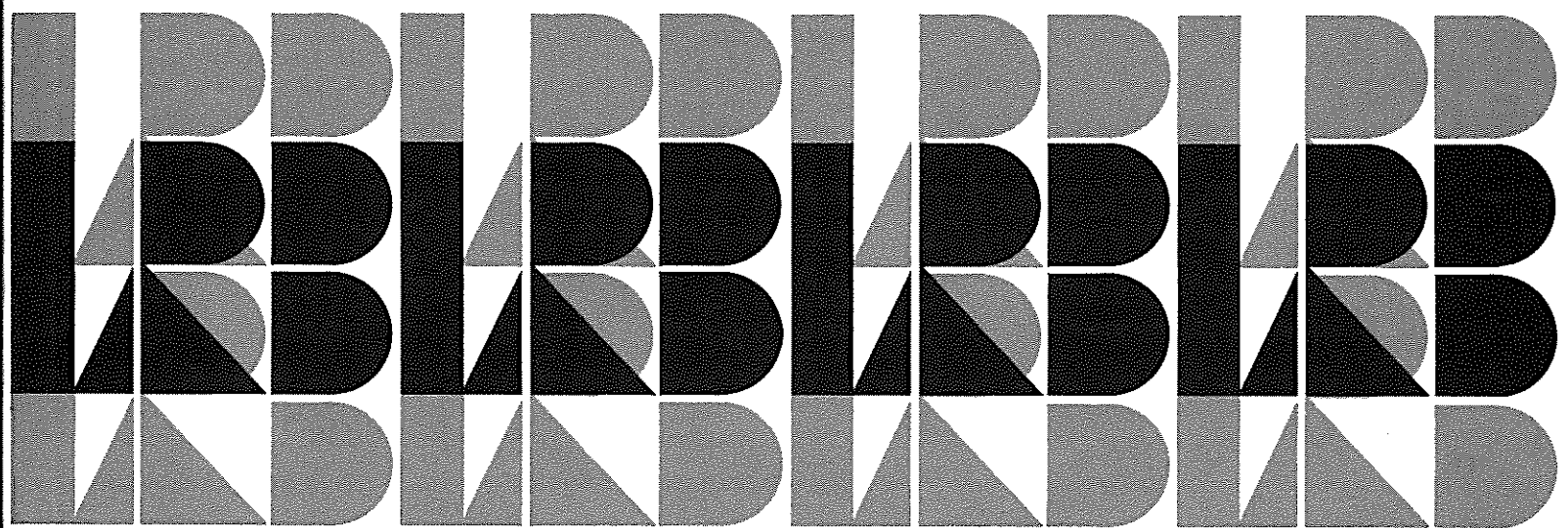
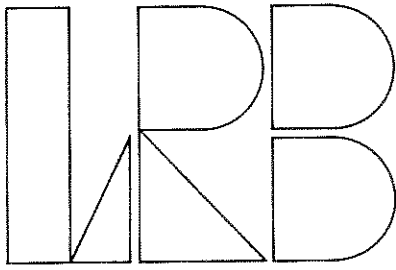


COMPENDIUM OF STATE OCEAN AND MARINE RELATED POLICIES



LEGISLATIVE REFERENCE BUREAU/STATE OF HAWAII



THE OFFICE OF THE LEGISLATIVE REFERENCE BUREAU

The present Office of the Legislative Reference Bureau resulted from Act 171, Session Laws of Hawaii 1972, which transferred, as of July 1, 1972, the former Legislative Reference Bureau out of the jurisdiction of the executive branch of government to the legislative branch of government. In addition, the Office of the Revisor of Statutes, formerly under the Judiciary, was placed within the Bureau for administrative purposes only. In 1977, Act 8 of the First Special Session, completed the integration process by making the functions performed by the revisor additional responsibilities of the Bureau. The end result of this legislation is to centralize under the Legislature the functions of bill drafting and bill publication as well as research and reference services supportive of the Legislature. The new Bureau is one of three legislative support agencies directly under the Legislature.

As a governmental institution, however, the Legislative Reference Bureau has its origins in Act 91, Session Laws of Hawaii 1943, when the Territorial Legislature established the organization as an integral part of the University of Hawaii.

Services performed by the Bureau cover a wide range from major report writing to bill drafting for the Legislature to answering telephone requests for information. Briefly, these services include:

1. Maintaining a reference library.
2. Preparing studies and reports and drafting of legislative measures in response to legislative requests.
3. Providing service to legislative committees, including interim committees.
4. Publishing standard reports.
5. Compiling and exchanging information with similar legislative service agencies in other states and with national organizations.
6. Providing information to legislators.
7. Conducting and coordinating pre-session seminars for members of the Legislature and for their legislative staffs.
8. Serving as a member of governmental boards and commissions when Bureau representation is specified.
9. Conducting impartial research, including legal research, as may be necessary for the enactment of legislation upon the request of the Legislature.
10. Controlling and maintaining the operations of any legislative data processing program as may be established.
11. Assisting, upon request, other legislative service agencies on matters within the Bureau's competency.
12. Maintaining a legislative information office serving the general public when the Legislature is in session.
13. Publishing the session laws and supplements to, and replacement volumes of, the revised statutes.
14. Conducting a systematic and continuing study of the laws of Hawaii for the purpose of reducing their number and bulk, removing inconsistencies, redundancies, unnecessary repetitions and otherwise improving their clarity; and for that purpose, preparing and submitting to the Legislature such reports, recommendations and drafts of legislation to carry out recommendations made.
15. Establishing a format for, and compiling and publishing an index of, rules adopted under the Administrative Procedure Act.

COMPENDIUM OF STATE OCEAN AND MARINE RELATED POLICIES

By

Thomas S. Brennan
Researcher

and

Ken H. Takayama
Researcher

Legislative Reference Bureau
State Capitol
Honolulu, Hawaii

FOREWORD

This collection of state ocean and marine-related policies was compiled in response to House Resolution No. 246, adopted during the 1986 Regular Session of the Hawaii State Legislature. The compendium is a collection of references to state statutes, administrative agency rules, functional plans, and other documents used by state agencies in formulating ocean and marine-related policies. As requested in the Resolution, recommendations are made with regard to the feasibility of enacting, organizing, or otherwise publishing these state policies in a particular manner.

Two features of the compendium which should be noted are that:

- (1) Certain references to the Hawaii Revised Statutes are made in more than one chapter of the compendium. This is because each law does not necessarily fit in its entirety within a particular subject area into which the compendium chapters have been divided. For example, certain laws regulating fishing could be characterized as "conservation", "food production", or "recreation", depending upon the particular intent of the person affected;
- (2) As a general rule, the references within each subject area are arranged in numerical order. This is intended to facilitate the maintenance of the compendium in future years to adjust to the enactment of new laws, and the amendment or repeal of existing laws.

It should also be noted that the primary value of this compendium stems from the fact that it draws together policy references for:

- (1) A broad topic of developing interest;
- (2) Where statutory and administrative responsibilities are presently divided among a variety of state agencies.

It would be far less useful to undertake a similar project for topics in such areas as health, transportation, education, crime, or other areas where the primary responsibilities are vested in a few agencies.

The format of this publication differs from other Bureau publications in that the Introduction and Findings and Recommendations sections were not assigned separate chapter numbers whereas chapters 1 through 6 contain the substantive part of the compendium. This was done deliberately so that any person who desires to update and maintain the compendium in an updated format is free to break out these chapters by photocopying or taking them from the bound volume and installing the pages in a three ring binder for ease of future additions and deletions.

The Bureau acknowledges with appreciation the cooperation of all agencies which provided information of inclusion in the compendium, and, in particular, Mr. Howard Goldstein and Mr. Tom Brandt of the Department of

Planning and Economic Development, and Mr. Henry Sakuda and Mr. Eric Onizuka of the Department of Land and Natural Resources.

Samuel B. K. Chang
Director

February 1987

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INTRODUCTION

This publication was produced in response to House Resolution 246, which was adopted by the House of Representatives during the Regular Session of 1986. The Resolution requested the Bureau to:

- (1) Develop a compendium of state policies concerning ocean and marine affairs including, but not limited to such areas as food production, energy, mineral mining, waterborne transportation, and recreation; and
- (2) Study the feasibility of centralizing ocean policies by consolidating them into "a single new chapter of the Hawaii Revised Statutes, the Hawaii State Planning Act, a new state functional plan, or in some other format."

The American Heritage Dictionary of the English Language (1971 edition) defines the term "policy" to mean:

1. Any plan or course of action adopted by a government...designed to influence and determine decisions, actions, and other matters....
- 2.a. A course of action, guiding principle, or procedure considered to be expedient, prudent, or advantageous....

Pursuant to this definition, we have included all state constitutional and statutory provisions, and administrative agency rules which apply to ocean and marine affairs. These provisions, which have the force and effect of law, have already been determined by the people of the State who approved the constitution, the legislature which enacted the laws, or the administrative agency which adopted the rules, that the particular statement is a "course of action, guiding principle, or procedure considered to be expedient, prudent, or advantageous".

We have also included portions of various functional plans, and made references to other documents, none of which have the force and effect of law. While the functional plans do not have the force and effect of law, they are designed to influence and determine decisions, actions, and other matters. Further, the plans were specifically authorized by the State Planning Act (chapter 226, Hawaii Revised Statutes), and approved by the legislature after their completion.

References to other documents have been included where they relate to policymaking in a particular area. These documents are a varied collection of studies, plans (other than the functional plans) and other monographs. Unlike the functional plans, the connection between policymaking and a given document is much less clear. The functional plans have already been set forth as policies by administrative agencies and the legislature. The other documents have not been proclaimed as policies. If anything, they usually provide some of the information which goes into agency determinations of what a policy will or should be. These documents were obtained by asking all state agencies to submit copies of documents which they used as a basis for

formulating policies relating to the ocean. The Bureau had no basis to presume that a document was used as a basis for policy unless the agency identified it as such. Documents other than functional plans were not included in this compendium unless an administrative agency indicated that the particular document was used as a basis for policy in a specified area. No specific policies are attributed to any of these documents. They are simply cited as being relevant to policy in that area. The reasons for these limitations are two fold:

- (1) A document could not be presumed to be a basis for policy simply because it was relevant to a particular subject area. The most noteworthy document cannot be a basis for policy if the policymaking entity does not know of the document or ignores its existence;
- (2) While agencies were willing to state that a particular document was relevant to policymaking in a specified area, they could not, would not, or simply did not indicate that the document served as the basis for a particular policy. For example, an agency stated that some of the recommendations of an aquaculture study were a basis for some of the policies in the area of aquaculture. The agency could not specify what particular recommendations were used, or what particular aquaculture policies were linked to the study.

Accordingly, documents other than the functional plans are cited as being relevant to policy areas rather than specific policies. The areas cited are as specific as could be made with the information provided by the agency using the document. The document references have been included because they provide useful information concerning the sources of information an agency considers important in a particular area. As such, they will be useful to persons researching state policies in the particular area.

As a collection of state ocean and marine related policies, this compendium serves only to identify state policies set forth in the sources mentioned above. It does not attempt to analyze or resolve conflicts which arise in the implementation of the respective policies, or between the policies themselves. Limitations of time have precluded the inclusion of case law interpreting state statutes and other policies. Federal and international laws, treaties, agreements, and other sources of policy are similarly outside the scope of this publication.

Chapter 1

CONSERVATION AND ENVIRONMENTAL PROTECTION

I. Environmental Quality Control

The State and its political subdivisions are required to conserve and protect Hawaii's natural beauty and resources and promote the development and utilization of resources in a manner consistent with conservation and in furtherance of self-sufficiency for the State. All natural resources are held in trust by the State for the benefit of the people. [Hawaii State Constitution, Art. XI, §1]

The State may promote and maintain a healthful environment and may prevent excessive demands upon it and upon state resources. [Hawaii State Constitution, Art. IX, §8]

Each person may defend that person's right to a clean and healthful environment with legal action against any other party; a clean and healthful environment shall result from the control of pollution and the conservation, protection, and enhancement of natural resources. [Hawaii State Constitution, Art. XI, §9]

The department of health shall have administrative control over an office of environmental quality control, which shall:

- (1) Advise the governor on all environmental matters;
- (2) Direct all state agencies on matters of environmental quality control pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS;
- (3) Direct the attention of the public and the University of Hawaii toward environmental and ecological problems through public education and through the University's environmental center or the environmental council established in chapter 341, HRS;
- (4) Conduct or contract for research on environmental and ecological quality;
- (5) Receive public and private complaints concerning ecological and environmental quality and encourage public acceptance of proposed ecological and environmental legislation; and
- (6) Recommend programs and legislation to further environmental quality control laws. [Hawaii Revised Statutes, §§341-3, 341-4]

The University of Hawaii shall establish an ecological or environmental center, which shall coordinate the university's research, educational and service efforts in ecological relationships and natural resources toward

determining and maintaining an optimum environmental quality. [Hawaii Revised Statutes, §§341-3, 341-5]

The department of health shall have administrative control over an environmental council, which shall:

- (1) Hear public complaints and advice concerning environmental quality;
- (2) Recommend measures for achieving environmental quality to the director of the office of environmental quality; and
- (3) Monitor county, state and federal agencies for progress toward achieving state environmental quality goals. [Hawaii Revised Statutes, §§341-3, 341-6]

A. Waste Disposal and Water Pollution Control

Each county shall maintain channels, streambeds, streambanks, and drainageways used for the drainage of storm waters, including their exits to the sea; such maintenance shall include removal of debris likely to create an unsanitary condition or otherwise become a public nuisance from these channels, streambeds, streambanks, and drainageways and from shores and beaches. The counties shall also enforce private responsibility for such maintenance. [Hawaii Revised Statutes, §§46-11.5, 62-34]

The council of the city and county of Honolulu shall make and enforce ordinances relating to sanitation, sewers, and fish. The council may also appoint city physicians and inspectors with powers similar to those of department of health inspectors to enforce such ordinances. [Hawaii Revised Statutes, §70-62]

All public contracts awarded pursuant to laws concerning public contracts and the expenditure of public money shall provide for pollution control. [Hawaii Revised Statutes, §103-61]

No person may strip mine without a permit from the board of land and natural resources; operators engaged in strip mining shall not discharge or allow the discharge of poisonous or noxious matter into streams or shore waters. [Hawaii Revised Statutes, §181-3]

The department of transportation shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, to provide for pollution control for all harbors, ocean waters, and navigable streams. [Hawaii Revised Statutes, §266-3]

The department of health shall adopt rules to prevent, control, and abate water pollution. The director of health shall have the power, in pursuit of this objective, to:

- (1) Establish water quality and sewage treatment standards;

- (2) Appoint a master to conduct investigations and public hearings at the department's initiative or in response to a complaint and take legal action to prevent, control or abate water pollution;
- (3) Advise all persons intending to begin or continue a business or undertaking or intending to alter a sewage disposal system which may pollute state waters;
- (4) Conduct and supervise research and educational or training programs concerning the causes, effects and hazards of water pollution and concerning methods for water pollution prevention and control;
- (5) Require the operator of any effluent source to keep such records, make such reports, install and maintain such monitoring equipment, take such effluent samples, provide such plans of existing or planned disposal facilities and permit the entry of authorized departmental inspectors to conduct such inspections as the director may determine are necessary to control water pollution;
- (6) Regulate those wastewater treatment facilities that are not regulated by the counties;
- (7) With the governor's approval, cooperate with and receive money from public or private sources to study or control water pollution; and
- (8) Note and report annually on the quality of state waters.
[Hawaii Revised Statutes, §342-32]

No person or public body shall discharge or allow the discharge of any pollutants into state waters or establish, alter or cause to be altered any sewage disposal system or water supply except by permit or in compliance with laws concerning environmental quality. [Hawaii Revised Statutes, §342-33]

The director of health shall have powers similar to those the director may use to control water pollution to prevent, control, or abate solid waste pollution. [Hawaii Revised Statutes, §342-52; see also §342-32]

No person or public body shall operate a solid waste disposal system without a permit from the director of health. [Hawaii Revised Statutes, §342-53]

The director of health may make amend and repeal state rules and regulations pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, controlling and prohibiting water pollution solid waste pollution and any other form of pollution found in the State. [Hawaii Revised Statutes, §342-3]

The department of health shall not grant a variance for any discharge which violates the Federal Water Pollution Control Act or any of its amendments. [Hawaii Revised Statutes, §342-7]

In order to enforce environmental pollution laws, the director of health, as appropriate, may:

- (1) Issue a cease and desist order;
- (2) Issue an emergency order to cease and desist;
- (3) Issue a citation;
- (4) Invoke the penalties listed in chapter 342-11(c), HRS, or
- (5) Sue for injunctive relief against violators of environmental pollution laws or of any rules adopted thereunder. [Hawaii Revised Statutes, §§342-8, 342-11, 342-11.3, 342-11.5, 342-12]

The State shall protect its natural water, visual, and other resources by controlling pollution. [Hawaii Revised Statutes, §344-3]

Department of Health Water Pollution Rules, Water Quality Standards

The general policies stated are to:

- (1) Protect, maintain, and improve water quality for:
 - (A) Food processing;
 - (B) Growth, support, and propagation of shellfish, fish, and other desirable species of marine and aquatic life;
 - (C) Oceanographic research; and
 - (D) Conservation of coral reefs and wilderness areas
- (2) Prevent the lowering of water quality standards which are higher than established standards, unless the change is justifiable as a result of necessary economic or social development, and will not interfere with or become injurious to any of the presently assigned uses.
[§11-54-01, Hawaii Administrative Rules]

The department has established classes of water uses, including:

- (1) Class 1 inland waters, with the following objectives:
 - (A) Waters shall remain in natural state as nearly as possible; and
 - (B) Wilderness character shall be protected to the extent possible.

Waste discharge into these waters is prohibited.

- (2) Class 2 inland waters, with the objective that use for recreation, propagation of aquatic life, and agricultural and industrial water supply shall be protected. No new industrial or sewage discharges are permitted within estuaries.
- (3) Class AA marine waters, with the objective that waters shall remain in a natural, pristine state as nearly as possible;
- (4) Class A marine waters, with the objective that use for recreation and aesthetic enjoyment shall be protected. No new industrial or sewage discharges are permitted within embayments;
- (5) Class I marine bottom ecosystems, with the objective that they shall remain in natural pristine state as nearly as possible;
- (6) Class II marine bottom ecosystems, with the objective that uses for the protection (and propagation) of fish, shellfish, and wildlife, and for recreational purposes shall not be limited. But actions which may permanently or completely alter or degrade these areas (such as landfill, harbors, sea walls, and wastewater effluent outfall structures) may be allowed if approved by the director of health after the director balances the environmental impact and the public interest pursuant to law.

