the force and effect of law. [L 1991, c 272, pt of §2; am L 2012, c 289, §3]

Law Journals and Reviews

Wiping Out the Ban on Surfboards at Point Panic. 27 UH L. Rev. 303.

" **[\$200-4.5] Safety of ocean users; rules.** The department shall adopt rules to promote greater safety of ocean users in the State's nearshore waters. The rules shall include but not be limited to the creation of safe zones for free divers and swimmers and stricter enforcement of boating regulations around swim zone buoys. [L 2012, c 195, pt of §2]

" **[\$200-4.6] Alternate access to state boating facilities; rules.** The department shall adopt rules to allow vessels holding a valid ocean recreation management area commercial use permit to use a state small boat harbor or boat launching ramp when unsafe wind and sea conditions would prevent safe access to the shoreline through a designated ingress or egress zone. The vessel operator or master shall give the department prior notice of the presence or threat of such conditions and shall be subject to local direction and control as necessary to avoid conflict with other users of the facility. Use of a state boating facility in accordance with this section shall not affect the permittee's right to use such boating facilities in the absence of such conditions in order to provision a vessel as permitted by law. [L 2012, c 195, pt of §2]

" **[\$200-5] Commercial harbors excluded.** For purposes of this chapter, ocean waters and navigable streams shall not include the commercial harbors of the State. [L 1991, c 272, pt of §2]

" **[\$200-6] Limitation of private use of ocean waters and navigable streams.** (a) No person shall erect or place any structure or similar object, or sink any type of watercraft or other sizeable object, or abandon any type of watercraft or other sizeable object, either sunk or unsunk, on or within the ocean waters or navigable streams of the State without a written permit from the department. The department may require any person violating this section to remove any structure, similar object, watercraft, or other sizeable object on or within the ocean waters or navigable streams of the State. If any person fails to remove the same within a time limit set by the

department, the department may effect the removal and charge the person with the cost thereof. The department may enforce compliance with this section by the use of any appropriate remedy including, but not limited to, injunction or other equitable or legal process in the courts of the State.

(b) No person shall anchor, moor, or otherwise place any vessel, houseboat, or other contrivance on or within the ocean waters or navigable streams of the State without a permit from the department. This section shall not apply to:

- (1) Vessels owned by the United States;
- (2) Vessels engaged in interstate or foreign commerce; or
- (3) Pleasure craft or fishing vessels temporarily anchored for a period of less than seventy-two hours.

The department may require any person violating this section to remove any vessel, houseboat, or other contrivance from the ocean waters or navigable streams of the State. If any person fails to remove the same within the time limit set by the department, the department may effect the removal and charge the person with the cost thereof. The department may enforce compliance with this section by the use of any appropriate remedy, including, but not limited to, injunction or other equitable or legal process in the courts of the State. As used in this section:

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

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

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water, including, but not limited to, power boats, ships, tugs, sailing vessels, barges, scows, lighters, ferry boats, pleasure craft, floating equipment, floating gear, dry docks, and any and all other watercraft.

(c) The permittee shall pay fees to the department for the offshore mooring permit issued by the department. The fees shall be based on, but not limited to, the use of the vessel, its effect on the waters and aquatic resources of the State, and the administrative expenses incurred by the department and other state agencies in administering offshore mooring. All revenues collected under this section shall be deposited in the boating special fund. [L 1991, c 272, pt of §2]

Case Notes

No commerce clause violation by state anchoring and mooring regulations where State's interest in having regulations for public safety is substantial and there is little burden on interstate commerce. 42 F.3d 1185.

" **§200-7 Waiver of mooring charges.** The department shall waive the mooring charge for:

- (1) Any and all sea scout craft using moorings belonging to or controlled by the State, when moorings are available as determined by the department; provided that the craft are owned and used exclusively for the purpose of regular organized sea scout groups; and
- (2) Any and all sailing school vessels. [L 1991, c 272, pt of §2; am L 1996, c 188, §4]

" **§200-8 Boating program; payment of costs.** The cost of administering a comprehensive statewide boating program, including but not limited to the cost of:

- (1) Operating, maintaining, and managing all boating facilities under the control of the department;
- (2) Improving boating safety;
- (3) Operating a vessel registration and boating casualty investigation and reporting system;
- (4) Other boating program activities; and
- (5) Planning, developing, managing, operating, or maintaining of all lands and improvements under the control and management of the board, including but not limited to permanent or temporary staff positions who may be appointed without regard to chapter 76,

shall be paid from the boating special fund; provided that any fees collected within small boat harbors shall be expended only for costs related to the operation, upkeep, maintenance, and improvement of the small boat harbors. The amortization (principal and interest) of the costs of capital improvements for boating facilities appropriated after July 1, 1975, including but not limited to berths, slips, ramps, related accommodations, general navigation channels, breakwaters, aids to navigation, and other harbor structures, may be paid from the boating special fund or from general revenues as the legislature may authorize in each situation. Revenues provided in this chapter for the boating special fund shall be at least sufficient to pay the special fund costs established in this section. [L 1991, c 272, pt of §2; am L 2011, c 197, §5; am L 2015, c 96, §2]

" **§200-9 Purpose and use of state small boat harbors.** (a)

State small boat harbors are constructed, maintained, and operated for the purposes of:

- (1) Recreational boating activities;
- (2) Landing of fish; and
- (3) Commercial vessel activities.

To implement these purposes, only vessels in good material and operating condition that are regularly navigated beyond the confines of the small boat harbor and that are used for recreational activities, the landing of fish, or commercial vessel activities shall be permitted to moor, anchor, or berth at a state small boat harbor or use any of its facilities.

(b) Vessels used for purposes of recreational boating activities that are also the principal habitation of the owners shall occupy no more than one hundred twenty-nine berths at Ala Wai boat harbor and thirty-five berths at Keehi boat harbor, which is equal to fifteen per cent of the respective total moorage space that was available as of July 1, 1976, at the Ala Wai and Keehi boat harbors.

(c) The total number of valid commercial use permits that may be issued for vessels assigned mooring in Ala Wai boat harbor shall not exceed fifteen per cent of the total number of berths and shall not exceed thirty-five per cent of the total number of berths at the Keehi boat harbor; provided that at the Ala Wai boat harbor, vessels issued commercial use permits shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthest mauka or adjacent to Holomoana street, with the remainder located throughout the Ala Wai boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans, for which valid commercial use permits or existing registration certificates have been issued by the department that allow the catamarans to operate upon Waikiki shore waters for hire.

The department shall allow a sole proprietor of a catamaran operating with a valid commercial use permit or existing registration certificate, issued by the department, for a commercial catamaran to land its commercial catamaran on Waikiki beach, to operate upon Waikiki shore waters for hire, and to transfer the ownership of the vessel from personal ownership to

corporate or other business ownership without terminating the right to operate under the commercial use permit or existing registration certificate. The existing commercial use permit or existing registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity. No valid commercial use permit or existing registration certificate issued to an owner of a commercial catamaran operating in the Waikiki area shall be denied or revoked without a prior hearing held in accordance with chapter 91.

(d) Notwithstanding any limitations on commercial permits for Maui county small boat facilities, vessels engaging in inter-island ferry service within Maui county shall be afforded preferential consideration for ferry landings, including the issuance of a commercial operating permit and the waiver of any applicable fees, at Maui county small boat facilities; provided that:

- (1) The vessel operator has been issued a certificate of public convenience and necessity for the purpose of engaging in inter-island ferry service that includes a route within Maui county;
- (2) The design and performance characteristics of the vessel will permit safe navigation within the harbor entrance channel and safe docking within Maui county small boat facilities;
- (3) The vessel operations will not result in unreasonable interference with the use of Maui county small boat facilities by other vessels; and
- (4) All preferential consideration and waivers, including any commercial permits issued under this section, shall cease upon the vessel operator's termination of inter-island ferry service within Maui county.

(e) The chairperson may adopt rules pursuant to chapter 91 to further implement this section.

[(f)] For purposes of this section:

"Commercial vessel activities" means the use of vessels for activities or services provided on a fee basis.

"Recreational boating activities" means the use of watercraft for sports, hobbies, or pleasure.

"Regularly navigated" means the movement of a vessel under its own power from its assigned mooring within a small boat harbor to beyond the confines of the small boat harbor and entrance channel at least once in a ninety-day period. Vessels moored in an offshore mooring area shall exit the confines of the designated mooring area under their own power at least once in a ninety-day period. [L 1991, c 272, pt of §2; am L 1995, c

86, §2; am L 1997, c 160, §4; am L 1999, c 266, §1; am L 2001, c 9, §1; am L 2006, c 123, §1; am L 2011, c 76, §1 and c 197, §6]

Cross References

Intra-island water ferry transportation system, see §268-2.5.

" **§200-10 Permits and fees for state small boat harbors; permit transfers.** (a) No person shall moor a vessel in a state small boat harbor without:

- (1) First obtaining a use permit from the department; and
- (2) Being the owner of the vessel.

(b) In order to obtain a permit or a permit renewal, the owner of a vessel shall provide, at the owner's own expense:

- (1) A marine surveyor's inspection or a vessel inspection by the department, no more than two years old, certifying that the vessel has been inspected and fulfills the requirements set by the department;
- (2) Documentation that the person is the owner of the vessel. The documentation shall meet requirements established by the department; and
- (3) Satisfactory proof that the person has attained the age of eighteen years prior to obtaining a permit or being placed on the waitlist for a permit.

(c) The permittee shall pay moorage fees to the department for the use permit that shall be based on but not limited to the use of the vessel, its effect on the harbor, use of facilities, and the cost of administering this mooring program; and, furthermore:

- (1) Except for commercial maritime activities where there is a tariff established by the department of transportation, moorage fees shall be established by appraisal by a state-licensed appraiser approved by the department and shall be higher for nonresidents than for residents. The moorage fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and may be increased annually by the department, to reflect a cost-of-living index increase; provided that:

- (A) Schedule A shall include existing mooring permittees; and
- (B) Schedule B shall apply to all new mooring applicants and transient slips on or after July 1, 2011;

provided further that schedule A rates shall be increased by the same amount each year so that

schedule A rates equal schedule B rates by July 1, 2014;

- (2) For commercial maritime activities where there is a tariff established by the harbors division of the department of transportation, the department may adopt the published tariff of the harbors division of the department of transportation or establish the fee by appraisal by a state-licensed appraiser approved by the department;
- (3) An application fee shall be collected when applying for moorage in state small boat harbors and shall thereafter be collected annually when the application is renewed. The application fee shall be:
 - (A) Set by the department; and
 - (B) Not less than \$100 for nonresidents;
- (4) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee that shall be calculated at a rate of:
 - (A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and
 - (B) \$7.80 a foot of vessel length a month if the permittee is a nonresident;provided that the liveaboard fees established by this paragraph may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year, beginning July 1 of each year;
- (5) If a vessel is used for commercial purposes from its permitted mooring, the permittee shall pay, in lieu of the moorage and liveaboard fee, a fee based on three per cent of the gross revenues derived from the use of the vessel or two times the moorage fee assessed for a recreational vessel of the same size, whichever is greater; and
- (6) The department is authorized to assess and collect utility fees, including electrical and water charges, and common-area maintenance fees in small boat harbors.

(d) The department shall not renew or issue a permit to a person who is not the owner of the vessel which is moored or which the person desires to moor in a state small boat harbor. No use permit may be transferred unless specifically provided by law. Any individual who is an owner of a vessel used for commercial purposes, including commercial fishing as a principal means of livelihood, and possesses a valid mooring permit or commercial permit, or both, in accordance with the rules adopted

by the chairperson pursuant to chapter 91, may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to moor or operate the vessel under the permit or permits. The existing permit or permits shall be reissued in the name of the transferee corporation or other business entity.

(e) For the purposes of this section, "person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity, and "owner" includes 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 a 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. "Controlled group" means parent-subsidary corporations, brother-sister corporations, or constructive owner. "Transfer" includes any change in control, by whatever means, of any entity that owns or controls, directly or indirectly, a use permit. 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. A "legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest in the vessel. An owner who is issued a permit to moor a vessel in a state small boat harbor shall notify the department in writing of a transfer of interest or possession in the vessel within seven days of transfer.

(f) Any person who owns an interest in a corporation or other business entity or is part of a controlled group possessing a valid commercial permit issued by the department, in accordance with rules adopted by the chairperson pursuant to chapter 91, may transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial permit or any other permit issued to it by the department; provided that:

- (1) The corporation or business entity has been engaged in the same commercial vessel activity, as defined in section 200-9, for a minimum of one year;
- (2) The seller shall pay the department a business transfer fee based on the passenger-carrying capacity of the vessels owned or operated by the corporation or business entity as provided by rules adopted by the chairperson pursuant to chapter 91, except for transfers of stock or interest in a corporation or

other business entity between spouses or first-generation lineal descendants; and

- (3) In the case of a controlled group, the transferee shall retain eighty per cent control of the transferor.

Any person possessing a commercial permit shall be required to meet minimum revenue standards, as a condition of retaining or renewing the commercial permit.

When an application for renewal of a commercial permit is made at least sixty days prior to expiration of the commercial permit, the department shall review the application and, within thirty days of receipt of the application, shall renew the permit or notify the applicant that the application is incomplete or cannot be renewed and explain any reasons for nonrenewal. Within thirty days of receipt of the applicant's amended application, the department shall either renew the permit or notify the applicant that the permit will not be renewed.

If the holder of a commercial permit fails to timely obtain renewal of a commercial permit, the holder of the permit shall automatically be granted a thirty-day extension from the date of the existing permit's expiration to obtain a permit renewal.

(g) The department may designate moorage space within state small boat harbors to accommodate commercial fishing vessels and transient vessels.

(h) All revenues from the foregoing operations shall be deposited in the boating special fund. [L 1991, c 272, pt of \$2; am L 2005, c 126, \$1; am L 2011, c 197, \$7; am L 2014, c 10, \$1 and c 84, \$1; am L 2015, c 90, \$1; am L 2016, c 219, \$1]

Case Notes

A vessel and its accompanying mooring and live-aboard permits are constitutionally protected "property", of which an individual may not be deprived without notice and an opportunity to be heard. 91 H. 1, 979 P.2d 586.

" **[\$200-10.5] Sailing school vessels; rules.** The department shall adopt rules for the regulation and operation of sailing school vessels. Until the rules are adopted, sailing school vessels shall be classified as recreational vessels and subject to rules adopted under sections 200-4 and 200-9 that pertain to recreational vessels; provided that sailing school vessels shall be exempt from:

- (1) All requirements for permits and fees; and
- (2) All rules pertaining to:

- (A) Mooring or anchoring of recreational vessels at any offshore mooring area; and
- (B) Living aboard a vessel while the vessel is moored within ocean waters of the State. [L 1996, c 188, §2]

" **[\$200-11] Existing permits.** An owner of a vessel used as a principal place of habitation holding a permit for that use in a state small boat harbor on June 9, 1976, may continue to moor the vessel in that harbor for such purpose and be permitted to obtain a new mooring permit; provided that the owner conforms to conditions set forth in sections 200-9 and 200-10. [L 1991, c 272, pt of §2]

" **[\$200-12] Administration of state small boat harbors.** The department shall include a separate administrative unit which shall administer the state small boat harbors and the state comprehensive recreational boating program. The unit shall:

- (1) Adopt necessary rules under section 200-4 for the purposes of this section;
- (2) Organize a comprehensive recreational boating program; and
- (3) Develop standard permits, and fees, for moorage in state small boat harbors to comply with section 200-10. [L 1991, c 272, pt of §2]

" **[\$200-12.5] Native Hawaiian canoes; education.** (a) In all state small boat harbors, the department shall accommodate the mooring of native Hawaiian canoes owned or leased by a nonprofit corporation, association, organization, or other duly chartered entity that operates native Hawaiian canoes for educational purposes.

(b) Any owner or lessee of a native Hawaiian canoe accommodated under subsection (a) shall submit to the department an annual report describing how the educational activities that were conducted during the previous year used, involved, or focused on the native Hawaiian canoe. The report shall include:

- (1) A description of each educational activity;
- (2) The date of each educational activity; and
- (3) The number of participants in each educational activity.

(c) The chairperson may adopt rules pursuant to chapter 91 to implement this section. [L 2013, c 243, §2]

" **§200-13 Marine inspections.** (a) The department shall:

- (1) Develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state small boat harbors;
- (2) Approve qualified marine surveyors to inspect vessels seeking permits to moor in state small boat harbors; and
- (3) Approve a fee schedule for marine surveyors' inspections.

(b) Vessels failing the marine inspection for a permit or a permit renewal shall have thirty days to correct deficiencies and complete the inspection.