The rules also specify water quality standards for different categories of waters, and specify a number of areas which are considered to be in a particular category. The categories include:

- (1) Inland waters, which include anchialine pools, coastal wetlands, and estuaries;
- (2) Within marine waters:
 - (A) Embayments, including a number of bays such as Anaehoomalu, Kahana, and Hanalei; and
 - (B) Open coastal waters, such as Waimanalo Bay;
- (3) Within marine bottoms:
 - (A) Sand beaches;
 - (B) Lava rock shoreline and solution benches, including Diamond Head, Barbers Point, and the Hanapepe Salt Ponds;
 - (C) Marine pools and protected coves, including Kalapana, Hana, Kaena Point, and Poipu;

- (D) Artificial basins, including just about if not all harbors;
- (E) Reef flats and communities, which include all reef flats and communities in natural area reserves controlled by the department of land and natural resources, nearshore reef flats, offshore reef flats, wave exposed reef communities, and protected reef communities; and
- (F) Soft bottom communities.

The rules also provide for "zones of mixing", which are limited areas around construction activities and outfalls to allow initial dilution of the discharges. [Chapter 11-54, Hawaii Administrative Rules]

The department of health's water pollution control rules implement the federal National Pollutant Discharge Elimination System (NPDES) to regulate the discharge of pollutants. In general terms, the rules establish procedural requirements to obtain permits to discharge effluents into state waters. The procedural requirements include public notice and hearings.

The permits are required to ensure compliance with federal and state pollution control standards. In issuing permits, the director of health is required to specify the average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge. The director may also specify additional limitations. [Chapter 11-55, Hawaii Administrative Rules]

B. Sewage Treatment

The counties may regulate sewage and wastewater treatment and disposal within their jurisdictions beginning July 1, 1987, unless otherwise authorized by receipt of state funds for this purpose. The counties may also regulate the design, construction, and operation of treatment and disposal facilities, provided the director of health has approved their plans for a regulatory program. [Hawaii Revised Statutes, §46-20]

The council of the city and county of Honolulu may establish and maintain sewer systems, including pumping, treatment, and disposal facilities, or may take over operation of state facilities within its jurisdiction for this purpose. [Hawaii Revised Statutes, §70-77]

The department of health shall have administrative control over a certification board which shall classify all wastewater treatment plants and certify all wastewater plant operators. The board may also revoke, suspend, or refuse to renew certification for any individual with cause. All wastewater treatment plants shall operate only under the supervision of a board-certified operator. [Hawaii Revised Statutes, §§340B-2, 340B-3, 340B-6, 340B-7, 340B-8]

C. Erosion and Sediment Control

The directors of soil and water conservation districts may plan, research, and demonstrate methods for the control and prevention of erosion on public lands within their jurisdiction or, with the permission of the controlling agency or the occupier, on other public or private lands. [Hawaii Revised Statutes, §180-13]

Each of the counties shall enact ordinances -- in cooperation with the various soil and water conservation districts, state and federal agencies -- providing for soil erosion and sediment control. The ordinances shall account for relevant land use, hydrological and geological data, surveys identifying multi-jurisdictional and watershed areas with critical erosion and sediment problems and standards for various soil types with methods for controlling erosion and sedimentation from each. The department of health shall adopt its own conservation and control standards and shall apply them to areas for which the counties have not adopted ordinances by June 15, 1975. [Hawaii Revised Statutes, §§180C-2, 180C-3, 180C-4]

Conservation land use districts shall include areas used for preventing soil erosion. [Hawaii Revised Statutes, §205-2]

D. Litter Control

The department of health may adopt rules to control litter and shall conduct research and educational programs concerned with the prevention and control of litter. [Hawaii Revised Statutes, §§339-2, 339-3]

No person shall dispose of litter on public or private property or in the waters of the state except in a county- or state-designated disposal site, a litter receptacle or a litter bag that is later properly disposed of. [Hawaii Revised Statutes, §339-4]

Public highways, beaches and bathing areas shall have a suitable number of litter receptacles, as established by department of health rules. [Hawaii Revised Statutes, §339-6]

The department of health, in addition to other penalties listed, may apply to circuit court for injunctive relief against violators of state litter laws. [Hawaii Revised Statutes, §§339-8, 339-10]

State General Plan Provisions

The State shall have as a planning objective the maintenance and pursuit of improved quality in Hawaii's land...and water resources. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Promote the proper management of Hawaii's land and water resources; and
- (2) Promote effective measures to achieve desired quality in Hawaii's surface...and coastal waters. [Hawaii Revised

Statutes, §226-13]

The State shall have as planning objectives for its solid and liquid waste facility systems the maintenance of basic public health and sanitation standards in waste treatment and the provision of adequate sewerage facilities for physical and economic activities that alleviate problems in housing, employment, mobility, and other areas. In order to achieve these objectives, the State, as a matter of policy, shall:

- (1) Encourage the adequate development of sewerage facilities that complement planned growth;
- (2) Promote re-use and recycling to reduce solid and liquid wastes and employ a conservation ethic; and
- (3) Promote research to develop more efficient and economical treatment and disposal of solid and liquid wastes. [Hawaii Revised Statutes, §226-15]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the prevention of the degradation and the enhancement of the quality of Hawaii's...water. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Prevent and control...water pollution through long-range planning, environmental impact assessments, interagency coordination, programs, regulations, and financial assistance to local governments in the following manner:
 - (A) The office of environmental quality control shall operate the environmental impact statement process and coordinate interagency programs;
 - (B) The soil and water conservation districts, in cooperation with the department of land and natural resources, shall develop and implement conservation plans for all agricultural lands to prevent the pollution of surface water from soil erosion and sediments resulting from agricultural practices;
 - (C) The wastewater treatment works construction grants branch of the department of health shall make grants to construct or upgrade public wastewater treatment plants, pumping stations, and sewer lines and shall review private wastewater treatment systems;
 - (D) The environmental permits branch of the department of health shall administer a permit program for discharges to...all surface water and for the treatment and disposal of solid wastes;

- (E) The environmental protection and health services division of the department of health shall cooperate with the United States Environmental Protection Agency to develop and maintain a state program to manage the generation, transport, treatment, and disposal of all toxic and hazardous materials;
- (F) The pollution investigation and enforcement branch of the department of health shall investigate reports of...water pollution and shall monitor and inspect dischargers for compliance with required actions and completion schedules; and
- (G) The litter control office of the department of health shall coordinate state-wide campaigns to promote recycling and litter clean-up activities. [Hawaii Health Functional Plan, Objective A, Policy A(1), Implementing actions A(1)(a), A(1)(b), A(1)(c), A(1)(e), A(1)(f), A(1)(g), A(1)(h)]

The State shall have as a planning objective the reduction of the incidence and severity of environmentally induced diseases within the State. In order to achieve this objective, the State, as a matter of policy, shall maintain the surveillance of potential and actual human illnesses caused by non-communicable environmental agents such as pesticides, fumes, and other substances and shall undertake necessary protective environmental control measures. [Hawaii Health Functional Plan, Objective I, Policy I(1)]

The State, as a matter of policy, shall improve agricultural water resource management. In so doing, the department of land and natural resources and the soil and water conservation districts shall provide incentives and assistance to farmers to practice appropriate...erosion and pollution control methods. [Hawaii Agriculture Functional Plan, Policy C(1), Implementing action C(1)(c)]

The State, as a matter of policy, shall encourage hotels and visitor condominium developments to use regional, rather than private, sewerage systems. [Hawaii Tourism Functional Plan, Implementing action B(3)(e)]

The State shall have as a planning objective the effective protection of Hawaii's open space, watershed, and natural areas. In order to achieve this objective, the State, as a matter of policy, shall control the erosion of...state lands through proper conservation and management programs in the following manner:

- (1) The department of land and natural resources shall enforce and maintain soil and water conservation district plans and state lease provisions dealing with good husbandry;
- (2) The department of land and natural resources shall encourage and support local participation in conservation planning and programming as the soil and water conservation districts programs provide; and

- (3) The department of land and natural resources shall identify and treat eroded areas of state lands. [Hawaii Conservation Lands Functional Plan, Objective C, Policy C(2), Implementing actions C(2)(a), C(2)(b), C(2)(c)]

The department of health, in accordance with state policy regarding the conservation and preservation of marine species and ecosystems, shall coordinate programs and activities to minimize non-point sources of water pollution, including cesspools and runoff, adversely affecting marine resources. [Hawaii Ocean Management Plan, Implementing action III.C.5.]

The State shall have as a planning objective the protection of the health of Hawaii's citizens and the minimal degradation of marine resources and ecosystems by ocean waste disposal activities and maritime accidents. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Develop a capability to manage present and future nuclear waste disposal needs;
- (2) Effectively represent its interests in national and international decisions regarding the disposal of wastes or accidental spills in the Pacific ocean;
- (3) Minimize the impact of cargo spills, particularly of oil, and tanker cleaning activities on marine ecosystems; and
- (4) Insure that federal regulatory controls over ocean waste disposal activities within the State reflect the unique geographical characteristics of the Hawaiian Islands.

Specific actions shall include:

- (1) The department of health and the attorney general shall seek to designate the department of health as the State's representative for all matters concerning nuclear waste disposal in the Pacific Ocean. The department of health shall develop expertise and maintain an awareness of matters relating to nuclear waste disposal in order to formulate and administer state policies and a program to represent state interests at the national and international level;
- (2) The department of health shall develop guidelines acceptable to the United States Environmental Protection Agency for the establishment of an ocean waste disposal and monitoring program relevant to Hawaii's tropical waters;
- (3) The department of health shall assess the State's capabilities to address risks associated with transporting hazardous materials across Hawaii waters. [Hawaii Ocean Management Plan, Objective IV.A., Policies IV.B.1, IV.B.3., IV.B.4., IV.B.5., Implementing actions IV.C.1., IV.C.2., IV.C.4.]

The State shall have as a planning objective the minimization of hazards to public and private property resulting from beach erosion. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Support research on beach erosion processes applicable to land and water use planning and decision making;
- (2) Strengthen the legal basis for controlling land and water development susceptible to or furthering beach erosion impacts; and
- (3) Promote the use of non-structural erosion control measures instead of structural measures where possible.

Specific actions shall include:

- (1) The department of planning and economic development shall identify erosion-prone beaches in the counties of Kauai, Maui and Hawaii and shall prepare maps of critical erosion areas as an information base to facilitate effective planning and permit decisions; and
- (2) The department of planning and economic development shall develop and submit to the legislature amendments to state laws to provide more effective control over development on erosion-prone beaches and over development activities which could cause or aggravate erosion. [Hawaii Ocean Management Plan, Objective V.A., Policies V.B.1., V.B.2., V.B.4., Implementing actions V.C.1., V.C.2.]

The department of health, in accordance with state policy providing for the establishment of an ocean mineral processing industry, shall examine regulations on ocean waste disposal in Hawaii, including water quality standards, geographic and activity jurisdictions and pollutant types with an emphasis on monitoring and enforcement and shall seek amendments for improvements to such regulations. [Hawaii Ocean Management Plan, Implementing action XI.C.4]

Hawaii, Department of Health, Water Quality Management Plan for the State of Hawaii (summary), December, 1980. The department has cited this document as a basis for policy in the subject area.

II. Marine Life Conservation

The department of land and natural resources shall manage and administer the State's aquatic life and wildlife resources. [Hawaii Revised Statutes, §26-15]

The department of land and natural resources shall manage and administer the State's aquatic life, aquatic life sanctuaries wildlife, wildlife sanctuaries, game management areas and natural area reserves. [Hawaii Revised Statutes, §171-3]

The board of land and natural resources may investigate and develop scientific commercial management practices for government-owned fishponds and may reconstruct, rehabilitate, improve, and stock such fishponds. [Hawaii Revised Statutes, §171-28]

The board of land and natural resources shall provide, when appropriate, for the protection of game management areas and wildlife sanctuaries in every lease it issues. [Hawaii Revised Statutes, §171-35]

The board of land and natural resources may allow the destruction, without permit, of birds and mammals that threaten aquaculture. [Hawaii Revised Statutes, §183D-61]

The department of land and natural resources shall:

- (1) Manage and administer the aquatic life and resources of the State;
- (2) Establish and maintain aquatic life propagation stations;
- (3) Establish, manage, and regulate artificial reefs, fish aggregating devices, marine life conservation districts, shoreline fishery management areas, and refuges;
- (4) Import aquatic life for breeding and stocking;
- (5) Compile information and statistics concerning the character and status of the state's aquatic resources;
- (6) Enforce all laws relating to the protection, taking, killing, propagating, or increasing of aquatic life in state waters. [Hawaii Revised Statutes, §187A-2]

The department of land and natural resources shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, to provide for the protection and propagation of introduced and transplanted aquatic life. These rules may specify allowable catch sizes and bag limits, season durations, allowable types and amounts of fishing gear, allowable types and amount of bait and conditions for entry into fishing areas. [Hawaii Revised Statutes, §187A-5]

The department of land and natural resources may take or permit the taking of aquatic life for scientific, educational or propagation purposes except as prohibited by chapter 195D, HRS. [Hawaii Revised Statutes, §187A-6]

The department of land and natural resources shall perform those duties necessary to establish cooperative aquatic life restoration and management programs under the Dingell-Johnson Federal Aid in Fish Restoration Act. [Hawaii Revised Statutes, §187A-9]

The University of Hawaii may use department of land and natural resources facilities, property and land for biological laboratory research,

provided such use does not interfere with the department's use of these facilities for an aquatic life propagation station for other aquatic purposes. The university will, in turn, render such assistance as is practicable or as may be agreed upon in connection with the department's activities. [Hawaii Revised Statutes, §187A-12]

The department of land and natural resources may establish and maintain marine reserves, refuges and public fishing areas in order to manage, conserve, protect and propagate aquatic life in waters under departmental control or, if the department and a private owner so agree, in privately owned waters, lands or fisheries. No person may lawfully enter such areas without a departmental permit, if required, or violate any governing departmental rule. [Hawaii Revised Statutes, §188-53]

Department of Land and Natural Resources Rules for Fisheries Management

The department has established marine fisheries management areas in:

- (1) Hilo Bay, Wailoa River, and Wailuku River, Hawaii;
- (2) Waikiki-Diamond Head Shoreline, Oahu;
- (3) Hanamaulu Bay and Ahukini Recreational Pier, Kauai;
- (4) Waimea Bay and Waimea Recreational Pier, Kauai;
- (5) Kahului Harbor, Maui;
- (6) Kailua Bay, Hawaii;
- (7) Manele Harbor, Lanai;
- (8) Puako Bay and Puako Reef, Hawaii; and
- (9) The Leeward (Northwestern) Hawaiian Islands.

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

- (1) The use of traps, most types of nets, spears (for crabs), and taking certain types of fish during specified months (Hilo Bay);
- (2) Fishing with more than a specified number of poles, lines, hooks, or any combination thereof (Hilo Bay, Waimea Recreational Pier, Kailua Bay);
- (3) Using specified types of nets (Hilo Bay, Waimea Bay, Hanamaulu, Kahului, Kailua Bay, Manele, Puako);

- (4) Any fishing activity during specified periods (Waikiki-Diamond Head);
- (5) Commercial fishing allowed if permits obtained (Leeward Hawaiian Islands).
[Chapters 13-47 to 13-54, Hawaii Administrative Rules]

The department has also restricted generally the taking, killing, removal, and sale of a variety of marine life, including:

- (1) Abalone, top shell, and several types of oysters;
- (2) Samoan crabs (with eggs, or below minimum size);
- (3) Japanese littleneck clams (other than during open season);
- (4) Octopi (below minimum size);
- (5) Ulua, papio, and omilu (catch limit for home consumption, minimum weight for sale);
- (6) Moi, moi-iii, and oama (size and catch limits);
- (7) Spiny lobster or ula (size limits);
- (8) Nehu (taking prohibited except for family consumption--net size and volume of catch regulated);
- (9) Pink and gold corals (taking prohibited except by permit; limits on size and total take by all permittees); and
- (10) Opihi (size limits).
[Chapters 13-83 to 13-92, Hawaii Administrative Rules]

The department of land and natural resources shall administer as a marine life conservation area all marine waters of the State. No person may take any fish, crustacean, mollusk, live coral, algae, or other marine life or take or alter any rock, coral, sand, or other geological feature except by departmental permit. [Hawaii Revised Statutes, §190-1]

The department of land and natural resources may establish and modify the boundaries of any conservation district or declare all waters within a county a conservation district. [Hawaii Revised Statutes, §190-2]

The department of land and natural resources shall adopt such rules, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, concerning the taking or conservation of marine life as it determines will further the state policy of conserving, supplementing and increasing state marine resources. These rules may prohibit activities that disturb, degrade, or alter the marine environment and may regulate the duration of seasons, the allowable areas, and methods for taking aquatic life. [Hawaii Revised Statutes, §190-3]

The department of land and natural resources may prohibit the taking of marine life except by permit for scientific, educational, or other purposes under conditions that cause minimal adverse effects within the district. [Hawaii Revised Statutes, §190-4]

Department of Land and Natural Resources Rules Establishing Marine Life Conservation Districts

Marine life conservation districts are established at:

- (1) Hanauma Bay, Oahu;
- (2) Kealakekua Bay, Hawaii;
- (3) Manele-Hulopoe, Lanai;
- (4) Molokini Shoal, Maui;
- (5) Honolua-Mokuleia, Maui
- (6) Lapakahi, Hawaii;
- (7) Pupukea, Oahu; and
- (8) Wailea Bay, Hawaii.

The rules generally prohibit all activities which do or could injure any marine life in the area. The emphasis is on preservation, not only of the marine life, but the area itself, as the alteration, destruction, and removal of inanimate features such as sand, rocks, and geological features is prohibited.