(c) Owners of vessels that fail the marine inspection may contest the inspection before an arbitration board of three inspectors approved by the department. The inspector who performed the original inspection shall not be a member of the arbitration board. [L 1991, c 272, pt of §2; am L 1994, c 113, §1]

Cross References

Alien aquatic organisms, see §187A-32(b).

" **§200-14 Violation of rules; penalty.** (a) Except as provided in subsection (b), any person who violates any rule adopted by the department under this part or who violates this part, shall be fined not more than \$1,000 or less than \$50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than \$1,000 or less than \$50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the environmental court may deprive the offender of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days.

(b) Any person who violates any rule adopted by the department under this part regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein. A person found to have committed such a traffic infraction shall be fined not more than:

- (1) \$100 for a first violation;
- (2) \$200 for a second violation; and
- (3) \$500 for a third or subsequent violation.

(c) Notwithstanding the provisions of subsection (a) establishing a fine of not more than \$1,000 or less than \$50 for each violation, any person who violates any rule adopted by the department relating to unauthorized discharge, dumping, or

abandoning, in any state boating facility or state waters, of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, shall be fined not more than \$10,000 for each day of violation, and any vessel, the agents, owner, or crew of which violate the rules of the department shall be fined not more than \$10,000 for each day of violation. [L 1991, c 272, pt of §2; am L 1994, c 38, §1; am L 1997, c 204, §1; am L 2008, c 101, §4; am L 2014, c 218, §]

" **[\$200-14.5] General administrative penalties.** (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder. Each day or instance of violation shall constitute a separate offense.

(b) For violations involving pollution of the waters of the State, the administrative fine shall be as follows:

- (1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than \$10,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$15,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$25,000.

(c) For all other violations the administrative fine shall be as follows:

- (1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$15,000.

(d) Any criminal action against a person for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude the State from pursuing civil legal action to recover administrative fines, fees and costs, or damages against that person. Any civil legal action to recover administrative fines, fees and costs, or damages for any violation of subtitle 8 of title 12 or any rule adopted thereunder shall not preclude

the State from pursuing any appropriate criminal action against that person. All fines, fees and costs, or damages recovered by the department under this section shall be deposited in the boating special fund. [L 1999, c 41, §1]

" **[\$200-15] Vessels or property taken into legal custody; unauthorized control.** No person shall exercise control over a vessel or other property that is under legal custody, seizure, or detention by the department. [L 1991, c 272, pt of §2]

" **§200-16 Mooring of unauthorized vessel in state small boat harbors and offshore mooring areas; impoundment and disposal proceedings.** (a) No person shall moor a vessel in a state small boat harbor or offshore mooring area without obtaining a use permit; nor shall a person continue to moor a vessel in any state small boat harbor or offshore mooring area if the use permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and is subject to this section.

(b) The department shall cause to be placed upon, or as near to the unauthorized vessel as possible, a notice to remove vessel, which shall indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel must be removed within seventy-two hours from the time the notice was posted.

(c) An unauthorized vessel may be impounded by the department at the sole risk of the owner of the vessel, if the vessel is not removed after the seventy-two-hour period or if during that period the vessel is removed and remoored in the harbor or mooring or anchorage area or any other state harbor or mooring or anchorage area without a use permit. The owner of the vessel shall be solely responsible for all costs of the impoundment and the disposal of the vessel. Any proceeds resulting from the impoundment and the disposal of the unauthorized vessel shall be used first to pay the costs of impoundment and disposal and then to pay any mooring fees due. If the proceeds resulting from the impoundment and the disposal are inadequate to pay for all costs and mooring fees due, the owner of the vessel shall remain liable for the outstanding costs and mooring fees.

(d) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by the department or a court. 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 or

documented owner or any lien holder or operator of the impounded vessel on record with the department or the United States Coast Guard. The owner, lien holder, or operator of the impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The hearing must be held within five working days of the department's receipt of the written request. The department shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section, which remains unclaimed for more than thirty days by the registered or documented owner, a lien holder, or operator of record, may be sold by the department at public auction. If the department is unable to sell the vessel at public auction, or if its appraised value is less than \$5,000 as determined by an independent appraiser with at least one year of experience in the sale and purchase of vessels, the department, after giving public notice of intended disposition if that notice was not previously included in a public auction notice, may sell the vessel by negotiation, retain and use the vessel, donate it to any other government agency, or dispose of it as junk. [L 1991, c 272, pt of §2; am L 1994, c 113, §2; am L 2004, c 70, §1; am L 2013, c 121, §1]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

Case Notes

Impoundment fees set by State not unlawful where no evidence to suggest that charges were arbitrary or unfounded. 91 H. 1, 979 P.2d 586.

Section does not provide statutory mechanism for recouping fees assessed against vessel owner for unauthorized mooring of vessel prior to non-repossessed vessel's impoundment. 91 H. 1, 979 P.2d 586.

" **[§200-16.5] Responsibility of vessel owner; evidence of unauthorized mooring.** (a) In any proceeding for violation of any statute or rule relating to the mooring of vessels, evidence of ownership including:

- (1) The state registration number;
- (2) The documented name or number of a vessel; or
- (3) Any other identifying name or number;

affixed to a vessel involved in the violation shall create a presumption that the owner of the vessel was the person who unlawfully moored or placed the vessel at the point where, and during the time when, the violation occurred.

(b) A vessel owner may present competent evidence that the vessel was sold, transferred, or stolen, or was moored or placed in accordance with prior written permission of the State or due to an emergency berthing condition to rebut the presumption established in subsection (a). [L 1996, c 188, §1]

" **[\$200-17] Designated slip for Coast Guard auxiliary.** (a) The department may designate one boat slip, that is not contiguous to the United States Coast Guard, in each harbor to be dedicated to a Coast Guard auxiliary vessel and designated as an auxiliary operational facility. The slip shall be occupied by a Coast Guard auxiliary vessel that shall be equipped and operated to answer emergency search and rescue calls. The Coast Guard shall pay the regular slip rate.

(b) The department may adopt rules pursuant to chapter 91 in consultation with the United States Coast Guard to implement this section. [L 1995, c 86, §1]

" **[\$200-18] Records of suspensions and revocations of operating privileges to be maintained.** (a) The department shall maintain a record of all persons adjudicated of violations under part III of chapter 291E and the period of suspension or revocation of operator privileges ordered by the director under that part.

(b) The department shall maintain a record of all persons convicted of offenses or violations under part IV of chapter 291E and the period of suspension or revocation of operator privileges ordered by the court under that part. [L 2001, c 157, §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[\$200-19] Private financing of small boat harbor improvements.** (a) Notwithstanding any law to the contrary, the board may enter into a capital advancement contract with a private party for any public improvement to or construction of a state small boat harbor, if the chairperson determines that a

capital advancement contract promotes the best interest of the State by finding that:

- (1) Private development is likely to be less costly than any other type of contract;
- (2) Private development provides needed public improvements on a significantly more timely basis; or
- (3) Public financing for the public improvements is not available on a timely basis.

(b) A capital advancement contract under subsection (a) may be financed by legislative appropriation to reimburse the private party or by credit against the private party's future rental or tariff payments to the State; provided that the terms of the contract shall ensure that the State benefits financially from the arrangement and that public use of the facility is maintained; provided further that capital advancement contracts under this section shall not be general obligations of the State for which the full faith and credit of the department is pledged and the legislature shall have no obligation to appropriate funds to reimburse a private party to a capital advancement contract.

(c) A capital advancement contract under subsection (a) shall be subject to the requirements of chapters 103 and 103D and be subject to the approval of the board; provided that all related transactions shall be subject to state audit.

(d) The board may execute capital advancement contracts pursuant to subsection (a) with a total contract value of \$2,000,000 or less without legislative approval. If the total value of a capital advancement contract pursuant to subsection (a) is greater than \$2,000,000 then the board shall obtain legislative approval in the form of the adoption of a concurrent resolution affirming the purpose, project, and contract issuance prior to executing the capital advancement contract. The total aggregate value of all capital advancement contracts entered into by the board pursuant to this section shall not exceed \$5,000,000 in any calendar year.

(e) For the purposes of this section:

"Capital advancement contract" means an agreement between the board and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state small boat harbor and in return for which the private party may be reimbursed in a manner to be determined by the board.

"Total value" includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project. [L 2001, c 285, §2]

Cross References

Private financing of harbor improvements, see §266-19.5

" **[§200-20] Hawaiian outrigger canoes on state shoreline areas.** Hawaiian outrigger canoe clubs registered with the Hawaiian Canoe Racing Association, Hui Wa'a Association, its affiliates, or its successor organization may keep their Hawaiian outrigger canoes at no charge on state shoreline areas; provided that:

- (1) The club shall indemnify, hold harmless, and defend the State, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or undertaken under this section, and shall procure sufficient insurance to provide this indemnification if requested by the department;
- (2) The club shall coordinate the placement of canoes with the applicable state or county authority to appropriately accommodate all beach users; and
- (3) Where required, the club shall secure an annual revocable permit from the applicable state or county agency. [L 2005, c 220, §2]

"PART II. BOATING LAW

[§200-21] Declaration of policy. The legislature hereby finds, determines, and declares that this part is necessary to promote and attain:

- (1) The full use and enjoyment of the waters of the State;
- (2) The safety of persons and the protection of property as related to the use of the waters of the State;
- (3) A reasonable uniformity of laws and rules regarding the use of the waters of the State; and
- (4) Conformity with, and implementation of, federal laws and requirements. [L 1991, c 272, pt of §2]

" **[§200-22] Purpose.** The purpose of this part is to authorize the chairperson to adopt rules for the regulation of vessels and their use in the waters of the State, which, together with the provisions of this part, shall conform with and supplement federal laws and requirements to fully implement the declared policy of section 200-21. [L 1991, c 272, pt of §2]

" **§200-23 Definitions.** As used in this part unless the context otherwise requires:

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boating accident" means any occurrence involving a vessel or its equipment that results in:

- (1) The death of a person;
- (2) The loss of consciousness by any person, the receipt of medical treatment by any person, or the incapacity of any person for more than twenty-four hours;
- (3) Damage to the vessel and other property totaling more than \$200; or
- (4) The disappearance of a person from the vessel under circumstances that indicate possible death or injury.

"Boat livery" means the business of holding out vessels for rent, lease, or charter.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Certificate" means certificate of number for an undocumented vessel.

"C.F.R." means the Code of Federal Regulations.

"Coast Guard" means the Coast Guard of the United States, or its successor agency.

"Commercial high speed boating" means the use of an open power boat to provide high speed rides to passengers who pay compensation for the rides. "Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Federal laws and requirements" means all statutes, rules, and other laws of the United States, which may apply to any and all subject matter of this part, and of the rules adopted pursuant to this part.

"Length" means the measurement of a vessel from end to end over the deck.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed boat racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Operator" means a person who operates, or who has charge of the navigation or use of, a vessel.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline which is towed by a vessel.

"Person" means an individual, partnership, firm, corporation, association, or other legal entity.

"Recreational vessel" means any vessel that is being used for pleasure.

"State" means the State of Hawaii.

"Thrill craft" means any motorized vessel that falls into the category of personal watercraft, and which:

- (1) Is generally less than thirteen feet in length as manufactured;
- (2) Is generally capable of exceeding a speed of twenty miles per hour;
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation; or
- (4) Is designed to provide similar operating performance as a personal watercraft through a combination of small size, power plant, and hull design.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, hovercraft, and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.

"Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

"Undocumented vessel" means any vessel which does not have and is not required to have a valid marine document as a vessel of the United States.

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

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus that is more than twelve inches wide and is attached to a towline which is towed by a vessel. If the apparatus is

round with a hollow center, the width shall be measured as a straight line:

- (1) Starting from a point on the outer edge of the apparatus;
- (2) Bisecting the hollow center; and
- (3) Ending at the farthest point on the opposite outer edge.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State. [L 1991, c 272, pt of §2; am L 1992, c 172, §1; am L 1995, c 140, §1 and c 165, §§2, 3]

" **[\$200-24] Rules.** The department shall adopt rules pursuant to chapter 91 to implement the policy and purpose of this part, and to classify vessels into appropriate categories and classes.

The department shall adopt rules pursuant to chapter 91 with respect to the following:

- (1) The registration and numbering of vessels;
- (2) The operation, use, and equipment of vessels on or in the waters of the State;
- (3) The conduct of persons involved in boating accidents and in the reporting of accidents and other casualties and losses to the department; and
- (4) The designation of areas of the waters of the State and time periods during which thrill craft may be operated, and waters on or above which, and time periods during which, persons may engage in parasailing, commercial high speed boating, and water sledding; provided that in designating the areas, the department shall use the official recommendation of the National Marine Fisheries Service with regard to the protection of protected marine life and habitats in adopting rules to implement this section, except as otherwise provided by law. [L 1991, c 272, pt of §2]

" **§200-25 Fines and penalties.** Any person violating this part, or any rule adopted pursuant to this part, shall be fined not less than \$50 and not more than \$1,000 or sentenced to a term of imprisonment of not more than thirty days, or both, for each violation; provided that in addition to, or as a condition to the suspension of, the fines and penalties, the environmental court may deprive the offender of the privilege of operating any vessel, including but not limited to any thrill craft or vessel engaged in parasailing or water sledding, in the waters of the

State for a period of not more than thirty days. [L 1991, c 272, pt of §2; am L 1997, c 204, §2; am L 2014, c 218, §8]

" **[\$200-26] Arrest or citation.** (a) Except when required by state law to take immediately before a district judge a person arrested for a violation of any provision of this part, including any rule adopted pursuant to this part, any person authorized to enforce this part, hereinafter referred to as an enforcement officer, upon arresting a person for violation of any provision of this part, including any rule adopted pursuant to this part, in the discretion of the enforcement officer, shall either:

- (1) Issue to the purported violator a summons or citation, printed in the form described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after such arrest; or
- (2) Take the purported violator without unnecessary delay before a district judge.

(b) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of the summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

(c) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this part, including any rule adopted pursuant to this part, shall be guilty of a misdemeanor.

In the event any person fails to comply with a summons or citation issued to that person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against that person and secure the issuance of a warrant for the person's arrest.

(d) When a complaint is made to any prosecuting officer of the violation of any provision of this part, including any rule adopted thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official of the department whose name

has been submitted to the prosecuting officer and who has been designated by the chairperson to administer the same. [L 1991, c 272, pt of §2]

" **[\$200-27] Police reports.** For the purpose of enforcement, it shall be incumbent upon the director of public safety and the police chief of each county to transmit to the department a copy of every investigation report submitted by the director of public safety and the police chief's subordinate officers which relate to boating accidents or the theft, loss, or recovery of vessels required to be registered and numbered pursuant to section 200-31. [L 1991, c 272, pt of §2]

" **[\$200-28] Duty of operator involved in, and at the scene of, a boating accident; limitations on liability.** (a) An operator involved in a boating accident, if and so far as the operator can do so without serious danger to the operator's own vessel, or person aboard, shall render such assistance as may be practicable and necessary to other persons and any property in order to save them from danger caused by the accident. The operator shall also make every reasonable effort to identify oneself by giving the operator's name and address and the identification of the vessel the operator was operating to:

- (1) All persons injured;
- (2) All owners of properties damaged; and
- (3) All operators of other vessels involved in the accident.

It shall further be the operator's duty to reasonably cooperate with all duly authorized personnel of governmental agencies investigating the accident.

(b) Any person who renders assistance in compliance with subsection (a) and any person who in good faith without remuneration or expectation of remuneration renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage, medical treatment, or other assistance, except for damages as may result from the person's gross negligence or wanton acts or omissions. [L 1991, c 272, pt of §2]

" **[\$200-29] Accident reports by operators; confidential nature.** The operator of:

- (1) Any vessel involved in a boating accident in the waters of the State; and

- (2) Any vessel required to be registered, or registered, with the department and involved in a boating accident in any waters,

shall file a written report with the department truthfully setting forth all relevant information required by the department; provided that the report need not be filed with the department where the operator is required by federal laws and requirements to report the accident to the Coast Guard.

The department shall transmit information of all boating accidents to the Coast Guard as may be requested by the agency for compilation, analysis, and publication of statistics.

The accident reports required by this section shall be used only to enable the department and the Coast Guard to make findings with respect to the causes of accidents and recommendations for their prevention, and to compile information for use in making statistical reports; except that the accident reports may also be used in the prosecution of the filing of false accident reports. [L 1991, c 272, pt of §2]

" **§200-30 Reciprocal agreements and courtesy.** The department may enter into, amend, revise, suspend, or revoke reciprocal agreements or arrangements with appropriate and duly authorized agencies of other jurisdictions whereby vessels properly numbered and equipped under the laws and regulations of this State are granted the same or substantially similar privileges, exemptions, and benefits enjoyed by vessels properly registered and equipped in such other jurisdictions in exchange for substantially similar privileges, exemptions, and benefits granted to properly registered and equipped vessels from other jurisdictions by the State. The department by appropriate rules may define the extent and nature of privileges, exemptions, and benefits which may be extended, as a matter of courtesy, to vessels properly numbered and equipped in other jurisdictions not covered by reciprocal agreements or arrangements.