In all of the districts, the department may issue permits to allow activities which would otherwise be prohibited, if the activities are done for scientific, propagation, or other related purposes. [Chapters 13-28 to 13-35, Hawaii Administrative Rules]

The legislature finds that in order to protect the State's distinctive marine plants and animals the State must strengthen its existing system of preserves, sanctuaries and refuges, set aside additional shoreline and establish a statewide natural area reserves system to preserve specific water areas in perpetuity. [Hawaii Revised Statutes, §195-1]

The department of land and natural resources shall administer the natural area reserves system and shall adopt rules, with the approval of the natural area reserves system commission and pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, governing the use, control, and protection of the areas within the system. The department may also confer police powers upon such of its employees as it deems necessary to enforce those rules. The department furthermore may designate as a reserve area and bring under its control state land under its jurisdiction and land acquired by gift, purchase, or eminent domain. [Hawaii Revised Statutes, §§195-3, 195-4, 195-5]

The department of land and natural resources shall have administrative control over a natural area reserves commission, which shall:

- (1) Recommend criteria for use in determining the suitability of an area for inclusion in the system;
- (2) Study and recommend areas for inclusion in the system;
- (3) Recommend controls and permitted uses for system areas;
- (4) Advise the governor on all matters concerning the preservation of unique state natural resources; and
- (5) Develop means of extending and strengthening existing reserve areas. [Hawaii Revised Statutes, §§195-6, 195-7]

The department of land and natural resources has adopted rules to regulate activities within the natural area reserves. Among other things, the operation of motorized vehicles in marine waters within the natural area reserves is prohibited except as otherwise provided in the boating rules adopted by the department of transportation. [Chapter 13-209, Hawaii Administrative Rules]

See Part III of Chapter 5, Recreation, for Boating Rules Adopted by the Department of Transportation.

The department of land and natural resources may study aquatic species and wildlife in order to learn about their biology, ecology, population, status, distribution, habitat needs, and other information necessary for their effective conservation. The department may also for purposes of conservation adopt rules, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, concerning the taking, possession, transportation, importation, exportation, processing and selling of aquatic life. No person, unless permitted by the department, may undertake any of these activities with any species the department deems in need of conservation. [Hawaii Revised Statutes, §195D-3]

The department of land and natural resources shall accord those species designated "endangered" or "threatened" under the Endangered Species Act the same status under the state law for conservation of aquatic life, wildlife, and land plants, provided that the department may so designate such species throughout all or part of their natural range. The department may designate additional species "endangered" or "threatened" by rule, and shall include in such rules a list of all species so deemed, identifying each with its scientific, common and Hawaiian name. The department shall also periodically review the list to determine if any species, except those classified under the Endangered Species Act, should be added or removed. No person, except by departmental license for scientific or breeding purposes, may export, take, possess, process, sell, or violate any conservation rule adopted for the protection of any endangered or threatened species. [Hawaii Revised Statutes, §195D-4]

The department of land and natural resources shall research indigenous aquatic life, endangered species, and their associated ecosystems and use its land acquisition or other authority for the conservation of such species. The governor shall review other departmental programs and direct the department to use appropriate programs for the conservation of aquatic species; the governor shall furthermore encourage other state and federal agencies to use their authority for such purposes, and the department shall be free to agree with those agencies to jointly carry out programs authorized by this section. The department shall accord priority in its programs to endemic species facing extinction, and shall coordinate its conservation programs and research with the natural area reserves commission and the animal species advisory commission. [Hawaii Revised Statutes, §195D-5]

Department of Land and Natural Resources Rules Establishing Lists of Indigenous, Endangered, or Threatened Wildlife

The lists include various forms of marine life such as certain species of sea snakes, turtles, dolphins, and whales.

The department has established a permit system under which the collecting, killing, or transporting of threatened species and indigenous wildlife is allowed. Permits may be issued only to authorized collectors of recognized museums, persons engaged in scientific research, educational programs for which collecting is essential, or to enhance propagation or survival of the species.

Permits may be issued to allow keeping indigenous wildlife for protection, treatment for injury or disease, propagation, or other purposes consistent with preservation and conservation.

Permits may be issued to destroy birds which are harmful or destructive to crops, native flora or fauna, or constitute a human health hazard. [Chapter 13-124, Hawaii Administrative Rules]

The board of land and natural resources may confer police powers upon department of land and natural resources employees to enforce laws relating to the conservation of endangered, threatened or indigenous species or any rule adopted thereunder. The police powers shall include the authority to conduct searches and seize any equipment, business records, merchandise, aquatic life or wildlife taken, possessed, transported, used or sold in violation of the conservation laws or any rule adopted thereunder. [Hawaii Revised Statutes, §§195D-7, 195D-8]

The department of land and natural resources shall have administrative control over an animal species advisory commission, which shall advise the board of land and natural resources on all matters concerning the introduction, from within or without the State, of aquatic life or wildlife into any habitat within the State; the commission shall also advise the board on all matters concerning the taking or conservation of aquatic life or wildlife, including proposed rules. The commission may acquire such information and hear such persons as it deems necessary to its function. [Hawaii Revised Statutes, §197-7]

The department of land and natural resources shall not introduce, whether from within or without the State, any aquatic life or wildlife into any habitat within the State unless the department permits such introduction by rule and recommendation. When forming its recommendation, the department shall consider:

- (1) What conditions limit the distribution and abundance of the species proposed for introduction in its native habitat and what its likely pattern of dispersal in the proposed area of introduction will be;
- (2) Whether the department could instead encourage an increase in a desirable, ecologically comparable or indigenous species already present in the proposed area of introduction;
- (3) Whether the proposed introduction will threaten in any way the existence and stability of any indigenous species;
- (4) Methods for controlling or eliminating, if necessary, the proposed introduction in the proposed area of introduction or in adjoining areas;
- (5) Whether the proposed introduction will enhance economically or aesthetically the proposed area of introduction;
- (6) Whether the proposed introduction is free of communicable diseases or parasites; and
- (7) Whether the proposed introduction will create a conflict among land use policies within the proposed area of introduction or adjoining areas.

The department, before introduction, shall test the suitability of the proposed introduction under conditions approximating as nearly as practicable the conditions of the proposed habitat and, after introduction, shall monitor the spread rate and impact of the introduction on its new habitat. [Hawaii Revised Statutes, §197-3]

Each county shall establish an aquatic life and wildlife advisory committee, which shall advise the department of land and natural resources on all matters concerning the taking and conservation of aquatic life and wildlife within the county, including proposed rules. Each committee may acquire such information and hear such persons as it deems necessary to its function. [Hawaii Revised Statutes, §197-4]

The board of land and natural resources shall establish in the department of land and natural resources a conservation and resources enforcement program and shall employ within it enforcement officers to whom it may delegate such authority as is needed to:

- (1) Enforce the conservation and resources laws included within title 12, HRS, the historic preservation law, chapter 6E, HRS, and any rules adopted thereunder;

- (2) Conduct such investigations, field observations and inspections, respond to such complaints, and gather such evidence as required or assigned;
- (3) Cooperate with other state, county, and federal agencies in joint conservation and resources enforcement programs;
- (4) Check and verify all department-issued leases, permits and licences; and
- (5) Enforce chapter 134, HRS, concerning firearms and dangerous weapons. [Hawaii Revised Statutes, §§199-1, 199-2, 199-3]

The board of land and natural resources shall have and may confer police powers upon employees in the conservation and resources enforcement program, including the power to make arrests, issue citations and seize property used in violation of title 12, HRS, or any rule adopted thereunder. [Hawaii Revised Statutes, §§199-4, 199-7]

Conservation land use districts shall include areas necessary for the conservation of endemic plants, fish and wildlife. [Hawaii Revised Statutes, §205-2]

The department of land and natural resources shall have zoning powers over conservation districts. [Hawaii Revised Statutes, §205-5]

Department of Land and Natural Resources Rules Designating Conservation Land Use Districts

The rules designate a number of subzones within conservation districts. Some of these subzones, including, but not limited to Keahole Point, Anaehoomalu, Milolii, and Manuka Bay include the shoreline, parts of the ocean, or both.

Protective or (P) subzones include areas necessary for preserving natural ecosystems of native fish, particularly those which are endangered, and all of the Northwestern Hawaiian islands except Midway. Marine sanctuaries and refuges may be established. Hunting and fishing programs may be allowed to control animal, plant, and marine populations.

Resource or (R) subzones are intended to develop areas in which the sustained use of the natural resources can be ensured. Included are areas suitable for outdoor recreational areas including fishing, and lands and waters below the upper wash of the waves (vegetation or debris line). Aquaculture, artificial reefs, and commercial fishing are allowed in R subzones.

Special or (SS) subzones are intended to provide for areas possessing unique qualities which complement the natural resources of the area. SS subzones include Sea Life Park (for recreational, educational, and commercial purposes), and Milolii-Hoopuloa (for fishing activities, residential, educational, cultural, and recreational purposes).

The rules establish procedures to obtain permits to carry on activities in the conservation districts, including specific procedures for application, conditions on the permits, and public hearings. [Chapter 13-2, Hawaii Administrative Rules]

Agricultural land use districts shall include as a permitted use game and fish propagation. [Hawaii Revised Statutes, §205-4.5]

The land use commission shall consider the impact of any proposed reclassification of land use districts on the preservation and maintenance of important natural systems or habitats and the maintenance of other valued natural resources. [Hawaii Revised Statutes, §205-17]

The State, as a matter of policy, shall establish and maintain natural area preserves, wildlife preserves, marine preserves, and unique ecological preserves, protect endangered species of indigenous plants and animals and introduce new plants and animals after ensuring that such introduction will pose only a negligible ecological hazard. [Hawaii Revised Statutes, §344-4]

Volunteer deputy game wardens shall enjoy the privileges of worker's compensation as state workers' compensation laws provide. [Hawaii Revised Statutes, §386-181]

State General Plan Provisions

The State shall have as a priority guideline to effect desired land resource utilization the identification of critical environmental areas in Hawaii, including...wildlife ocean habitats, areas with endangered species of plants and wildlife, natural streams and water bodies, scenic and recreational shoreline resources, open space and natural areas, historic and cultural sites, areas particularly sensitive to reductions in...water quality and scenic areas. [Hawaii Revised Statutes, §226-104]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the effective protection and prudent use of Hawaii's unique, fragile and significant environmental and natural resources. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Exercise an overall conservation ethic in the use of Hawaii's resources by protecting, preserving and conserving the State's critical and significant natural resources and controlling the use of hazardous areas in the following manner:
 - (A) The department of land and natural resources shall identify and maintain a comprehensive inventory of critical environmental areas, including...wildlife ocean habitats, areas with endangered species of plants and wildlife...and areas particularly sensitive to reduced...water quality; and

- (B) The department of land and natural resources shall review the state land use districts and the departmental rules and amend as appropriate the criteria for the inclusion of critical environmental areas in the state conservation district;
- (2) Establish and manage wildlife sanctuaries, marine life conservation districts and fishery management areas in the following manner:
 - (A) The department of land and natural resources shall establish new and monitor existing wildlife sanctuaries and Marine Life Conservation Districts; and
 - (B) The department of land and natural resources shall monitor and manage fishery management areas and game populations and habitats. [Hawaii Conservation Lands Functional Plan, Objective A, Policies A(1), A(2), Implementing actions A(1)(a), A(1)(b), A(2)(a), A(2)(b)]

The State shall have as a planning objective the protection of rare or endangered species and habitats native to Hawaii. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Protect and preserve habitats of rare and endangered wildlife in the following manner:
 - (A) The department of land and natural resources shall survey and monitor populations of endangered species and establish sanctuaries when necessary to protect critical habitats; and
 - (B) The department of land and natural resources shall develop, maintain, and operate propagation facilities for endangered wildlife;
- (2) Protect and preserve unique native plant species. [Hawaii Conservation Lands Functional Plan, Objective B, Policies B(1), B(2), Implementing actions B(1)(a), B(1)(b)]

The State, as a matter of policy, shall assess marine resources of the Northwestern Hawaiian Islands for state use and regulation in the following manner:

- (1) The department of land and natural resources shall assess and survey marine resources of the Northwestern Hawaiian Islands for state use and regulation and formulate a plan for managing fisheries in this area. [Hawaii Conservation Lands Functional Plan, Policy E(2), Implementing action E(2)(a)]

The State shall have as a planning objective the conservation and preservation of marine species and ecosystems consistent with their scientific, educational, cultural and historical, recreational, aesthetic, biological, ecological and economic values. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Develop information bases for decisions relating to the designation of areas for marine conservation and preservation;
- (2) Test alternative means for resolving conflicts between marine conservation program efforts and other ocean uses; and
- (3) Coordinate services for marine conservation and protection.

Specific actions shall include:

- (1) The department of land and natural resources shall develop a cooperative program evaluation and planning system to coordinate the designation, management, administration and enforcement of federal, state and county marine conservation and preservation policies;
- (2) The department of land and natural resources shall expand the coordination of public and private agency research to enhance marine conservation and preservation programs;
- (3) The department of land and natural resources shall formulate a strategy for obtaining financial assistance for marine conservation programs; and
- (4) The department of health shall coordinate programs and activities to minimize non-point sources of water pollution, including cesspools and runoff, that adversely affect marine resources. [Hawaii Ocean Management Plan, Objective III.A., Policies III.B.1., III.B.2., III.B.3., Implementing actions III.C.1, III.C.3, III.C.4., III.C.5.]

The department of land and natural resources, in accordance with state policy providing for the development of fisheries that would benefit the State's economy, shall prepare a plan for fisheries management which coordinates various federal, state, and county programs in providing effective and comprehensive management of fishery resources for a variety of user groups. The plan shall include programs limiting the taking of fish and providing controls over consumptive activities, such as fishery management areas, or kapukus, and marine life conservation districts. [Hawaii Ocean Management Plan, Implementing action VI.C.3.]

Hawaii, Department of Land and Natural Resources, Hawai'i Wildlife Plan, January, 1984. The department has cited this document as a basis for policy in the subject area.

Hawaii, Natural Area Reserves System Commission, Management Policy for the Natural Area Reserves System, March, 1984. The commission has cited this document as a basis for policy in the subject area.

Hawaii, Department of Land and Natural Resources, Hawaii Fisheries Development Plan, 1979. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Land and Natural Resources, Hawaii Fisheries Plan, February 1986. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Land and Natural Resources, Midway Islands Albacore Tuna Fishery Feasibility Study, April, 1984. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Land and Natural Resources, A Proposal To Establish a Fishing Support Operation At French Frigate Shoals, Northwestern Hawaiian Islands, May, 1984. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Land and Natural Resources, FY 1984-85 Hawaii Fisheries Coordinating Council Annual Report, 1985. The department has cited this document as a basis for policy in the subject area.

III. Coastal Zones and Coastal Zone Management

All driftwood found on any beach in the State shall be the property of the finder and may be taken for private use; provided that this provision shall not apply to wrecked or stranded vessels. [Hawaii Revised Statutes, §7-2]

No person shall take coral, rock, or sand from any government beach, reef, or sandbar in any of the counties, except for domestic use. In counties other than the city and county of Honolulu, such taking for other uses may be allowed with the written permission of the governmental authority vested by law with control of the coral, rock, or sand. No such taking shall be lawful for any purpose in the city of Honolulu. In places other than the city of Honolulu, coral may be taken for curio purposes. [Hawaii Revised Statutes, §7-3]

Each county shall exercise zoning power by ordinance; ordinances shall specify: areas bordering natural water courses and channels within which the county may restrict or prohibit trades, industries, filling, dumping or building; areas in which the county may restrict certain uses; and building setback lines. [Hawaii Revised Statutes, §46-4]

The counties shall maintain free of debris such channels, streambeds, streambanks and drainageways, including their exits to the ocean, as may carry storm waters, except those properly the responsibility of the State or of a private owner. [Hawaii Revised Statutes, §46-11.5]

Each county shall remove all seaweed, limu or debris posing a public nuisance from the shores and beaches within its jurisdiction or shall enforce such private responsibility for removal as may exist. [Hawaii Revised Statutes, §46-12]

Each county, with the approval of its council, may dispose of any easement, including easements over, under, through and across land bordering the ocean. [Hawaii Revised Statutes, §46-66]

The board of supervisors in each county shall supervise the maintenance of channels, including their exits to the ocean, in a condition suitable for the carrying of storm waters, or shall enforce such private responsibility for maintenance as may exist. [Hawaii Revised Statutes, §62-34]

The council of the city and county of Honolulu may dispose of such county property as it deems no longer suitable for county purposes, provided that the council shall not in any manner dispose of any county property bordering the ocean. [Hawaii Revised Statutes, §70-92]

The department of land and natural resources shall acquire and plan for the acquisition of lands with natural, environmental, recreational, scenic or historic value in order to make them accessible to the public and to effectively control their use. The board of land and natural resources shall administer all lands so acquired and may develop, lease or convey its interest therein, provided that it shall ensure that the transferee uses those lands in a manner consistent with the purpose for which they were acquired and provided that the board shall deposit all revenue from such transactions in a fund for the environment. The board, with the approval of the governor, may also grant to the counties sufficient funds to acquire lands having value as a resource to the State. [Hawaii Revised Statutes, §§173A-1, 173A-3, 173A-4, 173A-5, 173A-7, 173A-8, 173A-9]

No person may strip mine without a permit from the board of land and natural resources; operators engaged in strip mining shall not discharge or allow the discharge of poisonous or noxious materials into streams or shore waters. [Hawaii Revised Statutes, §181-3]

No structure, retaining wall, dredging or grading that interferes now or in the future with the natural course of the beach shall be permitted on accreted land as sections 501-33 or 669-1, HRS, so define it, provided that this provision shall not apply to state or county property. [Hawaii Revised Statutes, §183-45]

The director of planning and economic development, in formulating a general plan, shall include provisions for the designation, acquisition, maintenance, improvement and protection of open space areas for conservation, recreation, and cultural aesthetic or scenic preservation. [Hawaii Revised Statutes, §201-30]

Conservation land use districts shall include areas necessary to preserve scenic areas, beach reserves and open space areas whose openness or natural condition enhances the present or potential value of abutting communities or

the conservation of natural or scenic resources. [Hawaii Revised Statutes, §205-2]

The State shall have as objectives for its coastal zone management program:

- (1) The provision of publicly accessible coastal recreational resources;
- (2) The preservation, protection and restoration of natural and manmade historic resources significant in Hawaiian and American history;
- (3) The preservation, protection, and restoration of coastal scenic and open space resources;
- (4) The protection of valuable coastal ecosystems from disruption and adverse impacts;
- (5) The provision of public or private facilities and improvements important to the State's economy in suitable locations;
- (6) The reduction of hazards to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence; and
- (7) Improved processes of development review, communication and public input into the management of coastal resources and hazards.