Notwithstanding the preceding language of this section, the department shall recognize the validity of a number awarded to any vessel by:

- (1) Another state under a numbering system approved by the Coast Guard under appropriate federal laws and requirements; or
- (2) By the Coast Guard, for a period of at least sixty days. [L 1991, c 272, pt of §2]

" **§200-31 Vessels required to be registered and numbered.**

(a) Every undocumented vessel shall be registered and numbered before its use or operation on or in the waters of the State on

an annual basis in accordance with the rules of the department except:

- (1) Foreign vessels temporarily using the waters of this State;
- (2) Public vessels of the United States;
- (3) Ships' life boats; and
- (4) Other vessels exempted by the department, if federal laws and requirements permit the department to exempt the vessels.

(b) No vessel registration shall be renewed or transferred if:

- (1) The registered owner is delinquent in payment of any moneys due and payable to the department;
- (2) The registered owner has pending a citation for violation of any of the department's rules; or
- (3) The registered owner's vessel is an abandoned vessel, grounded vessel, derelict vessel, unauthorized vessel, or vessel impounded under section 200-16. All fees and charges relating to the vessel impound as well as any other fees associated with the vessel shall be paid in full prior to the vessel registration being renewed or transferred. [L 1991, c 272, pt of §2; am L 2013, c 121, §2]

" **[\$200-32] Fees and charges.** (a) Except for vessels for which fees and charges are provided in subsection (b), the department shall assess and collect from the owner of each vessel required to be registered and numbered by section 200-31, the following fees and charges:

- (1) Initial annual registration fee. For the issuance of an original certificate:
 - (A) For each vessel less than twenty feet in length, \$13;
 - (B) For each vessel twenty feet or more in length, \$25; and
 - (C) For each amphibious vehicle licensed as a motor vehicle, \$15;
- (2) Annual certificate renewal fee. For the annual renewal of a certificate:
 - (A) For each vessel less than twenty feet in length, \$10;
 - (B) For each vessel twenty feet or more in length, \$15; and
 - (C) For each amphibious vehicle licensed as a motor vehicle, \$10;
- (3) Reregistration fee. For the reregistration of a vessel, after a certificate has been canceled or

voided, the appropriate amount provided in paragraph (1);

- (4) Transfer fee. For the transfer of a certificate, \$5;
- (5) Certificate and registration sticker replacement fee. For the issuance of a replacement certificate or a replacement set of vessel registration stickers, \$5;
- (6) Certificate modification fee. For modifying a certificate, \$5;
- (7) Penalty charges for late registration, etc. For each month or fraction thereof that a registration, renewal, reregistration, or transfer is delinquent, one-tenth of the appropriate fee shall be added to the normal fee, and the department may take such other enforcement action it deems appropriate; and
- (8) Exemptions. The department may reasonably establish, by rules, exemptions from the fees required by this section.

(b) For vessels owned by or operated under the custody or control of a boat manufacturer or boat dealer, the manufacturer or dealer shall pay, in lieu of the fees and charges provided for in subsection (a):

- (1) Boat manufacturer and boat dealer annual certificate fee. For each certificate, a fee of \$20;
- (2) Annual certificate renewal fee. For the annual renewal of a certificate, a fee of \$15;
- (3) Certificate reissuance. For the reissuance of a certificate after a certificate has been canceled or voided, a fee of \$20; and
- (4) Certificate and registration sticker replacement fee. For the replacement of a certificate or registration sticker, a fee of \$5. [L 1991, c 272, pt of \$2]

" **§200-33 Future fee and charge increases or decreases.**

Notwithstanding section 200-32, all future fee and charge increases or decreases for vessels required to be registered and numbered pursuant to section 200-31 or for vessels owned by or operated under the custody of a boat manufacturer or boat dealer shall be established by rules adopted by the department pursuant to chapter 91. Fees and charges established pursuant to this section shall supersede the fees and charges set forth in section 200-32. [L 1991, c 272, pt of \$2]

" **§200-34 Disposition of revenues.** All fees and penalties collected pursuant to sections 200-10, 200-14, 200-14.5, 200-25, and 200-32, and all fees and penalties established by rules adopted pursuant to sections 200-4 and 200-24, shall be

deposited in the boating special fund. [L 1991, c 272, pt of §2; am L 2005, c 126, §2]

" **[\$200-35] Uniformity.** This part shall be interpreted and construed in the manner best able to effectuate the general purposes of attaining uniformity in the laws of the State, and with the laws of other states and the United States. [L 1991, c 272, pt of §2]

" **[\$200-36] Preemption of local law and special rules.** If any ordinance or rule of any county of the State conflicts or is inconsistent with this part or with the rules adopted pursuant thereto, the ordinance or rule shall be void.

Any county of the State, at any time, may make formal request to the chairperson for the department to adopt special rules with reference to the operation and use of vessels on any waters within its jurisdiction. The request shall set forth the reasons which make these special rules necessary or appropriate.

The department may make special rules with reference to the operation and use of vessels on any waters of the State as may be reasonably necessary to implement the declared policy of section 200-21. [L 1991, c 272, pt of §2]

" **§200-37 Operation of thrill craft; parasailing; water sledding; commercial high speed boating.** (a) No person shall operate a thrill craft unless the person is fifteen years of age or older.

(b) The department shall adopt rules to designate areas where, and time periods during which, thrill craft may be operated and parasailing, water sledding, and commercial high speed boating may be engaged in.

(c) No person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department;
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill craft between the areas designated under paragraph (1) and the shore;
- (3) Authorized government personnel conducting operations approved by the department;
- (4) Authorized film production permit holders conducting operations approved by the department; or
- (5) When used to conduct ocean cleanup, as authorized by rules adopted by the department.

To the extent that the authorization to operate thrill craft pursuant to this subsection is inconsistent with any other law, including section 200-38, this subsection shall control.

(d) No person shall:

(1) Engage in parasailing; or

(2) Operate a motorized vessel towing a person engaged in parasailing;

on or above the waters of the State, except on or above areas and during time periods designated by the department.

(e) No person shall:

(1) Engage in water sledding; or

(2) Operate a motorized vessel towing a person engaged in water sledding;

in the waters of the State, except in areas and during time periods designated by the department.

(f) No person shall engage in commercial high speed boating or operate an open power boat capable of exceeding forty miles per hour for commercial high speed boating purposes in the waters of the State, except:

(1) In areas, along routes, and during time periods designated by the department; and

(2) In accordance with a permit issued by the department.

(g) During all weekends and state and federal holidays, no commercial operator shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing in Maunaloa Bay on Oahu as provided for in section 200-38.

(h) On Sundays, all commercial ocean recreation activities, including those listed in this section, shall be prohibited on Oahu in Maunaloa Bay as provided for in section 200-38.

(i) Between December 15 and May 15 of each year, no person shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing on the west and south shore of Maui as provided in section 200-38.

(j) All commercial use and operator permits issued by the department for commercial thrill craft, and parasailing activities shall be fully transferable upon the payment of a business transfer fee in an amount determined by the department, which shall be no greater than six per cent of the transfer price; provided that no more than one transfer every two years shall be authorized with respect to any given permit, except transfers between family members for the purpose of business reorganization.

(k) The department may immediately revoke a commercial use permit without a hearing for any activity that endangers or may endanger the health or safety of passengers or the public, and may suspend or revoke a commercial use permit for violation of any rules of the department if, after seventy-two hours notice by the department of the violation, the permit holder fails to cure the violation; provided that the permit holder shall have ten days from receipt of the notice of suspension or revocation to request in writing an administrative hearing. The administrative hearing is solely for the purpose of allowing the permit holder to contest the basis for the suspension or revocation of the permit. The hearing shall be held within five working days of the department's receipt of the written request. The chairperson shall adopt rules pursuant to chapter 91 to implement the procedures governing the administrative hearing process. Within ten days after the conclusion of the hearing, the department shall either:

- (1) Lift the suspension;
- (2) Suspend the permit for a period of not longer than one year; or
- (3) Revoke the permit.

(1) All new commercial use and operator permits issued by the department for commercial thrill craft and parasailing activities after June 18, 1996 shall be issued at public auction.