The State shall implement these policies as part of its coastal zone management program:

- (1) Improve the coordination and funding of coastal recreation planning and management and provide adequate, accessible and diverse recreational opportunities by:
 - (A) Protecting coastal resources suitable for recreation;
 - (B) Requiring the replacement of or compensation to the State for significant coastal recreational resources, including surfing sites and sandy beaches, when damaged by development;
 - (C) Providing and maintaining such public access to recreational shorelines as does not interfere with resource conservation;
 - (D) Providing an adequate supply of shoreline and other parks and recreational facilities;
 - (E) Encouraging expanded public use of county, state and federal shorelines suitable for recreation;

- (F) Adopting water quality standards and regulating point and nonpoint sources of pollution;
 - (G) Developing new shoreline recreational opportunities, such as artificial lagoons, artificial beaches, artificial reefs for surfing and fishing; and
 - (H) Encouraging the land use commission, the board of natural resources and county planning commissions to dedicate recreational shoreline areas to public use.
- (2) Identify and analyze significant archaeological resources, preserve those remains and artifacts recovered and support state goals for the protection, restoration, interpretation and display of historic resources;
 - (3) Identify, preserve, maintain, improve, and restore valued shoreline open space and scenic resources, ensure the visual compatibility of new developments with their environments and encourage those developments not dependent on the coast to locate inland;
 - (4) Preserve valuable coastal ecosystems by improving the technical basis for natural resource management, effectively regulating stream diversions and the creation of new channels while recognizing competing water uses, and promoting water quality standards that reflect the tolerances of fresh-water and marine ecosystems;
 - (5) Concentrate that development necessary to the State's economy in appropriate areas, directing where possible such development or expansion to areas already so used or designated for such use, and ensure that such coastal-dependent developments as harbors, ports, tourist facilities and energy generating facilities present a minimal adverse social, visual and environmental impact on the coastal zone;
 - (6) Develop and communicate information concerning storm wave, tsunami, flood, erosion and subsidence hazards, control development in areas subject to these hazards, ensure that developments in hazard areas comply with the requirements of the Federal Flood Insurance Management Program, and prevent coastal flooding from inland projects; and
 - (7) Use and implement existing law to manage present and future coastal zone development, process development applications in a timely manner and without overlapping or conflicting requirements, and communicate the potential impacts of new developments soon enough and in such understandable terms as will facilitate public input into the planning and review process. [Hawaii Revised Statutes, §205A-2]

The department of planning and economic development shall have, for the purposes of the coastal zone management law, the power to:

- (1) Receive, expend, and disburse all funds that either the United States or the State makes available for the coastal zone management program;
- (2) Support and assist the administration of the coastal zone management program;
- (3) Review federal permits, licenses, programs and development proposals for consistency with the coastal zone management program;
- (4) Prepare guidelines for the specification and clarification of the objectives and policies of the coastal zone management program in consultation with the counties and the public for submission to the legislature during its regular session;
- (5) Review the administration of the coastal zone management program and state and county agencies and programs for compliance with its provisions;
- (6) Facilitate public participation in the coastal zone management program; and
- (7) Report annually to the governor and the legislature, including in that report recommendations for legislation necessary to require any agency to comply with the coastal zone management law. [Hawaii Revised Statutes, §205A-3]

Agencies implementing the coastal zone management law shall give full consideration to ecological, cultural, aesthetic and historic values and to economic needs; the coastal zone management law shall guide and regulate the activities of all agencies within the coastal zone. [Hawaii Revised Statutes, §205A-4]

All agencies shall amend their rules as appropriate to comply with the coastal zone management law and of any legislative guidelines enacted in addition to them. [Hawaii Revised Statutes, §205A-5]

Any person or agency may sue any agency for violating or failing to implement or abide by the coastal zone management law; the department of planning and economic development may intervene in such a suit if not a party to it. [Hawaii Revised Statutes, §205A-6]

The State, as a matter of policy, shall preserve, protect and restore the natural resources of the coastal zone of Hawaii by placing special controls on development along the shoreline in order to avoid permanent losses of valuable resources and ensure adequate access to publicly owned or used beaches, recreation areas and natural reserves. [Hawaii Revised Statutes, §205A-21]

The planning commissions of each county shall have authority over the special management area and, when reviewing proposed developments within such special management areas as the county has designated, shall require or seek to ensure:

- (1) Such access to publicly owned or used beaches, recreation areas and natural reserves as conforms with sound conservation principles;
- (2) Adequate and properly located public recreation areas and wildlife preserves;
- (3) Provisions for solid and liquid waste treatment, disposition and management;
- (4) That any alterations to existing landforms and vegetation and the construction of structures shall minimally impact the area's water resources and scenic and recreational amenities and shall not in the event of an earthquake fail or cause flooding, erosion, or siltation;
- (5) That the development shall not have any adverse ecological or environmental effect except when the public health, safety or interest outweighs this consideration; an adverse effect may include the effect of cumulative development and the limitation of future planning options;
- (6) That the development conforms with the coastal zone management law and special management area guidelines and of any legislative guidelines supplementing it;
- (7) That the development conforms with the county general plan and county zoning requirements;
- (8) A minimal amount of dredging, filling or alteration of any bay, estuary, salt marsh, river mouth, slough or lagoon;
- (9) A minimal amount of development which reduces the size of or restricts access to any beach, tidal or submerged lands, portions of rivers or streams within the special management area, the mean high tide line in the absence of a beach or any other area usable for public recreation;
- (10) A minimal amount of development which interferes with or detracts from the line of sight to the sea from the nearest coastal state highway; and
- (11) A minimal amount of development which would adversely affect water quality, areas of open water, existing and potential fisheries, wildlife habitats or agricultural land uses. [Hawaii Revised Statutes, §§205A-26, 205A-27]

No person may undertake any development within the special management area without a permit; the county planning commissions shall establish or amend, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, permit application procedures by rule and shall also specify procedures for granting emergency and minor permits. [Hawaii Revised Statutes, §§205A-28, 205A-29, 205A-30]

The department of planning and economic development may sue to enjoin any person or agency from violating any provision of the coastal zone management law. [Hawaii Revised Statutes, §205A-33]

The board of land and natural resources shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, specifying procedures for determining and for appealing shoreline delineations, provided that any such delineation shall not remain valid for a period longer than one year unless fixed by approved man-made structures. [Hawaii Revised Statutes, §205A-42]

The planning departments of each county shall adopt and enforce rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, concerning shoreline setbacks, set by this section at not less than 20 feet and not more than 40 feet inland from the shoreline. [Hawaii Revised Statutes, §205A-43]

No person or agency shall mine or take sand, coral, rocks, soil or other beach or marine deposits from the shoreline area, from within 1,000 feet seaward of the shoreline or from water 30 feet deep or less within the territorial sea, with the following exceptions:

- (1) Any person may take such materials from a public beach for personal, noncommercial use;
- (2) The State may mine or take sand for the purpose of replenishing public beaches at Hilo Bay, Waikiki, Ala Moana and Kailua, provided that the agency shall submit an environmental impact statement for the project, shall find that it serves the public interest and does not have an adverse social, economic, or environmental impact, and shall conform to the notification and hearing requirements set forth in this section; and
- (3) Persons or agencies may clear sand from existing drainage pipes, canals and stream mouths, provided that they deposit the sand on adjacent beaches unless such placement results in significant turbidity.

The counties shall not permit any unlawfully nonconforming structure, including seawalls, groins and revetments, within the shoreline area unless needed for safety reasons or to protect property from erosion or wave damage; the counties shall further permit the reconstruction or replacement of nonconforming structures provided that such reconstruction does not substantially enlarge or change such structures to another nonconforming use. [Hawaii Revised Statutes, §205A-44]

Each county, by ordinance, shall set shoreline setback lines, which may exceed those established by state law. [Hawaii Revised Statutes, §205A-45]

The planning department of each county shall review the plans of all applicants who request a variance for any structure, facility or activity normally prohibited and shall pass such applications, with its recommendations, to the county planning commission or other authority. The authority shall grant the applicant a variance if it finds that the proposed structure serves the public interest or that not granting a variance will cause the applicant hardship, provided that the resulting structure shall have a minimal impact on natural shoreline processes and safe public access to the shoreline. [Hawaii Revised Statutes, §205A-46]

Structures permitted in the shoreline area shall include tunnels, canals, basins, ditches, structures used by public utilities, wharves, docks, piers, other harbor and waterfront improvements and any other maritime facility or water sport recreational facility, provided that an appropriate state body has determined that the proposed structures will interfere only minimally with natural shoreline processes. The board of land and natural resources may grant a waiver or permit for the repair, strengthening, reinforcement or maintenance of fishponds and aquaculture farms, which shall exempt such structures and activities from this part. [Hawaii Revised Statutes, §205A-47]

The more restrictive ordinance or law setting shoreline setbacks shall apply in cases of conflict between their respective requirements. This requirement shall not diminish the department of transportation's jurisdiction over wharves, airports, docks, piers, small-boat, or other harbors, and any other maritime or water sport recreational facility on state land. [Hawaii Revised Statutes, §205A-48]

No person shall erect any structure or leave any sizeable object on or within state ocean waters without the permission of the department of transportation; the department shall enforce compliance with this section with appropriate means, including charging the costs of removal to the offending party. [Hawaii Revised Statutes, §266-16]

Department of Transportation Rules Regulating Coastal Zone Uses

Department of transportation rules prohibit persons from engaging in dredging, filling, or construction activity within the shores, shore waters, navigable streams, and harbors controlled by the State without first obtaining a permit from the department of transportation. This requirement is in addition to any which may be imposed by the departments of health or land and natural resources, or the United States Army Corps of Engineers.

Similarly, permits must be obtained in order to install buoys. [§§19-42-161 to 19-42-164, Hawaii Administrative Rules]

Actions which shall require the preparation of an environmental assessment include:

- (1) Any proposed use of land classified as part of a conservation district by the land use commission;
- (2) Any proposed use of land within the shoreline area;
- (3) Any proposed use of any site designated historic in the National Register, the Hawaii register or in the historic preservation law, chapter 6E, HRS;
- (4) Any proposed use within the Waikiki-Diamond Head area as designated; and
- (5) Any proposed use which will require a redesignation of land from agriculture, conservation or preservation in existing county general plans to some other designation. [Hawaii Revised Statutes, §343-5]

The State, as a matter of policy, shall protect its water and visual resources by preserving and augmenting natural resources and safeguarding the State's unique environmental characteristics. [Hawaii Revised Statutes, §344-3]

The State, in pursuing its policy to conserve its natural resources, shall:

- (1) Encourage management practices which conserve and protect open space areas;
- (2) Establish, preserve and maintain scenic, historic, cultural, park and recreation areas, including shorelines, for public recreational, educational and scientific uses;
- (3) Protect state shorelines from the encroachment of man-made improvements, structures, and activities; and
- (4) Promote the preservation of open space for its natural beauty as both a natural resource and an ennobling, living environment for the State's people. [Hawaii Revised Statutes, §344-4]

An applicant wishing to register land created by accretion shall prove that the accretion is natural and permanent; the accreted land shall be considered part of the conservation district and subject to the use restrictions listed in section 183-45, HRS, until the land use commission decides otherwise. [Hawaii Revised Statutes, §501-33]

Any person may bring action to quiet title to accreted land, but shall prove that the accretion is natural and permanent; the accreted land shall be considered part of the conservation district and subject to the use restrictions listed in section 183-45, HRS, until the land use commission decides otherwise. [Hawaii Revised Statutes, §669-1]

The department of land and natural resources shall administer a statewide kapu system for ocean resources modeled on the Waikiki-Diamond Head Shoreline Fisheries Management Area program; the kapu system shall involve the opening and closing of certain areas on an alternating basis to prevent indiscriminate and excessive fishing, and shall also effect a permanent ban on all net fishing, except net fishing for nehu or baitfish, in all harbors under the jurisdiction of the department of transportation. The provisions of this act shall not diminish traditional and customary native Hawaiian fishing rights. [Session Laws of Hawaii 1986, Act 256]

State General Plan Provisions

The State, as a matter of policy, shall promote and protect such intangible resources as...scenic beauty. [Hawaii Revised Statutes, §226-6]

The State shall have as planning objectives for land-based, shoreline and marine resources the prudent use of Hawaii's land-based, shoreline and marine resources and the effective protection of Hawaii's unique and fragile environmental resources. In order to achieve these objectives, the State, as a matter of policy, shall:

- (1) Exercise an overall conservation ethic in the use of Hawaii's natural resources;
- (2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems;
- (3) Account for the physical attributes of areas when planning and designing activities and facilities;
- (4) Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage;
- (5) Consider multiple uses in watershed areas, provided such uses do not detrimentally affect water quality and recharge functions;
- (6) Encourage the protection of rare or endangered plant species and habitats native to Hawaii;
- (7) Provide public incentives that encourage private actions to protect significant natural resources from degradation or unnecessary depletion;
- (8) Pursue compatible relationships among activities, facilities and natural resources; and
- (9) Promote increased accessibility and prudent use of...shoreline areas for public recreational, educational and scientific purposes. [Hawaii Revised Statutes, §226 11]

The State shall have as a planning objective for its physical environment the enhancement of Hawaii's scenic assets, natural beauty and multicultural and historic resources. In order to achieve this objective, the State, as a matter of policy, shall promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of...the ocean, scenic landscapes and other natural features. [Hawaii Revised Statutes, §226-12]

The State shall have as a priority guideline to promote the economic health and quality of the visitor industry the encouragement of the development and maintenance of...well-designed hotel and resort destination areas that provide adequate shoreline setbacks and beach access and are sensitive to neighboring communities and activities. [Hawaii Revised Statutes, §226-103]

The State shall have as priority guidelines for land resource utilization the following:

- (1) Identify critical environmental areas in Hawaii, including wildlife ocean habitats, areas with endangered species of plants and wildlife, natural streams and water bodies, scenic and recreational shoreline resources, open space and natural areas, historic and cultural sites, areas particularly sensitive to reduced...water quality and scenic resources;
- (2) Utilize Hawaii's limited land resources wisely, ensuring the protection of the environment and the availability of the shoreline, conservation lands and other limited resources for future generations; and
- (3) Protect and enhance Hawaii's shoreline, open spaces and scenic resources. [Hawaii Revised Statutes, §226-104]

Functional Plan Policies, Ocean Management Plan Policies and Agency Document Citations (not law)

The State shall have as a planning objective the establishment of a system to maintain...natural resources for present and future generations and to manage recreation and other land uses in accordance with sound conservation principles. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Exercise an overall conservation ethic in the use of Hawaii's resources in the following manner:
 - (A) The department of land and natural resources shall develop a resource management program to provide for the protection and restoration of unique, endangered, natural...and recreational resources. [Hawaii Recreation Functional Plan, Objective B, Policy B(1), Implementing action B(2)(a)]

The State, as a matter of policy, shall ensure that visitor facilities and destination areas are carefully planned and sensitive to neighboring communities and activities in the following manner:

- (1) The county planning and land use agencies shall ensure that developers of new hotel and condominium projects shall set such projects back from the shoreline to provide and encourage public use of the shoreline. [Hawaii Tourism Functional Plan, Policy B(4), Implementing action B(4)(b)]

The State shall have as a planning objective the effective protection and prudent use of Hawaii's unique, fragile and significant environmental and natural resources. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Exercise an overall conservation ethic in the use of Hawaii's resources by protecting, preserving and conserving the critical and significant natural resources of the State in the following manner:
 - (A) The department of land and natural resources shall identify and maintain a comprehensive inventory of critical environmental areas, including scenic and recreational shoreline resources, open space and natural resources, areas sensitive to reduced...water quality and scenic resources;
 - (B) The department of land and natural resources shall review the state land use districts and the departmental rules and amend as appropriate the criteria for the inclusion of critical environmental areas in the state conservation district;
 - (C) The department of land and natural resources shall review the rules and permit systems applicable to conservation district lands for possible simplification or consolidation and for compliance with the coastal zone management program;
 - (D) The department of land and natural resources shall provide for the effective enforcement of conservation district rules and permit systems; and
 - (E) The department of land and natural resources shall review conservation district land use applications to control impacts on natural and cultural resources. [Hawaii Conservation Lands Functional Plan, Objective A, Policy A(1), Implementing actions A(1)(a), A(1)(b), A(1)(c), A(1)(d), A(1)(e)]

The State shall have as a planning objective the effective protection and management of Hawaii's open space...and natural areas. [Hawaii Conservation Lands Functional Plan, Objective C]

The State shall have as a planning objective the promotion of sound management and development of Hawaii land and marine resources for potential economic benefit. [Hawaii Conservation Lands Functional Plan, Objective D]

The State shall have as a planning objective the protection of state interests in selected areas. [Hawaii Conservation Lands Functional Plan, Objective E]

The State shall have as a planning objective the promotion of desired...environmental conditions in the provision of energy facilities and distribution systems. In order to achieve this objective, the State, as a matter of policy, shall address and manage potential adverse environmental concerns early in the process of energy facility siting in the following manner:

- (1) The department of planning and economic development and the department of health shall support the continued implementation of a statewide energy impact management program, shall expand the program to include means to increase public awareness of energy developments and, as a top priority, shall allocate program funds to avoid or mitigate...environmental and health concerns related to geothermal development. [Hawaii Energy Functional Plan, Objective E, Policy E(1), Implementing action E(1)(a)]

The State, as a matter of policy, shall strengthen the legal basis for controlling land and water development susceptible or furthering beach erosion impacts. Specific actions shall include:

- (1) The department of planning and economic development shall seek to amend chapter 205, HRS, to allow offshore sand mining, where current laws restrict such mining, to replenish public beaches, provided that such mining shall avoid environmental impacts and conflicts with other ocean uses and provided that the department shall develop alternative means to protect beaches when replenishment is not feasible or desirable. [Hawaii Ocean Management Plan, Policy V.B.2., Implementing action V.C.3.]

The State, as a matter of policy, shall identify potential environmental impacts and ocean-use conflicts associated with coastal energy facilities and shall coordinate the various responsibilities to manage environmental impacts from coastal energy facilities. Specific actions shall include:

- (1) The department of planning and economic development shall coordinate the management of environmental impacts and ocean-use conflicts resulting from the development of coastal energy facilities; and
- (2) The department of planning and economic development shall develop a mapping system to identify potential sites for various coastal energy facilities, potentially sensitive environments and conflicting marine uses. [Hawaii Ocean Management Plan,

Policies VIII.B.1., VIII.B.2., Implementing actions VIII.C.2., VIII.C.3.]

The State, as a matter of policy, shall manage the development of ocean-based mariculture in consideration of a wide range of potential environmental impacts and water use conflicts. Specific actions shall include:

- (1) The department of land and natural resources shall assess potential sites to identify potential use conflicts and environmental impacts from mariculture; and
- (2) The department of land and natural resources shall develop and support the operation of a research and demonstration program to assess the practicability of mariculture activities and their potentially adverse effects. [Hawaii Ocean Management Plan, Policy IX.B.1., Implementing actions IX.C.1., IX.C.4.]

Hawaii, Department of Planning and Economic Development, Hawaii Coastal Zone Management Program Federal Consistency Procedures Guide, April, 1985. The department has cited this document as a basis for policy in the subject area.

IV. Marine-Related Disasters and Emergencies/Flood Prevention and Control

Note: Most of the references in this part have been included because they refer to tsunami or tidal waves.

The lieutenant governor or the county chief election officer may consolidate precincts within a representative district made inaccessible by flood, tsunami, or other natural disaster. [Hawaii Revised Statutes, §11-92.3]

The department of defense shall include a civil defense agency, which shall have responsibility for defending the state against mass violence originating from...natural causes. [Hawaii Revised Statutes, §26-21]

The councils or executive officers of each county may participate in federal flood insurance programs under the provisions of Public Law 1016, Eighty-fourth Congress, Second Session (70 Stat. 1078) and shall have such authority as they may need to qualify their counties for insurance coverage. [Hawaii Revised Statutes, §46-11]

The council of each county, after certifying a need for the renewal, redevelopment or rehabilitation of any area within the county that has suffered such damage from a seismic wave, a flood, a hurricane, a storm or other catastrophe as may prompt the governor to declare the area a disaster area, may approve a rehabilitation or renewal plan for it without regard to certain requirements of the urban renewal law. [Hawaii Revised Statutes, §53-7]

The county's redevelopment agency may acquire land for the purpose of renewal immediately after the council has approved plans for such renewal and

after all permissible challenges to those plans have been resolved or have expired; such acquisition may include real property when such property has suffered damage from a seismic wave, flood, hurricane, storm or other catastrophe and the property owner does not wish to make improvements. [Hawaii Revised Statutes, §53-8]

The board of supervisors in each county shall maintain channels, including their exits to the ocean, free of debris and in suitable condition to carry storm waters. The board may also enact zoning ordinances prohibiting the use of lands subject to seasonal, periodic or occasional flooding. [Hawaii Revised Statutes, §62-34]

The council of the city and county of Honolulu may enact a zoning ordinance prohibiting the use of lands subject to seasonal, periodic or occasional flooding; the council may also acquire or construct facilities for the control of and protection against floods and flood waters and may drain and rehabilitate lands already flooded. [Hawaii Revised Statutes, §70-100]

The director of finance shall have all powers necessary to qualify the State for federal flood insurance coverage pursuant to Public Law 1016, Eighty-fourth Congress, second session. [Hawaii Revised Statutes, §126-1]

The director of the disaster relief agency shall formulate and carry out all programs concerning disaster relief and shall coordinate relief efforts among all public and private relief organizations, including state and federal agencies; the director shall adopt rules, without regard to the Hawaii Administrative Procedure Act, chapter 91, HRS, plan, procure supplies and equipment, conduct studies and surveys of the State's disaster relief capabilities and coordinate mutual aid plans between political subdivisions for the purposes of the disaster relief law. Persons employed in or under a disaster relief program shall not be liable for any acts done in the performance of that person's duty. [Hawaii Revised Statutes, §§127-2, 127-4, 127-7] (Note: §§127-1 through 127-9 have been suspended indefinitely.)

The governor and officials of each political subdivision may exercise the powers outlined in the civil defense and emergency law, chapter 128, HRS, relating to disasters resulting from enemy attacks for the purposes of other disaster relief when sections 127-1 through 127-9 have been suspended. Other disaster relief shall include minimizing or repairing damage caused by flood, tidal wave, volcanic eruption, or massive oil spills. [Hawaii Revised Statutes, §127-10] (Note: §§127-1 through 127-9 have been suspended indefinitely.)

The board of land and natural resources may dispose of public lands to victims of a natural disaster, including disasters resulting from seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, or flood, by negotiation in order to relocate and rehabilitate disaster victims as provided in the law relating to special dispositions of public lands. [Hawaii Revised Statutes, §§171-85, 171-86, 171-87]

The State, as a matter of policy, shall coordinate all federal and state flood control projects to provide such technical and financial assistance to its

political subdivisions as will minimize the damage resulting from heavy rainstorms and abnormal tidal action. This policy shall not prevent any political subdivision from applying for federal aid on its own initiative and without state approval. [Hawaii Revised Statutes, §179-1]

The board of land and natural resources shall administer and manage all flood control and water conservation programs except flood disaster operations under the guidance of the general flood control plan and in the following manner:

- (1) Coordinate all state agency programs and activities to conform with the objectives of the statewide flood control program;
- (2) Compile, evaluate, interpret and disseminate information for public education and technical use;
- (3) Render upon request to agencies of any political subdivision of the State assistance in master planning, zoning, qualifying for and constructing state and federal flood control projects, the training of flood fighting units and related flood control activities;
- (4) Review those plans federal agencies submit for state approval and make recommendations upon them to the governor, and formulate a policy for the State to participate jointly with its political subdivisions in federal flood control projects that will provide such financial assistance as those subdivisions request and will execute and administer any agreements with those subdivisions necessary to provide assurances of state participation in federal projects;
- (5) Formulate criteria for the study, evaluation and determination of the feasibility of proposed flood control projects that do not meet federal feasibility standards, and, as warranted, execute and administer agreements with political subdivisions to assure compliance with state projects and state design, prepare plans and specifications, obtain bids, contract and supervise the construction of state flood control works;
- (6) Render coordination and aid to a political subdivision that has initiated and financed its own flood control project only upon its request; and
- (7) Coordinate the resolution of various drainageway problems between state agencies, political subdivisions, and private parties. [Hawaii Revised Statutes, §§179-3, 179-4]

Conservation land use districts shall include lands necessary to prevent floods and soil erosion. [Hawaii Revised Statutes, §205-2]

The governor, after any extraordinary event that causes losses and suffering, shall declare when and where warranted a state disaster and authorize the dispensation of relief efforts; relief efforts shall include

providing public housing on public lands and providing commercial and personal loans and unemployment compensation to disaster victims under such conditions and in accord with those procedures outlined in chapter 209, HRS. [Hawaii Revised Statutes, §§209-1 through 209-41]

The governor, after declaring a natural disaster following a seismic wave, tsunami, hurricane, volcanic eruption or typhoon, may authorize the formation of claims commissions in each of the affected areas in order to review and make recommendations concerning the claims of disaster victims for losses suffered and the amount and duration of tax relief such victims shall enjoy. [Hawaii Revised Statutes, §§234-1 to 234-11]

State General Plan Provisions

The State shall have as a planning objective for...water quality the maintenance and pursuit of improved quality in Hawaii's...water resources. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions and other natural or man-induced hazards and disasters. [Hawaii Revised Statutes, §226-13]

The State shall have as a planning objective for public safety an optimum organizational readiness and capability in all phases of emergency management to maintain the strength, resources and social and economic well-being of the community in the event of...natural disasters and other major disturbances. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Ensure that responsible organizations are in a proper state of readiness to respond to major...technological and natural disasters at all times; and
- (2) Enhance the coordination between emergency management programs throughout the State. [Hawaii Revised Statutes, §226-26]

Functional Plan Policies, Ocean Management Plan Policies and Agency Document Citations (not law)

The State shall have as a planning objective the effective protection and prudent use of Hawaii's unique, fragile and significant environmental resources. In order to achieve this objective, the State, as a matter of policy, shall exercise an overall conservation ethic in the use of Hawaii's resources by...controlling the use of hazardous areas in the following manner:

- (1) The department of land and natural resources shall identify and maintain a comprehensive inventory of critical environmental areas, including...areas subject to natural hazards; and

- (2) The department of land and natural resources shall review the state land use districts and departmental rules and amend as appropriate the criteria for the inclusion of critical environmental areas, including hazardous areas, in the state conservation district. [Hawaii Conservation Lands Functional Plan, Objective A, Policy A(1), Implementing actions A(1)(a), A(1)(b)]

The State shall have as a planning objective the improved management of floodplains. In order to achieve this objective, the State, as a matter of policy, shall reduce existing and future flood losses in the following manner:

- (1) The department of defense shall update disaster preparedness plans and programs for water-caused disasters. [Hawaii Water Resources Development Functional Plan, Objective C, Policy C(1), Implementing action C(1)(a)]

The State shall have as a planning objective the minimization of hazards to public and private property resulting from beach erosion. In order to achieve this objective, the State, as a matter of policy, shall assess potential problems in Hawaii resulting from a predicted rise in the world sea level. Specific action shall include:

- (1) The department of planning and economic development shall organize a task force to assess potential impacts from sea-level rises around the State and shall formulate a plan to mitigate such impacts with recommendations and a timetable for governmental actions. [Hawaii Ocean Management Plan, Objective V.A., Policy V.B.5., Implementing action V.C.4.]

V. Land Conservation and Reclamation

The State shall have the power to regulate the use of private property in order to conserve and develop objects and places of historic or cultural interest and provide for public sightliness and good order. [Hawaii State Constitution, Art. IX, §7]

The State, as a matter of policy, shall conserve and protect Hawaii's natural beauty and resources, including land, and shall promote the development and utilization of these resources in a manner consistent with their conservation; the State shall hold all public natural resources in trust for the benefit of the people. [Hawaii State Constitution, Art. XI, §1]

The department of land and natural resources shall manage and administer the public lands of the State and the water and mineral resources thereon, including the soil conservation function. [Hawaii Revised Statutes, §26-15]

Each county, in the preparation of an urban and regional design plan, shall protect and enhance historic sites, significant natural land and water features, and views and vistas and shall restrain buildings and structures from encroaching on the shoreline and other designated land forms such that

manmade features on the land shall not conflict with natural formations along the shoreline. [Hawaii Revised Statutes, §57-2]

"Public lands" includes all lands in the state classed as government or crown lands before August 15, 1895 and all lands acquired by the State subsequently, including submerged lands, lands beneath tidal waters suitable for reclamation and those reclaimed lands given the status of public lands. The term shall not include lands reserved to the Hawaiian Homes Commission, the United States, the University of Hawaii, the Hawaii housing authority and the Hawaii community development authority, lands used for roads and streets or lands to which the United States has relinquished title but over which the board of land and natural resources has no jurisdiction. [Hawaii Revised Statutes, §171-2]

The board of land and natural resources may sell or lease reclaimed land by negotiation to the abutting owner after determining that such disposition does not conflict with the best interest of the State and after giving public notice of such intent. The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may also lease submerged lands and lands beneath tidal waters suitable for reclamation under the conditions and restrictions applicable to public lands, provided that the board shall require the lessee to bear all expenses related to reclamation; no private abutting owner shall otherwise reclaim such lands. The State shall retain title to the land in all such leases. The board may furthermore sell, lease or transfer public lands with the approval of the governor in order to settle the rights of an abutting owner, create public beaches, consolidate public land holdings or provide public rights-of-way. [Hawaii Revised Statutes, §171-53]

The board of land and natural resources, with the prior approval of the governor and the authorization of the legislature by concurrent resolution, may lease or sell public lands, including submerged lands and lands to be reclaimed at the developer's expense, to a private developer for the purposes of and subject to the conditions outlined in section 171-60, HRS. [Hawaii Revised Statutes, §171-60]

The department of land and natural resources may advance funds from the special land and development fund and issue revenue bonds to finance the construction of new land areas and the means of access thereto, including the costs of acquiring private rights affected by such construction and any rights-of-way to the shore or shorelands necessary for such construction and the costs of maintaining, bettering or extending such new lands. [Hawaii Revised Statutes, §§173-1, 173-2]

The board of land and natural resources shall require the holder of every mining lease granted under the provisions of the laws relating to government mineral rights outlined in chapter 182, HRS, to deposit a bond with the board in order to guarantee the lessee's faithful adherence to and performance of all lease conditions, including payment to the occupiers of the leased land for all damages inflicted and the proper restoration of the land after the termination of operations. [Hawaii Revised Statutes, §182-3]

Any public body and any organization that qualifies for an income tax exemption under section 501(c) of the Internal Revenue Code of 1954 and whose purposes facilitate those of the conservation easements law, chapter 198, HRS, may acquire and hold conservation easements of such character as may be specified in the instrument creating or transferring such easements, in order to preserve and protect land predominantly in its natural, scenic, or open space condition; the organization may also enforce such easements with action for injunctive relief. An organization holding an easement may transfer its interest in any legal manner -- such easement shall in any case run with the land transferred, even if the transfer contract does not so stipulate -- as an interest in real property. [Hawaii Revised Statutes, §§198-1, 198-2, 198-3, 198-5]

The director of planning and economic development, in formulating the general plan, shall:

- (1) Cooperate with the department of land and natural resources to plan for the development of suitable and economically feasible submerged lands in order to develop such lands as soon as is financially and legally possible. The department of land and natural resources shall retain its powers over those lands currently or potentially under its control;
- (2) Designate appropriate industrial areas for submerged lands and other areas; and
- (3) Prepare a comprehensive state open space plan, which shall designate areas for such open space uses as conservation, recreation and scenic, cultural or historic preservation and which shall plan for the acquisition, maintenance, improvement, protection or other conservation of open space areas. The director shall cooperate with the department of land and natural resources to study the needs of the State for open space and shall make necessary recommendations. [Hawaii Revised Statutes, §201-30]

The governor shall develop a quality growth policy for the State which shall examine the environmental impact of proposed urban development and the relationship between short-term and long-term environmental quality and shall consider alternatives available to minimize adverse environmental effects from such development in order to conserve open space areas and protect the environment. [Hawaii Revised Statutes, §§223-1, 223-2]

Any proposed use of areas within conservation land use districts, within the shoreline area or within the Waikiki-Diamond Head area of Oahu shall require an environmental assessment to determine the need for an environmental impact statement. An environmental impact statement shall be required in all cases where an environmental assessment finds that the proposed use will have a significant impact on the proposed area of use. [Hawaii Revised Statutes, §343-5]

An applicant for registration of land formed by accretion shall prove that the accretion is permanent and natural. The accreted land shall fall within the

conservation district unless the land use commission decides otherwise.
[Hawaii Revised Statutes, §501-33]

Any person bringing action to quiet title to land formed by accretion shall prove that the accretion is permanent and natural. The accreted land shall fall within the conservation district unless the land use commission decides otherwise. [Hawaii Revised Statutes, §669-1]

State General Plan Provisions

The State shall have as priority guidelines for land resource utilization the following:

- (1) Identify critical environmental areas in Hawaii, including natural streams and water bodies, scenic and recreational shoreline resources, open space and natural areas, historic and cultural sites, areas particularly sensitive to reduced...water quality, and scenic resources;
- (2) Use Hawaii's limited land resources wisely, ensuring the protection of the environment and availability of the shoreline, conservation lands and other limited resources for future generations; and
- (3) Protect and enhance Hawaii's shoreline, open spaces and scenic resources. [Hawaii Revised Statutes, §226-104]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the orderly development of residential areas sensitive to community needs and other land uses. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Plan the location of housing developments, heeding the physical setting, their proximity to public facilities and services...and the concerns of existing communities and surrounding areas in the following manner:
 - (A) The counties and the Hawaii housing authority shall assess and delineate lands suitable for future housing development, provided that development should avoid critical environmental areas, including...important ocean habitats for wildlife, endangered species habitats, streams and water bodies, scenic or recreational shoreline and historic and cultural sites. [Hawaii Housing Functional Plan, Objective B, Policy B(1), Implementing action B(1)(a)]

The State shall have as a planning objective the effective protection and prudent use of Hawaii's unique, fragile and significant environmental and natural resources. In order to achieve this objective, the State, as a matter

of policy, shall exercise an overall conservation ethic in the use of Hawaii's resources by protecting, preserving and conserving Hawaii's critical and significant natural resources in the following manner:

- (1) The department of land and natural resources shall identify and maintain a comprehensive inventory of critical environmental areas, including...scenic and recreational shoreline resources, open space and natural areas, areas particularly sensitive to reduced...water quality, and scenic areas;
- (2) The department of land and natural resources shall review state land use districts and the departmental rules and amend as appropriate the criteria for the inclusion of critical environmental areas in the state conservation district;
- (3) The department of land and natural resources shall review the various rules and permit systems applicable to conservation district lands for possible simplification or consolidation and for compliance with the coastal zone management program; and
- (4) The department of land and natural resources shall review applications for the use of conservation lands to control impacts on natural resources. [Hawaii Conservation Lands Functional Plan, Objective A, Policy A(1), Implementing actions A(1)(a), A(1)(b), A(1)(c), A(1)(e)]

The State shall have as a planning objective the effective protection and management of Hawaii's open space, watershed and natural areas. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Protect and manage lands with...natural resources value in the following manner:
 - (A) The department of land and natural resources shall establish criteria, evaluate and prioritize for public or private agency acquisition those private lands with...natural resource value; and
 - (B) The department of land and natural resources shall establish criteria and evaluate areas of public land with...natural resource value and establish management practices to protect such areas from further degradation;
- (2) Provide opportunities and facilities to meet public needs for a wide range of recreational and educational activities within conservation lands in the following manner:
 - (A) The department of land and natural resources, where possible, shall make available areas of unique biota or geology for public appreciation and enjoyment. [Hawaii Conservation Lands Functional Plan, Objective

C, Policies C(3), C(4), Implementing actions C(3)(a),
C(3)(c), C(4)(a)]

The State shall have as a planning objective the promotion of the sound management and development of Hawaii land and marine resources for potential economic benefit. [Hawaii Conservation Lands Functional Plan, Objective D]

The State shall have as a planning objective the protection of state interests in selected areas. In order to achieve this objective, the State, as a matter of policy, shall assess the marine resources of the Northwestern Hawaiian Islands for state use and regulation in the following manner:

- (1) The department of land and natural resources shall assess and survey marine resources of the Northwestern Hawaiian Islands for state use and regulation and shall formulate a plan for managing fisheries in this area. [Hawaii Conservation Lands Functional Plan, Objective E, Policy E(2), Implementing action E(2)(a)]

VI. Historic and Cultural Preservation

Note: References in this part have been included because "historic sites" may include underwater sites.