(m) Each commercial use and operator permit issued by the department for commercial thrill craft and parasailing activities shall be valid for one year from the date of issuance and shall be renewed by the department for additional one-year periods; provided that the permit holder meets the following conditions:

- (1) The permit holder shall be in compliance with all applicable rules of the department;
- (2) The permit holder shall have timely filed and paid all applicable state taxes during the year; and
- (3) The permit holder shall have a good safety record regarding the operation of a commercial thrill craft, or parasailing activity.

(n) All commercial use and operator permits issued by the department for commercial thrill craft, and parasailing activities shall be subject to an annual review by the department which shall include but not be limited to:

- (1) The permit holder's compliance with applicable rules of the department;
- (2) The permit holder's timely filing and payment of all applicable state taxes during the year; and

(3) The permit holder's safety record regarding the operation of a commercial thrill craft, or parasailing activity.

(o) The department shall adopt rules to encourage water safety education and programs with respect to thrill craft, or parasailing activities. [L 1991, c 272, pt of §2; am L 1993, c 317, §§3(2), 7; am L 1995, c 140, §2; am L 1996, c 258, §1; am L 1998, c 4, §3 and c 129, §1; am L 2009, c 89, §§2, 5; am L 2013, c 118, §1; am L 2014, c 21, §§1, 2]

Note

The department of land and natural resources shall adopt rules to implement L 2013, c 118. L 2013, c 118, §2.

Case Notes

Appellants' right to operate vessels under federal maritime coasting licenses did not preempt Hawaii law prohibiting parasailing off the coast of Maui during limited portions of the year to protect mating humpback whales; among other things, because the parasailing ban furthers the legitimate governmental purpose of protecting humpback whales, the statute is reasonable. 508 F.3d 1189.

Defendants' motion for summary judgment granted, where, inter alia, plaintiffs argued that subsection (i) impermissibly restricted the coastwise trade of plaintiff's vessels in contravention of plaintiff's federal licenses. 380 F. Supp. 2d 1160.

Subsection (i) and all rules and regulations derived from the statute are not preempted by the Marine Mammal Protection Act. 380 F. Supp. 2d 1166.

" **[\$200-37.5] Emergency communication devices.** (a) It shall be unlawful to operate in the waters of the State beyond one mile of shore, any:

- (1) Vessel required to be registered by the State or documented by the United States Coast Guard; or
- (2) Manual or sail-propelled vessel not required to be registered by the State or documented by the United States Coast Guard,

unless the vessel is equipped with a properly functioning fixed mount or handheld marine VHF-FM radio (156-162 MHz band) or emergency position indicating radio beacon.

Canoes, thrill craft, surfboards, and paddleboards shall be exempt from this section. Kayaks and training sailboats shall

be exempt from this section when accompanied by at least one vessel that complies with this section.

(b) Notwithstanding the provisions of section 200-25, any person who violates this section shall be fined not more than \$100 for each separate offense. Each day of each violation constitutes a separate offense. Any action taken to impose or collect the fine provided by this section shall be considered a civil action.

(c) As used in this section, an "emergency position indicating radio beacon" is an electronic device that, when activated, transmits a distress call on a designated emergency frequency to a radio or satellite receiver and is used by rescue personnel to locate the position of the signal. Emergency position indicating radio beacons shall be approved by the Federal Communications Commission and COSPAS-SARSAT, an international search and rescue organization. The 406 MHz class of emergency position indicating radio beacons shall be registered with the National Oceanic and Atmospheric Administration. The applicable United States Coast Guard regulations relating to emergency position indicating radio beacons shall prevail for commercial vessels. [L 2003, c 54, §2]

" §200-38 Ocean recreation management areas. (a)

Notwithstanding any other law to the contrary, no commercial operator shall operate a thrill craft, engage in parasailing, water sledding, or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motor vessel towing a person engaged in water sledding during all weekends and state and federal holidays on Oahu in Maunalua Bay from Kawaihoa (Portlock) Point to Wailupe Peninsula and commercial zones a, b, and c.

(b) Notwithstanding any other law to the contrary, all commercial ocean recreation activities shall be prohibited on all Sundays on Oahu in Maunalua Bay.

(c) Notwithstanding any other law to the contrary, no person shall operate a thrill craft, engage in parasailing, operate a motorized vessel towing a person engaged in parasailing, engage in commercial water sledding or commercial high speed boating, or operate a commercial motor vessel towing a person engaged in water sledding between December 15 and May 15 of each year in the waters of west and south Maui from Pu`u Ola`i to Hawea Point.

(d) The department may adopt rules pursuant to chapter 91 to further implement this section. [L 1991, c 272, pt of §2; am L 1993, c 317, §§3(3), 7; am L 1998, c 4, §3]

" **§200-39 Kaneohe Bay ocean use activities; permits; restrictions.** (a) For the purposes of this section, "ocean use activities" means commercial operation of thrill craft, high speed boating, parasailing, water sledding, sailing and snorkeling tours, glassbottom boat tours, or any other similar commercial ocean recreation activity for hire.

(b) Any other provision of this chapter to the contrary notwithstanding, no person shall operate thrill craft, parasailing, water sledding, or commercial high speed boating unless the person meets the requirements of section 200-37 and all rules adopted by the department that regulate or restrict these activities.

(c) Permits issued by the department for the commercial operation of ocean use activities in Kaneohe Bay shall be limited to the number and locations, by permit type and vessel and passenger capacity, provided in the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990, until applicable rules consistent with the master plan are adopted by the department; provided that the passenger capacity for snorkeling tours and glassbottom boat tours shall be set through rules adopted pursuant to chapter 91. No thrill craft permit may be transferred after June 21, 1998; provided that transfers of permits may be made at any time between family members.

(d) On Sundays and federal holidays, all commercial ocean use activities shall be prohibited.

(e) All rules adopted by the department with regard to Kaneohe Bay shall be drafted in consultation with the Kaneohe Bay regional council. For those provisions of the Kaneohe Bay master plan previously adopted by the legislature, the rules adopted by the department shall be in accordance with those provisions. Notwithstanding subsection (c) to the contrary, if the department determines for safety or environmental protection reasons that a permitted use should be relocated, the department may relocate the permitted use and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the current vessel length.

For those provisions of the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990, not previously adopted by the legislature, the master plan shall be used as the recommended guideline in the adoption and implementation of rules with regard to the regulation of all activities in Kaneohe Bay. [L 1993, c 317, §§3(1), 7; am L 1998, c 4, §§2, 3 and c 129, §2; am L 2000, c 110, §1]

Note

The source note to this section is supplemented by: L 1998, c 129, §6 and L 2000, c 110, §2.

**"PART III. ABANDONED VESSELS ON PUBLIC AND
PRIVATE PROPERTY GENERALLY**

Note

L 2012, c 146, §12, with respect to amendments to this part, provides:

"SECTION 12. This Act shall take effect on July 1, 2012; provided that county responsibility under this Act for each county shall commence:

(1) Upon a county's access to vessel registration and marine document records of the department of land and natural resources or the United States Coast Guard as required in section 200-41, Hawaii Revised Statutes, in section 1 of this Act; or

(2) On January 1, 2013;
whichever is earlier".

§200-41 Disposition of certain abandoned vessels. (a) Any vessel may be deemed abandoned if the vessel has been moored or otherwise left in the waters of the State or on public property contrary to law or rules having the force and effect of law, or left on private property without authorization of the owner or occupant of the property if:

- (1) The vessel's registration certificate or marine document has expired and the registered owner no longer resides at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;
- (2) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
- (3) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner;
- (4) The vessel registration records of the department of land and natural resources and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined; or
- (5) The requirements of section 200-52 are met.

(b) The determination whether a vessel is abandoned on public property may be made by:

- (1) The chairperson, with regard to public property under the jurisdiction of the department of land and natural resources; or
- (2) Any other state department or agency through its director, with regard to public property within the department or agency's respective jurisdiction; or
- (3) Any county through its mayor or the mayor's designee, or chief of police, with regard to public property within the respective county's jurisdiction; provided that the department shall provide to the respective county access to the department's vessel registration and marine document records or those of the United States Coast Guard for the purposes of this section.

Once a vessel is deemed abandoned, the appropriate official under this subsection may direct and cause the vessel to be taken into custody and disposed of pursuant to and in the manner provided in this chapter.

(c) All vessels abandoned on private property shall be the responsibility of the private property owner. [L 1991, c 272, pt of §2; am L 2012, c 146, §1]

" **§200-42 Notice to owner.** A state or county agency, upon taking custody of any vessel, shall immediately post a written notice on the vessel and send a duplicate original by registered or certified mail, with a return receipt requested, to any owner registered with the department or documented by the United States Coast Guard or any lien holder or operator of the vessel on record with the department or the United States Coast Guard at their respective last known address on record with the department or the United States Coast Guard. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed within twenty days after the mailing of the notice. Such owner, lien holder, or operator, of the vessel shall have ten days after receipt of the mailed notice to request in writing an administrative hearing pursuant to chapter 91 from the state or county agency that took custody of the vessel. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given for the impoundment of the vessel. The hearing shall be held within five working days of the state or county agency's receipt of the written request. [L 1991, c 272, pt of §2; am L 2004, c 70, §2; am L 2012, c 146, §2]

" **§200-43 Public auction.** If the vessel is not repossessed within twenty days after the mailing of the notice, the vessel shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given at least once; provided that the public auction shall not be held less than five days after the notice is given. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency. [L 1991, c 272, pt of §2; am L 1998, c 2, §54]

" **§200-44 Possession by interested party.** Any person having an interest in the vessel taken into custody may take possession of the vessel prior to the date of public auction upon payment to the state or county agency that took custody of the vessel of all use fees, towing, handling and storage charges, appraisal and advertising expenses, and any other expenses incurred by that state or county agency in connection with the vessel. If the person taking possession of the vessel is not the registered or documented owner, the person, prior to taking possession of the vessel, shall pay the foregoing expenses and post security satisfactory to the state or county agency, which shall not exceed the value of the vessel. The security, if not forfeited, shall be returned to the person posting it within two years after receipt. [L 1991, c 272, pt of §2; am L 2004, c 70, §3; am L 2012, c 146, §3]

Case Notes

State had no statutory basis upon which to charge fees for the impoundment and disposal of vessel under §200-49 or this section where vessel had not been repossessed and State had engaged in the negotiated sale of the vessel for a purchase price of \$0.00. 91 H. 1, 979 P.2d 586.

" **§200-45 When public auction not required.** Public auction shall not be required when the appraised value of any vessel is less than \$5,000, as determined by an independent appraiser who has at least one year of experience in the sale or purchase of vessels. Upon that determination, after public notice of intended disposition has been given at least once, the state or county agency that took custody of the vessel may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency. [L 1991, c 272, pt of §2; am L 2004, c 70, §4; am L 2012, c 146, §4]

" **§200-46 Effect of sale.** The transfer of interest by sale hereunder shall be evidenced by a bill of sale from the

appropriate state or county agency, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto. [L 1991, c 272, pt of §2; am L 2012, c 146, §5]

" **§200-47 Disposition of proceeds.** A state or county agency that sells a vessel pursuant to this part shall deposit that portion of the proceeds of the sale of the vessel that represents the mooring or other fees and charges due the agency, the expenses of the auction, and any other expense incurred by the agency in taking into custody and disposing of an abandoned vessel, derelict vessel, or vessel impounded under section 200-16, into the boating special fund or other state or county fund, as appropriate, from which the expenses incurred in connection with the vessel were paid. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within one year after the execution of the bill of sale. If no claim is made within the year allowed, the money shall become a state realization. A lien holder shall receive priority in payment from the balance of the proceeds to the extent of the lien holder's lien on the vessel. If the proceeds of the sale are insufficient to cover the mooring and other fees and charges, the expenses of the auction, and the other expenses incurred by the agency in taking into custody and disposing of the vessel, the agency may bring an action for the deficiency in [an] environmental court of appropriate jurisdiction against the registered or documented owner or any person who had an interest in the vessel when custody was taken by the agency. [L 1991, c 272, pt of §2; am L 2004, c 70, §5; am L 2012, c 146, §6; am L 2014, c 218, §8]

" **§200-47.5 Vessel aground on state property.** (a) All vessels grounded on state submerged lands, shorelines, or coral reefs shall be removed immediately by the owner or operator at the owner's or operator's expense. Vessels grounded on a sand beach, sandbar, or mudflat and not in imminent danger of breaking up shall be removed within seventy-two hours, unless otherwise agreed to by the department. Damage to state or private property caused by a grounded vessel shall be the sole responsibility of the vessel's owner or operator.

(b) Solely for the purposes of removal and with no liability to the department, the department may assume control of any vessel that:

- (1) Is grounded on a coral reef or in imminent danger of breaking up; and

- (2) Cannot be immediately removed by the owner within twenty-four hours of actual notification to the vessel owner or the owner's representative by the department and in a manner that is reasonably safe, as determined by the department. If the department has made good faith efforts to provide actual notice to the owner or the owner's representative but such actual notice is futile, the department may assume control of the grounded vessel within twenty-four hours from the time it has been determined actual notice is futile. If the owner's representative has received actual notice from the department and has commenced effective salvage operations, this section shall not apply.

The owner of the vessel may continue as the primary agent in salvaging the vessel after twenty-four hours upon providing proof of a marine insurance policy listing the State as an additional insured in the amount of at least \$1,000,000 and proof that the owner is actively and effectively initiating a salvage effort with reasonable evidence, as determined by the department, that the vessel may be saved within seventy-two hours of grounding; provided that the department may allow an extension beyond the seventy-two hour limit if it determines that no additional environmental damage exists. Once the department assumes control over the vessel, the vessel shall be removed by conventional salvage methods to minimize damage to the natural resources and not become a hazard to navigation. All costs and expenses of removing the vessel and damage to state or private property shall be the sole responsibility of the vessel's owner or operator. This section shall apply whether the vessel is attended or deemed derelict under section 200-48.

(c) The department may take legal action to collect any costs or expenses incurred by the department for any removal under this section. All moneys collected shall be deposited in the boating special fund.

(d) Any person who renders assistance to the department when it acts pursuant to subsection (b) and any person who, in good faith and without remuneration or expectation of remuneration, renders assistance at the scene of a vessel grounded on a coral reef or in imminent danger of breaking up shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage or other assistance, except for damages caused by the person's gross negligence or wanton acts or omissions. [L 2006, c 134, §1; am L 2008, c 96, §1; am L 2012, c 57, §1]

" **[\$200-48] Derelict vessel.** A vessel which has been left unattended for a continuous period of more than twenty-four hours is a derelict if:

- (1) The vessel is sunk or in immediate danger of sinking, is obstructing a waterway, or is endangering life or property; or
 - (2) The vessel has been moored or otherwise left in the waters of the State or on public property contrary to law, or rules having the force and effect of law, or the vessel has been left on private property without authorization of the owner or occupant of the property and if:
 - (A) The vessel's registration certificate or marine document has expired and the registered owner no longer resided at the address listed in the vessel registration or marine document records of the department or the United States Coast Guard;
 - (B) The last registered owner of record disclaims ownership and the current owner's name or address cannot be determined;
 - (C) The vessel identification numbers and other means of identification have been removed so as to hinder or nullify efforts to locate or identify the owner; or
 - (D) The vessel registration records of the department and the marine document records of the United States Coast Guard contain no record that the vessel has ever been registered or documented and the owner's name or address cannot be determined.
- [L 1991, c 272, pt of §2]

Case Notes

A vessel and its accompanying mooring and live-aboard permits are constitutionally protected "property", of which an individual may not be deprived without notice and an opportunity to be heard. 91 H. 1, 979 P.2d 586.

Where an owner's right to a hearing subsequent to impoundment of a derelict vessel was not clearly established under §200-49, this section, or other law at the time of state boating officer's actions, it was not unreasonable for officers to have believed it was lawful to dispose of vessel without a hearing; thus officers, in individual capacities, entitled to qualified immunity in 42 U.S.C. §1983 action. 91 H. 1, 979 P2d 586.

" **§200-49 Disposition of derelict vessel.** (a) The chairperson may cause a derelict vessel to be immediately taken

into custody. Upon taking custody of a derelict vessel, the department, as soon as reasonably possible shall:

- (1) Give public notice of intended disposition and procedure for requesting an administrative hearing;
- (2) When possible, post a notice of intended disposition and procedure for requesting an administrative hearing on the vessel; and
- (3) Serve a duplicate original of the notice of intended disposition and procedure for requesting an administrative hearing by certified mail, return receipt requested on:
 - (A) The registered or documented owner of the vessel, if known, at the owner's last known address on record with the department or the United States Coast Guard;
 - (B) All lien holders who have properly filed a financing statement, referencing the name of the registered or documented owner, in the bureau of conveyances or who are shown on the records of the department or the United States Coast Guard; and
 - (C) Any operator of the vessel on record with the department or the United States Coast Guard.