The State shall have the power to conserve and develop objects and places of historic or cultural interest and to regulate private property for this purpose. [Hawaii State Constitution, Art. IX, §7]

The State, as a matter of policy, shall provide leadership in preserving, restoring and maintaining historic and cultural property and shall ensure the administration of such property in a spirit of stewardship for future generations and to provide for the education, inspiration, pleasure, and enrichment of the citizens of the State. [Hawaii Revised Statutes, §6E-1]

The department of land and natural resources shall establish a comprehensive historic preservation program to protect, restore, rehabilitate, and interpret buildings, structures, objects, districts, areas or sites, including underwater sites, which shall:

- (1) Develop and conduct research, including surveys, excavations, scientific recordings, interpretations and publications on the State's historic and cultural resources;
- (2) Acquire, by any legal method, historic and cultural properties and charge reasonable admissions to such properties;
- (3) Identify and document historic property statewide, including all property of the State and of its political subdivisions;
- (4) Prepare information for the state and the national registers of historic places;

- (5) Prepare, review and revise a state historic preservation plan;
- (6) Apply for and receive gifts, grants, technical assistance, and other funding from public or private sources;
- (7) Provide technical and financial assistance to the political subdivisions of the State, to public and to private agencies involved in historic preservation;
- (8) Coordinate the activities of the political subdivisions of the State to accord with the state historic preservation plan;
- (9) Stimulate public interest in historic preservation through interpretive programs for historic properties; and
- (10) Employ sufficient professional and technical staff for the purposes outlined, adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, as needed for the purposes outlined and report annually to the governor and legislature concerning activities undertaken for the purposes outlined. [Hawaii Revised Statutes, §§6E-2, 6E-3]

The department of land and natural resources shall have administrative control over a Hawaii historic places review board, which shall:

- (1) Order and enter historic properties into the state register of historic places according to the value of such properties to Hawaii's heritage;
- (2) Evaluate and recommend, as appropriate, historic properties for inclusion on the national register of historic places;
- (3) Review the state survey of historic places and the state historic preservation plan; and
- (4) Maintain the state register of historic places, including those on the national register of historic places, and a notification and publication program for properties on either register. [Hawaii Revised Statutes, §6E-5.5]

The State shall have exclusive right to and control over historic property located on lands or under waters that belong to the State and shall retain this control in any permit or lease it issues, and, in addition, shall subject such property to rights of access, public visitation and other conditions of operation, maintenance, restoration, and repair as the department of land and natural resources shall prescribe. [Hawaii Revised Statutes, §6E-7]

The department of land and natural resources shall have an opportunity to review the effect of any project proposed by any state agency or agency of a political subdivision of the State on historic property and must give its consent before the commencement of any such project. All state agencies and officers and the agencies and officers of any political subdivision thereof shall

report any finding of historic property and shall cooperate with the department on its investigation, recording, salvage and preservation. [Hawaii Revised Statutes, §6E-8]

The department of land and natural resources shall review any proposed construction, alteration, disposition or improvement of any private property, not undertaken for ordinary maintenance or repair, that will affect historic property and shall either give its consent for the continuation of the proposal or shall condemn the historic property or permit its investigation, recording, preservation or salvage by any agency qualified for this purpose. The department may enter private property for the inspection of historic property on such premises. [Hawaii Revised Statutes, §6E-10]

The attorney general or any person may bring an action against any person or agency violating state laws or rules concerning historic preservation for injunctive relief, in addition to other penalties provided in chapter 6E, HRS, for such violation. [Hawaii Revised Statutes, §6E-13]

Political subdivisions of the State may establish an historic preservation commission and a comprehensive program of historic preservation for their jurisdictions and may regulate or restrict the use and appearance of such properties by local laws and rules or by planning and zoning laws. [Hawaii Revised Statutes, §§6E-14, 6E-15]

The department of land and natural resources shall manage and administer state parks, including historic sites. [Hawaii Revised Statutes, §26-15]

The governor may contract with the counties to repair, maintain and operate the buildings and grounds of state parks and historic sites. The governor may temporarily transfer such functions to the counties subject to the express approval of the next succeeding legislature. [Hawaii Revised Statutes, §27-32]

The department of land and natural resources shall manage and administer the state parks and historic sites. [Hawaii Revised Statutes, §171-3]

The board of land and natural resources shall have those powers granted to it by the laws concerning the acquisition of resource value lands outlined in chapter 173A, HRS, for the purpose of acquiring lands with historic value. [Hawaii Revised Statutes, §173A-1]

Conservation land use districts shall include lands necessary to preserve scenic or historic areas. [Hawaii Revised Statutes, §205-2]

The land use commission shall review any proposed reclassification of land use districts for impact on the maintenance of valued cultural, historic or natural resources. [Hawaii Revised Statutes, §205-17]

Any proposed use of any historic site registered in either the state or national registers of historic places shall require an environmental assessment to determine the need for an environmental impact statement. An

environmental impact statement shall be required when an assessment finds that the proposed use will significantly impact the proposed area of use. [Hawaii Revised Statutes, §343-5]

State General Plan Provisions

The State shall have as a planning objective for its physical environment the enhancement of its...multicultural and historic resources. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Promote the preservation and restoration of significant natural and historic resources;
- (2) Provide incentives to maintain and enhance historic and cultural amenities; and
- (3) Protect those special areas, structures and elements that are an integral and functional part of Hawaii's ethnic and cultural heritage. [Hawaii Revised Statutes, §226-12]

The State, in order to effect a desired distribution of growth and utilization of land resources, shall have as a priority guideline the identification of critical environmental areas within the State, including...historic and cultural sites. [Hawaii Revised Statutes, §226-104]

Functional Plan Policies (not law)

The State shall have as a planning objective for historic preservation the compilation of an inventory that adequately locates and describes a significant portion of Hawaii's historic property, including underwater sites. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Take the lead, together with the counties, in compiling an inventory of historic properties in the following manner:
 - (A) The department of land and natural resources shall establish priorities for inventory;
 - (B) The department of land and natural resources shall identify and coordinate the identification of historic properties; and
 - (C) The coastal zone management program of the department of planning and economic development and the department of land and natural resources shall expand sensitivity mapping statewide. [Hawaii Historic Preservation Functional Plan, Objective B, Policy B(1), Implementing actions B(1)(a), B(1)(b), B(1)(c)]

The State shall have as a planning objective for historic preservation the implementation of adequate legal measures to minimize adverse impacts to

significant historic properties. In order to achieve this objective, the State, as a matter of policy shall:

- (1) Select and designate significant historic properties for legal recognition in the following manner:
 - (A) The department of land and natural resources shall expedite the presentation of register nominations, including historic district, thematic and multiple resource nominations, to the Hawaii historic places review board and shall emphasize the nomination of properties for which the department may readily find information;
 - (B) The department of land and natural resources shall propose procedures and legislation to establish the eligibility of properties for the Hawaii Register;
- (2) Provide timely historic property reviews integrated into the land use regulatory system by:
 - (A) Expanding the archaeological services of the department of land and natural resources to meet the needs of all state agencies and encouraging the counties to provide archaeological services;
 - (B) Computerizing the department's historic properties inventory and establishing an efficient information retrieval system accessible to permitting agencies;
 - (C) Clearly defining the scope of work required from different intensities of archaeological surveys and requiring that those areas sensitivity mapping has defined as having a high probability shall undergo more intensive surveys;
 - (D) Establishing minimum standards for the performance of each type of archaeological survey, excavation and restoration; and
 - (E) Establishing rules and regulations for fishponds pursuant to section 183-44, HRS;
- (3) Resolve conflicts involving the preservation of historic properties in the following manner:
 - (A) The department of land and natural resources shall propose legislation to implement section 6E-8, HRS, authorizing the establishment of the Hawaii advisory council on historic preservation;

(4) Establish and make available a variety of methods to better protect historic properties by:

(A) Organizing community and private organizations to monitor and maintain historic sites; and

(B) Reexamining and amending as necessary sections 6E-11 and 338-25.5, HRS, concerning respectively the destruction and looting of historic properties and the disinterment of human bodies. [Hawaii Historic Preservation Functional Plan, Objective C, Policies C(1), C(2), C(3), C(4), Implementing actions C(1)(a), C(1)(b), C(2)(a), C(2)(b), C(2)(c), C(2)(d), C(2)(e), C(3)(a), C(4)(a), C(4)(b)]

The State shall have as a planning objective for historic preservation the treatment of historic properties with acceptable standards of workmanship. In order to achieve this objective, the State, as a matter of policy, shall:

(1) Provide a variety of funding alternatives to the private sector to encourage the preservation of historic properties;

(2) Encourage the maintenance and preservation of state- and county-owned historic properties by:

(A) Amending chapter 6E, HRS, to permit private parties to lease historic properties from the State for preservation purposes; and

(B) Assuring that up to one percent of all appropriate state agency project costs go to pay for the investigation, recording, preservation and salvage of impacted historic properties;

(3) Encourage proper preservation techniques in the following manner:

(A) The department of land and natural resources shall provide technical assistance to all people involved in preservation projects. [Hawaii Historic Preservation Plan, Objective D, Policies D(1), D(2), D(4), Implementing actions D(2)(a), D(2)(b), D(4)(a)]

The State shall have as a planning objective for historic preservation the establishment of new and the expansion of existing programs which increase knowledge and understanding of Hawaii's history and ethnic and cultural heritages. In order to achieve this objective, the State, as a matter of policy, shall:

(1) Establish a substantive interpretation program for publicly owned historic properties in the following manner:

- (A) The department of land and natural resources shall expand the state parks interpretation program. [Hawaii Historic Preservation Functional Plan, Objective E, Policy E(2), Implementing action E(2)(a)]

The State, as a matter of policy, shall provide relevant interpretations of and public access to sites of archaeological significance whenever feasible and shall establish a program to explain Hawaii's history and values to visitors and residents. [Hawaii Tourism Functional Plan, Implementing action D(3)(b)]

The State, as a matter of policy, shall protect and manage lands with...historic value in the following manner:

- (1) The department of land and natural resources shall establish criteria, evaluate and prioritize for public or private agency acquisition those lands with...historic value;
- (2) The department of land and natural resources shall acquire and maintain historic sites for park and other purposes; and
- (3) The department of land and natural resources shall establish criteria and evaluate public lands with...historic value and establish management practices to protect such lands from further degradation. [Hawaii Conservation Lands Functional Plan, Policy C(3), Implementing actions C(3)(a), C(3)(b), C(3)(c)]

VII. Introduction and Transportation of Living Species

The department of agriculture, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt rules concerning the quarantine, inspection, fumigation, disinfection, destruction or exclusion of any plant or animal life or products thereof; or of any container or packing material used in the shipment of such life or products, either upon introduction or at any time thereafter; and concerning the importation and transportation of any such life or article from within or without the State. [Hawaii Revised Statutes, §141-3]

Violators of chapters 141, 142 and 144 to 149A, HRS, or of any rule adopted thereunder, and masters of vessels which bring into the State or land any article either prohibited from importation or subject to inspection before landing shall be fined not more than \$500. [Hawaii Revised Statutes, §141-7]

The department of agriculture, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt rules requiring the owners or captain of any boat or vessel to report on the number and class of animals carried, the names of owners and consignees, the origin and destination of the shipment, the method of handling, the numbers and causes of any deaths during shipment, loading or unloading and other information the department

may require. The department may also prohibit the importation or transportation of any animal infected with or known or suspected of being infected with a communicable disease. [Hawaii Revised Statutes, §142-2]

Any animal entering the State must have a valid health certificate. [Hawaii Revised Statutes, §142-4.5]

The landing of any animal for the purpose of inspection and quarantine shall not constitute an entry. Landing an animal infected with or known to have contracted a communicable disease shall constitute an illegal entry, provided that the department of agriculture may permit such landing for the purpose of inspection or quarantine at the owner's expense. [Hawaii Revised Statutes, §142-5]

The captain of any vessel shipping live animals shall notify the department of agriculture upon arrival, and shall not permit the removal of any animal or any food, water, or other effect connected with any animal shipped, before departmental inspectors have permitted such removal. [Hawaii Revised Statutes, §142-8]

The department of agriculture may quarantine live animals passing between the islands of the State either in the port of shipment or delivery or in the port of entry nearest the port of shipment or delivery. [Hawaii Revised Statutes, §142-9]

Department of Agriculture Rules for Carrier Reports

Carriers transporting poultry or birds through or landing them at any port in the State must submit a shipmaster's declaration to the department providing the following information:

- (1) The name and address of the owner, importer, consignor, consignee, and port of origin;
- (2) Number on board; and
- (3) Number which have died en route and the circumstances of death.

In the case of cattle, sheep, goats, swine, horses, and other non-domestic animals, the rules provide that in addition to the shipmaster's report:

- (1) The carriers are responsible for confining the animals at the pier or airport until movement is authorized;
- (2) Animals in transit beyond Hawaii may not be off-loaded for any reason unless authorized by the state veterinarian or an agent; and
- (3) Manure may not be off-loaded and disposed of except under supervision of an inspector.

[Chapters 4-16, 4-17, 4-19, and 4-20, Hawaii
Administrative Rules]

Carriers bringing in dogs, cats, and other carnivores must furnish shipmaster's reports containing the information required for other animals. In addition, dogs, cats, and other carnivores:

- (1) Arriving by boat and intended for entry must be confined to the vessel in secure, escape proof crates for inspection;
- (2) Not intended for entry must be confined in secure crates or cages within a locked, escape proof room or compartment;
- (3) Aboard a private vessel transiting the State may remain on board for not more than 72 hours while the vessel is anchored, moored, or docked, and the owner or master of the vessel must submit a statement with the shipmaster's declaration to the effect that the animals will be securely confined while on board, and that no other dogs, cats, or other carnivores will be allowed on board;
- (4) May be ordered impounded at the quarantine station if all requirements are not complied with.

[Chapter 4-18, Hawaii Administrative Rules]

Any person importing any plant life or any product thereof, animal life including fish, mollusk, crustacean, or other marine life, or any container or packing material used for its shipment, shall:

- (1) Notify the department of agriculture, providing the waybill number, container number, name and address of both the consignor and consignee, identification marks used, number of packages, a description of the content of each package, port at which laden and any other information the department may require and hold such shipment at the point of entry pending departmental inspection;
- (2) Allow the entry of departmental inspectors into or onto any vessel, pier, warehouse, or other area where the importer may hold any of the listed articles for the purpose of inspection or allow the transfer of the article to a place more suitable for inspection;
- (3) Provide the department of agriculture with a written statement setting forth the importer's reasons for wanting to import any of the listed articles and including as additional information:
 - (A) The scientific name;
 - (B) The quantity and a description of the import;
 - (C) The locality where the import was grown or produced;

- (D) A certification that all imported animals are the progeny of captive populations or that the board of agriculture has specifically approved their importation;
 - (E) An identification of the port of shipment; and
 - (F) The shipper and the consignee;
- (4) Provide also a request for departmental inspection, an agreement of responsibility for all necessary costs and a waiver of liability for damages resulting from inspection, fumigation, disinfection, quarantine, or destruction;
 - (5) Permit the disinfection or quarantine, as needed, of the import at the importer's expense; and
 - (6) Ship or land the listed articles only through ports of entry the board of agriculture approves for this purpose.

Individual passengers, officers and crew of any carrier bringing any of the listed articles with them into the State shall complete a declaration form listing those articles and shall give the form to the carrier, which shall turn all forms collected over to a departmental inspector immediately upon arrival. [Hawaii Revised Statutes, §150A-5]

The landing of any article for the purpose of inspection or quarantine shall not constitute a legal entry until the department of agriculture has inspected such article and has permitted its importation. [Hawaii Revised Statutes, §150A-5.5]

No provision of the state quarantine law, chapter 150A, HRS, shall be construed to permit the importation of any article the department of agriculture has prohibited by rule from importation. [Hawaii Revised Statutes, §150A-5.6]

No person shall transport or receive eels of the order Anguilliformes or any other animal in any stage of development that may harm agriculture, horticulture, animal or public health, natural resources, including native biota or may have an adverse effect on the environment. The board of agriculture shall maintain either a list of plants and animals permitted entry into the State or a list prohibited from entry into the State. No person shall possess, propagate, or harbor any plant or animal listed as prohibited. [Hawaii Revised Statutes, §150A-6]

The department of agriculture shall seize and destroy, donate to a government agency or send out of the State any living creature the department has prohibited from entry and shall charge the owner or owner's agent for all costs related to such action; the department shall also take such action when any living creature admitted under departmental rules escapes from confinement. [Hawaii Revised Statutes, §150A-7]

No person shall move those articles specified in department of agriculture rules from one island to another or from one point to another on any island within the State without a permit from the department. [Hawaii Revised Statutes, §150A-8]

The department of agriculture, without recourse to the Hawaii Administrative Procedure Act, chapter 91, HRS, may adopt interim rules concerning the transportation of plants and animals into and within the State after public notice and after the advisory committee on plants and animals finds that such transportation, in the absence of effective rules, endangers public health and safety or the ecological health of plants and animals within the State. Rules so adopted shall expire no later than 180 days after adoption. [Hawaii Revised Statutes, §150A-9.5]

The department of agriculture shall have administrative control of an advisory committee on plants and animals, which shall advise and assist the department in developing or revising rules concerning the introduction, confinement or release of plants, animals and microorganisms. [Hawaii Revised Statutes, §150A-10]

Department of agriculture inspectors shall have the power to serve and execute warrants, issue citations and confiscate all articles used or possessed in violation of state quarantine laws. [Hawaii Revised Statutes, §150A-11]

Department of Agriculture Rules for Importation of Non-domestic Animals and Microorganisms

As a general rule, before any non-domestic animals or microorganisms may be imported:

- (1) Permits must be obtained;
- (2) Bonds must be obtained for certain animals.

Additional conditions apply to animals for which bonds must be obtained, including keeping the animal in captivity at all times. While no aquatic animals or marine life are specified in the list of animals requiring bonds, the board of agriculture apparently reserves the right to require the bonding of any non-domestic animal or microorganism.

The introduction of all bacteria, fungus, and virus cultures is prohibited unless a permit is obtained and the culture is preserved in a standard preserving medium. [Chapter 4-71, Hawaii Administrative Rules]

The master of any vessel landing articles without a permit as required under conservation laws shall be fined. [Hawaii Revised Statutes, §183-4]

The department of land and natural resources may import aquatic life for propagation and dissemination within state waters. [Hawaii Revised Statutes, §187A-2]

For provisions concerning the introduction and propagation of aquatic life and the powers and duties of the department of

land and natural resources and the animal species advisory committee, see part II of this chapter.