(b) The owner, lien holder, or operator of the vessel shall have ten days after the date of the public notice or receipt of the mailed notice, whichever occurs later, to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner, lien holder, or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The hearing must be held within five working days of the department's receipt of the written request.

(c) If the vessel is not repossessed within twenty days after the date of the public notice or mailing of the notice, whichever occurs later, the vessel may be disposed of by negotiated sale except that, when two or more purchasers indicate an interest in purchasing the vessel, the vessel will be sold at public auction to the highest bidder, unless the vessel is exempt from public auction under section 200-45. If no purchaser expresses a desire to purchase the vessel, the vessel may be destroyed or donated to any governmental agency. [L 1991, c 272, pt of §2; am L 1998, c 2, §55; am L 2004, c 70, §6]

Case Notes

A vessel and its accompanying mooring and live-aboard permits are constitutionally protected "property", of which an individual may not be deprived without notice and an opportunity to be heard. 91 H. 1, 979 P.2d 586.

State had no statutory basis upon which to charge fees for the impoundment and disposal of vessel under §200-44 or this section where vessel had not been repossessed and State had engaged in the negotiated sale of the vessel for a purchase price of \$0.00. 91 H. 1, 979 P.2d 586.

Where an owner's right to a hearing subsequent to impoundment of a derelict vessel was not clearly established under §200-48, this section, or other law at the time of state boating officers' actions, it was not unreasonable for officers to have believed it was lawful to dispose of vessel without a hearing; thus officers, in individual capacities, entitled to qualified immunity in 42 U.S.C. §1983 action. 91 H. 1, 979 P.2d 586.

**"PART IV. VESSELS ABANDONED ON PREMISES OF PERSONS
ENGAGED IN REPAIR BUSINESS, PRIVATE MARINAS,
YACHT CLUBS, OR ON OTHER PRIVATE PROPERTY**

Note

Part heading amended by L 2012, c 146, §7.

§200-51 Disposition of vessels abandoned on the premises of a vessel repair business, private marina, yacht club, or other private property. When any person abandons a vessel upon the premises of a vessel repair business, a private marina, a yacht club, or other private property, the owner of the vessel repair business or private marina, or the owner's representative; the designated representative of the yacht club; or the owner of other private property, may sell or dispose of the vessel in accordance with this part. [L 1991, c 272, pt of §2; am L 1999, c 232, §2; am L 2012, c 146, §8]

" §200-52 When vessel deemed abandoned on the premises of a vessel repair business, private marina, or yacht club. A vessel shall be deemed to be abandoned upon satisfaction of all the following conditions:

- (1) The service requested or required by a person whose vessel is navigated, towed, or brought to a vessel repair business, private marina, or yacht club, such as mooring, storage, towing, and rendering estimates of the cost of repairs, has been performed;
- (2) No authorization is given to perform any further service respecting the vessel, or to allow mooring, or

- storage, but the vessel is left on the repair business, private marina, or yacht club premises;
- (3) The owner of the repair business or private marina, or the owner's authorized representative, or the designated representative of the yacht club, has given notice by registered or certified mail, to the registered owner of the vessel at the address on record at the vessel repair business, private marina, or yacht club, and the address on record at the department or United States Coast Guard, and to any person with a recorded interest in the vessel stating that, if the vessel is not repossessed within thirty days after the mailing of the notice, it will be sold or disposed of. The notice also shall contain a description of the vessel and its location. The notice need not be sent to an owner or any person with an unrecorded interest in the vessel whose name or address cannot be determined and, absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five calendar days after the mailing; and
- (4) The vessel is not repossessed within the thirty-day period. [L 1991, c 272, pt of §2; am L 1999, c 232, §3; am L 2012, c 146, §9]

" **§200-53 Sale or disposition of vessel.** When a vessel is abandoned, the owner of the vessel repair business or private marina, or the owner's authorized representative; the designated representative of the yacht club; or the owner of other private property, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vessel or dispose of it; provided that the vessel shall not be sold or disposed of less than five calendar days after the publication of the advertisement. Upon the sale or disposal of the vessel under this part, the owner of the vessel repair business or private marina, or the owner's authorized representative; the designated representative of the yacht club; or the owner of other private property, shall file an affidavit with the department stating to whom the vessel was sold or, if the vessel was not sold, the manner in which the vessel was disposed of pursuant to this part. [L 1991, c 272, pt of §2; am L 1999, c 232, §4; am L 2012, c 146, §10]

" **[\$200-54] Disposition of proceeds.** The authorized seller of the vessel shall be entitled to the proceeds of the sale to the extent of the compensation that is due the seller for services rendered in connection with the vessel, including

reasonable and customary charges for towing, handling, and storage, and the cost of notices and advertising required by this part. A lien holder shall receive priority in payment from the balance to the extent of the lien holder's lien. Any remaining balance shall be forwarded to the registered owner of the vessel, if the registered owner can be found. If the registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the registered owner of the vessel, if a proper claim is filed thereof within one year from the execution of the sale agreement. If no claim is made within the year allowed, the money shall become a state realization. [L 1991, c 272, pt of §2]

" **[\$200-55] Effect of transfer of title.** The transfer of title and interest by sale under this part is a transfer by operation of law; provided that a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest. [L 1991, c 272, pt of §2]

"PART V. TRESPASS TO VESSEL

[\$200-61] Definitions. As used in this part:

"Enforcement officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"Vessel" means every description of watercraft used or capable of being used as a means of transportation on water.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State. [L 1991, c 272, pt of §2]

" **[\$200-62] Trespass to vessel; penalty.** Whoever, without right, boards or remains in or upon any vessel of another within the waters of the State shall be guilty of a misdemeanor. [L 1991, c 272, pt of §2]

" **[\$200-63] Questioning and detaining suspected persons aboard a vessel.** An enforcement officer may detain any person found upon a vessel under circumstances as reasonably justify a suspicion that the person boarded without permission for the purpose of demanding, and may demand of the person, the person's name, address, and the nature of the person's business upon the vessel. If the enforcement officer has reason to believe that the person has no right to be upon the vessel, the enforcement

officer may arrest the person without a warrant on the charge of violating section 200-62. [L 1991, c 272, pt of §2]

"PART VI. VESSEL IDENTIFICATION NUMBERS

[\$200-71] Hull, defined. As used in this part, "hull" means the shell, frame, or body of a vessel, exclusive of masts, yards, sails, riggings, machinery, and equipment. [L 1991, c 272, pt of §2]

[\$200-72] Defacing, etc., vessel hull identification numbers. No person shall wilfully deface, destroy, remove, or alter the vessel hull identification number which is carved, burned, stamped, embossed, or otherwise permanently affixed to the hull of a vessel by the manufacturer, or by the owner in the case of restoration, for the purpose of identifying the hull. This section does not prohibit the restoration by an owner of an original number when the restoration is authorized by the department, nor prevent any manufacturer from placing in the ordinary course of business, numbers or marks upon new hulls. [L 1991, c 272, pt of §2]

[\$200-73] Unlawful to possess certain vessels or hulls. No person shall possess a vessel or hull, knowing that the vessel hull identification number, placed on the same by the manufacturer or the owner for the purpose of identification, has been changed, altered, erased, or mutilated for the purpose of changing the identity of the vessel or hull thereof. Any vessel or hull from which the vessel hull identification number carved, burned, stamped, embossed, or otherwise permanently affixed to the hull by the manufacturer or by the owner, has been removed, defaced, or altered shall be caused by the chairperson to be taken into custody and, if not identified, disposed of pursuant to part III. If identified, the chairperson shall:

- (1) Notify the owner at the owner's last known address or the address shown on the records of the department or United States Coast Guard, and all lien holders who have properly filed a financing statement, referencing the name of the registered owner, in the bureau of conveyances or who are shown on the records of the department or United States Coast Guard;
- (2) Authorize restoration of the original vessel hull identification number or if unknown, assign a new number; and
- (3) Restore the vessel or hull to the owner upon payment to the State of all costs and expenses incurred by the

State causing the vessel to be taken into custody. [L
1991, c 272, pt of §2]

" **[\$200-74] Penalty.** Any person who violates this part
shall be guilty of a misdemeanor. [L 1991, c 272, pt of §2]

"PART VII. ALCOHOL AND BOATING SAFETY--REPEALED

§§200-81 to 96 REPEALED. L 2000, c 189, §27.