VIII. Instream Uses in Estuaries

The State, as a matter of policy, shall develop instream flow standards and instream flow programs to protect and enhance the instream use of water as a fishery, a water-related wildlife resource, a recreational resource, and a scenic resource. [Hawaii Revised Statutes, §176D-2]

The board of land and natural resources shall cooperate with other state agencies, federal agencies and county agencies in establishing and administering an instream use protection program for windward Oahu districts, which shall:

- (1) Establish instream flow standards for windward Oahu districts when the board determines that such standards will serve the public interest;
- (2) Investigate each stream and consult with the department of health, the United States Fish and Wildlife Service and other agencies or persons interested in each stream concerning a description of the amount of flow necessary to protect the public interest in each stream. The description and standards shall balance the relative benefits of current or potential instream uses and current or potential non-instream uses, including the economic consequences of restricting non-instream uses for each stream;
- (3) Establish interim instream flow standards pending the establishment of permanent standards;
- (4) Protect stream channels from alteration where practicable by requiring any person planning such alteration to obtain a board permit; and
- (5) Conduct investigations and collect information concerning fishing, wildlife, aesthetic and recreational stream uses and water quality, ecological and flow data necessary for determining instream flow requirements. [Hawaii Revised Statutes, §176D-4]

Any person, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, may request judicial review of any action of the board of land and natural resources taken in accordance with the Hawaii Instream Use Protection Act of 1982. [Hawaii Revised Statutes, §176D-7]

Department of Land and Natural Resources Rules for Protection
of Instream Uses of Water in Windward Oahu

The rules provide that, among other things, the purpose of having instream flow standards is to preserve fish and wildlife, and maintain aesthetic, recreational, and navigational uses.

The rules set forth the procedures for developing instream flow standards, including:

- (1) Notice of intent to establish a standard;
- (2) Investigations;
- (3) Methodology;
- (4) Public hearings; and
- (5) Procedures to modify an instream flow standard.

The rules also establish procedures for issuing and revoking permits to alter stream channels. In ruling on applications, the board of land and natural resources is required to cooperate with persons having a direct interest in the alteration, and "should" not grant permits where alterations will:

- (1) Adversely affect the quality or quantity of stream water or ecology;
 - (2) Diminish the quantity or quality of water below any standards which have been established;
 - (3) Interfere substantially and materially with existing uses or alterations permitted previously.
- [Chapter 13-167, Hawaii Administrative Rules]

State General Plan Provisions

The State shall have as a priority guideline for land resource utilization the identification of critical environmental areas in Hawaii, including watershed and recharge areas and natural streams and water bodies. [Hawaii Revised Statutes, §226-104]

The State shall have as a planning objective the maintenance of freshwater supplies with consideration to the accommodation of important environmental values. In order to achieve this objective, the State, as a matter of policy, shall seek a balance among developmental and environmental values in the planning, evaluation, permitting and construction of water resource projects in the following manner:

- (1) The office of environmental quality control shall maintain current environmental impact statement review procedures and

requirements for the consideration of environmental concerns in water project formulation and evaluation; and

- (2) The department of land and natural resources shall improve state laws and rules to recognize and protect noneconomic values in water, such as aesthetics, recreation, and fish and wildlife propagation. [Hawaii Water Resources Development Functional Plan, Objective B, Policy B(3), Implementing actions B(3)(a), B(3)(b)]

The State shall have as a planning objective the protection and enhancement of Hawaii's...estuarine environment. In order to achieve this objective, the State, as a matter of policy, shall protect...estuaries from uses which may degrade their ecological, aesthetic and recreational values in the following manner:

- (1) The department of land and natural resources shall establish a state program for instream flow management; and
- (2) The department of land and natural resources shall initiate appropriate measures, including the collection of fish habitat and recreation potential information and the development of streamflow criteria and standards, to protect and enhance...estuarine environments, provided such measures allow the widest opportunity for beneficial economic development. [Hawaii Water Resources Development Functional Plan, Objective G, Policy G(1), Implementing actions G(1)(a), G(1)(b)]

The State shall have as a planning objective the pursuit of water resource data collection and research to meet changing needs. In order to achieve this objective, the State, as a matter of policy, shall assure the adequacy of basic data to support evaluation, planning and decisionmaking in water resources in the following manner:

- (1) The department of land and natural resources shall accelerate and improve programs for gathering and utilizing information on water resources, including...assessments of stream and estuarine environments. [Hawaii Water Resources Development Functional Plan, Objective I, Policy I(1), Implementing action I(1)(a)]

IX. Environmental Education

The board of regents of the University of Hawaii shall establish and maintain an aquarium and marine biological laboratory on lands described in section 304-31, HRS, for the exhibition to the public of marine life. The board may charge admission to any person, except school children accompanied by a teacher or persons older than age 60 when on a tour sponsored by a senior citizen's group, for entry into the aquarium and shall deposit all receipts into the general fund for use by the University of Hawaii. [Hawaii Revised Statutes, §§304-31, 304-32, 304-33]

The State, as a matter of policy, shall:

- (1) Establish a commitment on the part of each person to protect and enhance Hawaii's environment and reduce the drain on nonrenewable resources;
- (2) Foster culture and the arts and promote their linkage to the enhancement of the environment;
- (3) Encourage both formal and informal environmental education to all age groups;
- (4) Encourage all citizens to adopt a moral ethic to respect the natural environment, to reduce waste and excessive consumption and to fulfill their responsibilities as trustees of the environment for present and succeeding generations; and
- (5) Provide for expanding citizen participation in decision making.
[Hawaii Revised Statutes, §§344-3, 344-4]

State General Plan Provisions

The State shall have as a planning objective for its land...and water quality greater public awareness and appreciation of Hawaii's environmental resources. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Foster educational activities that promote a better understanding of Hawaii's limited environmental resources; and
- (2) Foster recognition of the importance and value of land...and water resources to Hawaii's people, their cultures and visitors.
[Hawaii Revised Statutes, §226-14]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The department of education shall continue its emphasis on environmental education. [Hawaii Education Functional Plan, Implementing action I.2.1.]

The State shall have as a planning objective the public use, enjoyment and appreciation of ocean resources in a manner that minimizes environmental degradation, reduces conflicts among public resource values and assures their long-term viability. In order to achieve this objective, the State, as a matter of policy, shall promote public education and awareness by encouraging safe, environmentally sensitive, legally compliant and courteous use of ocean resources and by fostering informal public participation in the management and development of ocean resources. Specific actions shall include:

- (1) The department of planning and economic development shall coordinate and support the efforts of various federal, state and county agencies, non-profit groups and private sector

groups involved in promoting public awareness of ocean resource values and management concerns; and

- (2) The department of education, the University of Hawaii and the various county departments of parks and recreation shall develop and establish educational and training programs to enable Hawaii's people to fulfill the needs of ocean-related industries, marine resource management and water safety. [Hawaii Ocean Management Plan, Objective 1.A.1., Policy 1.B.2, Implementing actions 1.C.4., 1.C.5]

The State, as a matter of policy, shall promote knowledge, skills and services required for safe ocean recreation among visitors and residents. Specific actions shall include:

- (1) The departments of land and natural resources and transportation and the various county departments of parks and recreation shall expand information and educational programs that emphasize safety, conservation of recreational resources, pertinent laws and rules and appropriate use of public facilities. [Hawaii Ocean Management Plan, Policy II.B.5., Implementing action II.C.5.]

The State, as a matter of policy, shall enhance public awareness and appreciation of marine conservation and preservation efforts. Specific actions shall include:

- (1) The department of land and natural resources shall develop a coordinated public information and education program to enhance public awareness of marine conservation and preservation efforts. [Hawaii Ocean Management Plan, Policy III.B.4, Implementing action III.C.2.]

The State, as a matter of policy, shall facilitate informed public participation in decisions regarding nuclear waste disposal in the ocean. Specific actions shall include:

- (1) The department of health shall coordinate with federal and private groups the formulation of a public information and education program on matters pertaining to radiological health and safety. [Hawaii Ocean Management Plan, Policy IV.B.2., Implementing action IV.C.3.]

The State, as a matter of policy, shall promote public awareness of beach erosion problems in the State and alternative approaches to deal with them. [Hawaii Ocean Management Plan, Policy V.B.3.]

The State, as a matter of policy, shall foster public awareness and informed public input on government efforts to attract private investment to ocean mineral processing or related efforts in Hawaii. Specific actions shall include:

- (1) The department of planning and economic development shall improve public awareness through the media of potential positive and adverse impacts associated with the establishment of various ocean mineral recovery activities in Hawaii. [Hawaii Ocean Management Plan, Policy XI.B.3., Implementing action XI.C.2]

Chapter 2

ECONOMIC DEVELOPMENT AND RESOURCE PRODUCTION

I. Ocean Mining

The State and its political subdivisions shall conserve and protect Hawaii's resources, including...minerals and shall promote such development as does not conflict with the state goals of conservation and self-sufficiency; the State shall hold all natural resources in public trust for public purposes. [Hawaii State Constitution, Art. XI, §1]

The State shall control and manage those marine, seabed, and other resources within state bounds and archipelagic waters and those outside such bounds not otherwise controlled by federal or international law. [Hawaii State Constitution, Art. IX, §6]

The department of land and natural resources shall manage and administer the public lands of the State, including the water and mineral rights thereon. [Hawaii Revised Statutes, §26-15]

The department of planning and economic development shall plan for the use of state ocean resources. [Hawaii Revised Statutes, §26-18]

The department of land and natural resources shall manage, administer and control public lands, including submerged lands, and all water rights, minerals and other interests thereon and shall exercise such powers of disposition over such lands and resources as law may grant. [Hawaii Revised Statutes, §171-3]

The board of land and natural resources shall classify for mining use those lands bearing sufficient quantity and quality of mineral products suitable for commercial mining and use. [Hawaii Revised Statutes, §171-10]

The board of land and natural resources, in all leases it may issue, shall reserve to the State all rights to...mineral and metallic resources. [Hawaii Revised Statutes, §171-36]

The board of land and natural resources shall not include in any lease the right to any mineral, provided that the board may provide in any agreement for just compensation to the lessee for any improvements the State may make in the course of exercising its rights to such minerals and provided that the board may dispose of the State's rights to such minerals as provided by law. [Hawaii Revised Statutes, §171-58]

Any person leasing or purchasing state lands shall not thereby acquire title, right, or interest in any mineral in, on, or under such lands, and shall exercise that person's rights to the lands leased or purchased subject to the State's right to prospect for and to occupy as much of such land as needed to mine and remove any minerals therefrom; the board of land and natural resources shall enumerate such reservations and rights in all land patents,

grants, leases or other conveyances it issues. [Hawaii Revised Statutes, §182-2]

The board of land and natural resources shall require from every operator to whom it issues a mining lease a bond, in such form and amount as the board shall approve, for whose return the board shall require the operator's faithful compliance with the conditions of the lease, the laws concerning government mineral rights and an agreement to pay the occupier of the lands so leased for all damages the operation may cause; the operator and any lessee to which the State has granted, sold, or leased its mineral interests and its rights to the use of the land, respectively, shall bear joint responsibility for the payment of compensation for all damages caused by a mining operation to the occupier of such land. The occupier may, in all cases, demand and receive rent from the operator and may agree with the operator upon the amount of damages payable. [Hawaii Revised Statutes, §182-3]

The board of land and natural resources, before granting an operator a mining lease on state land, shall determine whether the existing or reasonably foreseeable future use of that land will benefit the State more than the proposed mining use will; if the State will benefit more from the existing or potential land use, the board shall disapprove the operator's application. The board shall determine the boundaries of the land included in any lease it issues, and, after public notice, shall offer that lease in public auction. The person discovering the mineral potential of the land leased shall receive from the operator granted lease rights a reimbursement for all expenses incurred in the exploration of the land, subject to board approval. [Hawaii Revised Statutes, §182-4]

The board of land and natural resources may issue permits to explore for minerals on state lands, provided that the explorer shall remove no minerals from such lands beyond those reasonably required for testing and analysis. [Hawaii Revised Statutes, §182-8]

The board of land and natural resources shall impose a limitation on the number of leases an operator may hold and on the number of acres included in such lease. No lease shall include an area larger than four square miles of contiguous land. [Hawaii Revised Statutes, §182-8]

The board of land and natural resources may direct the operators of mining leases in adjoining lands to operate under a collective plan of development if the board finds that such development will prevent the waste of any mineral, increase the ultimate recovery, avoid unnecessary drilling or digging, or for any other reason that would promote the development of any mineral resource. [Hawaii Revised Statutes, §182-9.5]

The State may acquire real property, rights-of-way, or interest in lands necessary for transportation or communication in connection with any mining lease and may assign, lease or otherwise transfer such rights to persons or companies engaged in mining operations. [Hawaii Revised Statutes, §182-12]

Operators of mining leases may surrender such leases at any time, provided that the board of land and natural resources shall approve such

surrender and shall require payment of two years' rent for that portion of the land or of the rights surrendered. The lessee shall have no liability or duty to the land surrendered beyond that incurred during the lessee's previous operations, and may remove any improvements constructed in the course of such operations. [Hawaii Revised Statutes, §182-13]

The board of land and natural resources, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt rules to protect the public interest and further the provisions of chapter 182, HRS, concerning government mineral rights. [Hawaii Revised Statutes, §182-14]

The board of land and natural resources may lease, sell, or otherwise dispose of the surface of lands for which it has issued a mining lease, subject to the rights of the operator of the mining lease. [Hawaii Revised Statutes, §182-15]

The board of land and natural resources may waive royalty payments from or may charge such rates to developers of geothermal resources as will encourage the initial and continued production of such resources, provided that the board shall heed the level of geothermal development prevalent at the time, the capability of the developer to undertake development and the need for financial incentive to encourage development. [Hawaii Revised Statutes, §182-18]

State General Plan Provisions

The State shall have as a planning objective the development of and expansion of potential growth activities that increase and diversify Hawaii's economy. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Facilitate investment and employment in economic activities that have growth potential, including...marine-related industries; and
 - (2) Increase research and the development of ocean-related economic activities, including...mining and scientific research.
- [Hawaii Revised Statutes, §226-10]

Ocean Management Plan Policies and Agency Document Citations (not law)

The State, as a matter of policy, shall promote public education and awareness by developing a skilled workforce to meet future ocean resource management and development demands. [Hawaii Ocean Management Plan, Policy I.B.2.]

The State shall have as a planning objective the establishment of an ocean mineral processing industry or such related enterprises as a shoreside support for Pacific mining activities and research, development, and demonstration projects in a manner that minimizes both the degradation of marine environments having scientific, educational, recreational, economic,

cultural and historic value, and conflicts with other ocean-related activities. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Support and coordinate research and dissemination of information pertinent to decisions regarding ocean mineral processing and facility siting;
- (2) Coordinate government services and facilities for ocean mineral processing and such related facilities and activities as harbors and related infrastructures, permit streamlining, and land and water use planning, regulation, monitoring, and enforcement;
- (3) Foster public awareness and informed public input on governmental efforts to attract private investment to ocean mineral processing or related efforts to Hawaii;
- (4) Support federal efforts to clarify the legal aspects of ocean mineral mining and potential environmental impacts in international waters.

Specific actions shall include:

- (1) The department of planning and economic development, in consultation with private industry, shall assess the potential environmental, social, and economic impacts of an ocean mineral processing industry in Hawaii;
- (2) The department of planning and economic development shall improve public awareness through the media of potential positive and adverse impacts associated with the establishment of various ocean mineral recovery activities in Hawaii;
- (3) The department of transportation shall survey harbor facilities and services, assess their adequacy, and determine the cost of maintaining or expanding them to accommodate ocean mineral processing;
- (4) The department of health shall examine regulations on ocean waste disposal in Hawaii, including water quality standards, geographic and activity jurisdictions, and pollutant types with emphasis on monitoring and enforcement, and seek amendments for improvements;
- (5) The department of planning and economic development shall support the implementation of environmental, regulatory, and planning activities authorized by the Deep Seabed Hard Minerals Resources Act;
- (6) The department of planning and economic development shall assess and coordinate state and county plans and programs to help establish ocean mineral processing and related activities;

- (7) The department of planning and economic development shall explore potentials for establishing services and facilities associated with ocean mineral mining and processing in Hawaii; and
- (8) The department of planning and economic development shall establish an intergovernmental advisory committee to advise the department's manganese nodule program and coordinate the activities of various federal, state, and county agencies. [Hawaii Ocean Management Plan, Objective XI.A, Policies XI.B.1., XI.B.2, XI.B.3, XI.B.4., Implementing actions XI.C.1., XI.C.2., XI.C.3., XI.C.4., XI.C.5., XI.C.6., XI.C.7., XI.C.8.]

Hawaii, Department of Planning and Economic Development, The Feasibility and Potential Impact of Manganese Nodule Processing in Hawaii, February, 1978. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Planning and Economic Development, The Feasibility and Potential Impact of Manganese Nodule Processing in Puna and Kohala Districts of Hawaii, November, 1981. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Planning and Economic Development, Hawaii and the Sea, 1974. The department has cited this document as a basis for policy in the subject area.

II. Ocean Leasing

The department of planning and economic development shall plan for the use of ocean resources. [Hawaii Revised Statutes, §26-18]

The department of land and natural resources shall manage and administer state public lands, including submerged lands, reclaimed lands and lands beneath tidal waters suitable for reclamation, and over all water and mineral resources therein, and may exercise such powers of disposition over those lands and resources as law may provide. [Hawaii Revised Statutes, §§171-2, 171-3]

The board of land and natural resources, when...disposing of submerged or reclaimed lands, shall publish notice of such intent and include in such notice a description of the size and location of the land; the board shall publish a notice at least once in each of three successive weeks in a newspaper of general circulation in the State, and, if the land lies within the first, second, or fourth district, in a newspaper of general circulation within the appropriate county. [Hawaii Revised Statutes, §171-16]

The board of land and natural resources may sell or lease reclaimed land to the abutting owner after determining that such disposition will not prejudice the State's best interests and after giving public notice of such intent. The board may lease submerged lands and lands beneath tidal waters suitable for reclamation with the prior approval of the governor and the

legislature, provided that the State shall retain title to the land and provided that the lessee shall bear any costs of reclamation. The board, with the prior approval of the governor and the legislature, may also sell or lease submerged lands and lands beneath tidal waters suitable for reclamation in order to settle the rights of abutting owners, to create public beaches or public rights-of-way or to consolidate public holdings in the area. [Hawaii Revised Statutes, §171-53]

The board of land and natural resources shall require of any person wishing to lease state marine waters or submerged lands a conservation district use application together with an environmental impact statement and a statement assessing the impact of all activities proposed for the lease area on its use for navigation, fishing, and recreation; applications for mariculture leases shall describe the species the lessee intends to cultivate. The board shall approve such applications only after finding that the applicant has the capability to undertake the proposed activity and after concluding that the activity serves the public interest despite its impacts or adverse effects on wildlife, aquatic life, the environment of the surrounding area and the use of the area for existing industry or for navigation, fishing, and public recreation. The board may limit the lease to cover that area necessary for the proposed activity. [Hawaii Revised Statutes, §190D-11]

The board of land and natural resources shall determine whether the lease is commercial or non-commercial and shall issue a lease, with the concurrence of the director of transportation, only for activities approved in the conservation district use application and in compliance with the provisions for the reclamation and disposition of submerged lands in section 171-53, HRS. The board shall not issue a lease when the proposed activity will adversely affect existing department of land and natural resources projects, will use waters designated for use in national defense, will adversely impact the public's overall economic, social, and environmental interests in the area or will not comply with governing federal, state, or county laws and rules. [Hawaii Revised Statutes, §190D-22]

The board of land and natural resources shall specify in any lease it issues for a mariculture operation the plants and animals such operation will cultivate and shall hold the lessee responsible for the removal or the costs of removal, if necessary to protect the environment or public health and safety, of any cultivated plant or animal from any area outside the leased area. Any person may take any such plant or animal not clearly identified as the property of the lessee subject to state fishing laws. The lease shall further require the lessee to construct gates, openings or lanes through the leased area for navigation unless such navigation will unduly interfere with the mariculture operation, and to place such buoys, fences or other devices and such warning signs as do not unnecessarily interfere with navigation or other uses of the water surface to mark the leased area and to enumerate any limitations on its public use. The board shall in all cases retain the right to suspend or revoke the lease and any research or commercial activities conducted thereunder after public notice and hearing for violations of any governing lease conditions, laws, or rules, or if the activities pose an immediate danger to human or marine life, or to the environment. The department of land and natural resources may enter and inspect all leased

areas to determine compliance with the lease. [Hawaii Revised Statutes, §190D-23]

The board of land and natural resources shall not issue any lease that in any way abridges or interferes with those konohiki fishing rights recognized by law, including rights to sublease konohiki fishing grounds for marine activities. Any fishing or marine activity conducted within konohiki fishing grounds shall be subject to state laws and rules governing fisheries and navigable waters. [Hawaii Revised Statutes, §190D-24]

For additional provisions relating to ocean leasing, see part II of chapter 3, Food Production.

State General Plan Provisions

The State shall have as a planning objective the development and expansion of potential growth activities that serve to increase and diversify Hawaii's economy. In order to achieve this objective the State, as a matter of policy, shall facilitate investment and employment in economic activities that have growth potential, including...marine-related industries. [Hawaii Revised Statutes, §226-10]

Ocean Management Plan Policies and Agency Document Citations (not law)

The department of land and natural resources, consistent with state policy to develop ocean resources of economic and social benefit in a manner that minimizes environmental degradation, reduces conflicts with other public resource values, and assures their long-term viability, shall support the enactment of an interim ocean leasing law to permit experimentation with new technologies and management techniques. [Hawaii Ocean Management Plan, Objective I.A.2., Implementing action I.C.8.]

Hawaii, Department of Planning and Economic Development, Ocean Leasing for Hawaii, January, 1981. The department has cited this document as a basis for policy in the subject area.

III. Energy and Alternative Energy Production

The department of planning and economic development shall undertake statewide planning activities, including energy research, development and management, shall plan for the use of ocean resources and shall have administrative control over the natural energy laboratory of Hawaii. [Hawaii Revised Statutes, §26-18]

Each county may develop alternative energy sources, including...ocean power, in cooperation with a public utility or an end-user or by itself for its own consumption or an end-user's consumption. [Hawaii Revised Statutes, §46-19]

The director of planning and economic development shall serve as the energy resources coordinator and shall:

- (1) Formulate plans, including objectives and criteria to measure their accomplishment, needed programs, and funding necessary for the optimum development of Hawaii's energy resources;
- (2) Recommend to the governor and legislature which existing or proposed energy resource programs will represent the best allocation of resources for the development of energy sources;
- (3) Develop programs to encourage public and private exploration for and research concerning alternative energy sources;
- (4) Conduct public education programs concerning the energy situation and the responses of government agencies;
- (5) Advise the governor, public agencies, and private industry on matters concerning energy resource acquisition, utilization, and conservation;
- (6) Contract for such services as required for the development of energy sources;
- (7) Report to the governor and legislature annually and as needed concerning all matters related to energy sources; and
- (8) Adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, and subject to legislative review, as needed to implement the energy resources law, chapter 196, HRS. [Hawaii Revised Statutes, §§196-3, 196-4]

The department of planning and economic development shall develop a state program for short- and long-range energy planning for the development of alternative sources of energy and shall disseminate the information resulting from such a program. [Hawaii Revised Statutes, §201-12]

The board of land and natural resources, as an exception to the power of the counties and the land use commission, shall designate by rule, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, geothermal resource subzones within...agricultural and conservation land use districts and shall permit, in addition to those uses permitted in each land use district, the development of geothermal resources only in such subzones. The board shall regulate by rule geothermal development in conservation land use districts only. Appropriate county authorities shall govern such uses in all other land use districts. [Hawaii Revised Statutes, §205-5.1]

Department of Land and Natural Resources Rules for Geothermal Energy Development

The department of land and natural resources has adopted rules for the designation and administration of geothermal subzones. [Chapter 13-184, Hawaii Administrative Rules]

The department has also adopted rules for the leasing and drilling of geothermal resources. The rules provide:

- (1) Procedures for issuing geothermal exploration permits;
- (2) Procedures for issuing and administering geothermal leases;
and
- (3) Requirements for drilling wells.
[Chapter 13-183, Hawaii Administrative Rules]

The department of planning and economic development shall have administrative control over the natural energy laboratory of Hawaii, which shall manage and operate facilities for the research, development, demonstration and commercialization of natural energy sources. [Hawaii Revised Statutes, §227-1]

The director of planning and economic development shall serve as chairperson for a managing board, which shall manage and control the natural energy laboratory of Hawaii, and shall:

- (1) Adopt, amend, and repeal bylaws governing its organization, the conduct of its business and the exercise of its powers and duties;
- (2) Adopt rules, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, concerning its activities, projects and facilities;
- (3) Promote the use of the laboratory site for the purposes provided by law;
- (4) Impose and collect fees for the use of the laboratory's properties and facilities;
- (5) Make and execute all contracts and other instruments necessary to further the purposes of the laboratory;
- (6) Contract for and accept any gifts and grants from public agencies or any other source;
- (7) Budget for the operation of the laboratory;
- (8) Appoint, hire, remove, and set the salaries for laboratory staff members, without regard to the civil service laws;
- (9) Report annually to the governor and the legislature concerning the activities of the board and of the laboratory; and
- (10) Conduct any other activities necessary for the operation of the laboratory. [Hawaii Revised Statutes, §§227-2, 227-3]

The managing board for the natural energy laboratory of Hawaii shall deposit all gifts and revenues from or for the laboratory into the natural energy laboratory of Hawaii special fund, from which the board shall draw funds necessary for the operation of the laboratory. [Hawaii Revised Statutes, §227-4]

The public utilities commission shall report annually to the governor concerning its activities, and shall include in that report...information about the operations and performance of public utilities and information about any environmental matters that significantly impact public utilities. [Hawaii Revised Statutes, §269-5]

Each commissioner of and the public utilities commission as a whole may investigate upon complaint or upon the initiative of the commission or any commissioner, the condition of, the methods of operation with respect to public health and safety of, the working hours and wages of employees of, the rates charged by...the amount and disposition of the income of and all matters affecting the relations and transactions with the public of any public utility. [Hawaii Revised Statutes, §269-7]

Every public utility shall provide the public utilities commission with an inventory of its property and all information the commission may require and shall permit the commission to examine its books, records, contracts, maps, and other documents. [Hawaii Revised Statutes, §269-8]

Every public utility shall keep and maintain within the State such records, books, papers, accounts, and other documents as the public utilities commission may deem necessary for effective regulation. [Hawaii Revised Statutes, §269-8.2]

The public utilities commission shall approve any contract between a producer of geothermally generated electricity or geothermal steam and any public utility, provided that the commission shall set just and reasonable rates and terms for the contract if the producer and the utility fail to agree or if the commission fails to approve their agreement. [Hawaii Revised Statutes, §269-27.1]

The public utilities commission shall seek alternative sources of electricity and may direct public utilities which supply electricity to acquire as much of such energy as the producer may willingly produce, provided that the commission shall approve any agreement between the producer and the utility, or shall set a rate for the acquisition not less than the amount the utility saves as a result of purchasing, rather than producing, the energy should the utility and the producer fail to agree. [Hawaii Revised Statutes, §269-27.2]

Public Utilities Commission Rules for Small Power Production and Cogeneration

The rules provide:

- (1) Standards for determining what qualifies as a cogeneration or small power production facility;

- (2) Procedures for determining the price at which the electric utilities will purchase the energy from qualifying facilities; and
- (3) Standards for payment by qualifying facilities to the electric utilities for interconnection costs and electricity provided by the utilities.

[Chapter 6-74, Hawaii Administrative Rules]

The laws concerning public utilities in chapter 269, HRS, shall not apply to commerce with foreign nations or with any state of the United States or to any public utility the State, any county or political subdivision may operate. [Hawaii Revised Statutes, §269-31]

State General Plan Provisions

The State shall have as a planning objective the development and expansion of potential growth activities that increase and diversify Hawaii's economy. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Facilitate investment and employment in economic activities that have growth potential, including...energy and marine-related industries;
- (2) Accelerate research and development of new energy-related industries based on...ocean resources. [Hawaii Revised Statutes, §226-10]

The State shall have as a planning objective for state...energy facility systems an increased self-sufficiency. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Support research and development as well as promote the use of renewable energy sources; and
- (2) Ensure that the development or expansion of power systems and sources adequately considers environmental, public health, and safety concerns, and resource limitations. [Hawaii Revised Statutes, §226-18]

The State shall have as a priority guideline for energy use and development the development, demonstration, and commercialization of renewable energy sources. [Hawaii Revised Statutes, §226-103]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the improvement of statewide energy planning and program implementation capabilities. In order to achieve this objective the State, as a matter of policy, shall utilize a statewide integrated approach to formulate and implement public sector strategies designed to accelerate the transition to an indigenous energy

economy in the following manner:

- (1) The department of planning and economic development shall continue to coordinate energy self-sufficiency planning efforts and recommended priorities for state and county energy programs and projects through a group representing state and county government officials and members of the public; and
- (2) The department of planning and economic development shall develop, through consultation with both the public and private sectors, a viable scenario for the State to pursue in order to make an economic transition from oil-based energy generation to alternative sources of electric energy. The scenario should be based on the need to identify positive incentives to accelerate conversion or expansion of energy generation based on sources other than oil, the need to bring about a reasonable cost of alternate energy to the consumer while accounting for the technical and financial risks related to various new sources, and an efficient balance between policies and programs that enhance conservation and those that emphasize new energy sources. [Hawaii Energy Functional Plan, Objective A, Policy A(1), Implementing action A(1)(a), A(1)(d)]

The State shall have as a planning objective the acceleration of the transition to an indigenous renewable energy economy by facilitating private sector activities to explore supply options and to achieve local commercialization and application of appropriate alternate energy technologies. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Investigate and alleviate legal, institutional, economic, and financial barriers to alternate energy resource development in the following manner:
 - (A) The department of planning and economic development shall support the continued implementation of the state geothermal commercialization program to address and mitigate legal and institutional concerns;
 - (B) The department of land and natural resources shall designate, as appropriate, geothermal resource subzones within each of the land use districts to be used for the exploration, development, production and distribution of electrical energy from geothermal sources; and
 - (C) The department of land and natural resources and the United States Army Corps of Engineers shall conduct feasibility studies and implement appropriate hydropower projects.

(2) Facilitate research, development, and demonstration activities designed to resolve remaining technical barriers to alternate energy technologies in order to expedite local commercialization in the following manner:

- (A) The University of Hawaii and various county planning agencies shall conduct statewide alternate energy resource assessment studies as appropriate to supplement private sector investigations;
- (B) The Hawaii Natural Energy Institute shall conduct technical studies to advance new opportunities for the use of appropriate alternate energy technologies for electricity production in Hawaii;
- (C) The University of Hawaii shall continue geothermal research activities as appropriate to support commercialization efforts;
- (D) The Hawaiian Electric Company and Parsons, Hawaii shall develop and demonstrate interisland electrical energy transmission technology using a deep water electrical cable;
- (E) The department of planning and economic development shall assist and facilitate private sector efforts in the design and construction of a Hawaii-based OTEC pilot plant; and
- (F) The natural energy laboratory of Hawaii and the department of planning and economic development shall support joint state and county funding of natural energy laboratory capital improvement projects and operating funds for ocean energy research, including the Seacoast Test Facility. [Hawaii Energy Functional Plan, Objective B, Policies B(1), B(2), Implementing actions B(1)(g), B(1)(h), B(1)(i), B(2)(a), B(2)(b), B(2)(g), B(2)(h), B(2)(i), B(2)(j)]

Consistent with state policy to maintain and strengthen the University of Hawaii's position as a leading national and international research center, the University of Hawaii, the Hawaii Natural Energy Institute and the natural energy laboratory of Hawaii shall develop national leadership in the areas of ocean and alternate energy research. [Hawaii Higher Education Functional Plan, Policy B(3), Implementing action (B)(3)(b)]

The State shall have as a planning objective the encouragement and coordination with other water programs of the development of self-supplied industrial water and the production of water-based energy. In order to achieve this objective the State, as a matter of policy, shall support programs for hydroelectric and geothermal power plants and shall study the feasibility of joint public and private financing and operation of such power production.

The department of planning and economic development shall continue to assess sites for commercial hydroelectric and geothermal power plants and shall study the feasibility of joint public and private financing and operation of such power development projects. [Hawaii Water Resources Development Functional Plan, Policy D(3), Implementing action D(3)(a)]

The State, as a matter of policy, shall consider where appropriate the use of conservation district lands and water for alternate energy activities. The department of land and natural resources shall develop criteria governing the development and use of alternate energy resources in the conservation district. [Hawaii Conservation Lands Functional Plan, Policy D(3), Implementing action D(3)(a)]

The State shall have as a planning objective the development of coastal energy facilities important to the State in a manner that minimizes both the degradation of marine environments having scientific, educational, recreational, economic, cultural, and historic value, and conflicts with other ocean-related activities. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Identify potential environmental impacts and ocean-use conflicts associated with coastal energy facilities;
- (2) Coordinate the various responsibilities to manage environmental impacts of coastal energy facilities; and
- (3) Develop energy generation and transmission alternatives to increase Hawaii's energy self-sufficiency.

Specific actions shall include:

- (1) The department of planning and economic development shall support the development and demonstration of interisland electrical energy transmission technology by the private sector;
- (2) The department of planning and economic development shall coordinate the management of environmental impacts and ocean-use conflicts resulting from the development and operation of coastal energy facilities; and
- (3) The department of planning and economic development shall develop a mapping system to identify potential sites for various coastal energy facilities, potentially sensitive environments, and conflicting marine uses. [Hawaii Ocean Management Plan, Objective VIII.A., Policies VIII.B.1., VIII.B.2., VIII.B.3., Implementing actions VIII.C.1., VIII.C.2., VIII.C.3.]

The State shall have as a planning objective the establishment of ocean thermal energy conversion facilities for research, development, demonstration, and commercial power production in a manner that minimizes both the degradation of marine environments having scientific, education, recreational,

economic, cultural, and historic value, and conflicts with other ocean-related activities. In order to achieve this objective, the State shall:

- (1) Assure the adequate regulation of OTEC activities in state waters;
- (2) Seek the development of a legal and regulatory framework that encourages OTEC research, development, demonstration, and commercialization in Hawaii;
- (3) Promote more public awareness of and support for OTEC research, development, and demonstration projects in Hawaii;
- (4) Seek fiscal support from federal, state, and county agencies and private industry for OTEC research, development, and demonstration projects in Hawaii;
- (5) Seek development of OTEC projects jointly with other nations; and
- (6) Promote research to identify and minimize potential adverse impacts of OTEC systems.

Specific actions shall include:

- (1) The department of planning and economic development and the University of Hawaii shall develop research programs to investigate the use of OTEC technology for electrical power generation, freshwater production, aquaculture, and other uses;
- (2) The department of planning and economic development shall design and implement programs to enhance public awareness and understanding of the research, development, and demonstration of OTEC technology and attract the commercial establishment of full-scale, operational OTEC facilities;
- (3) The department of planning and economic development shall establish a program for developing OTEC technology jointly with other nations;
- (4) The department of planning and economic development shall develop a research program to identify potential beneficial and adverse impacts of full-scale and multiple facility OTEC operations and ways to mitigate adverse impacts;
- (5) The department of planning and economic development shall coordinate federal support for OTEC projects in Hawaii with the private sector; and
- (6) The department of transportation shall survey harbor facilities and services, assess their adequacy, and determine the cost of maintaining or expanding them to accommodate OTEC research

and development. [Hawaii Ocean Management Plan, Objective X.A., Policies X.B.1., X.B.2., X.B.3., X.B.4., X.B.5., Implementing actions X.C.1., X.C.2., X.C.3., X.C.4., X.C.5., X.C.6.]

Hawaii, Department of Planning and Economic Development, Hawaii and the Sea, 1974. The department has cited this document as a basis for policy in the subject area.

IV. Desalinization and Alternate Water Sources

The department of land and natural resources shall administer the public lands of the State, including the...water resources therein. [Hawaii Revised Statutes, §26-15]

The department of land and natural resources shall manage and administer state public lands and the water resources therein and shall exercise such powers of disposition over those lands and resources as the law may provide. [Hawaii Revised Statutes, §171-3]

The board of land and natural resources shall classify as lands for watershed use all lands suitable for use as watersheds or for water development and requiring the restriction of other uses. [Hawaii Revised Statutes, §171-10]

The board of land and natural resources shall compile all information available from all public agencies within the State and shall initiate its own surveys to assess and compile an inventory of all water resources in the State, including surface, ground, brackish, salt, or other water sources needed to supply all water needs within the State, for the purpose of planning water conservation, development, and use. [Hawaii Revised Statutes, §§176-1, 176-2, 176-3]

The board of land and natural resources shall review all available information concerning and assess the feasibility of converting nonpotable sources of water, including brackish, salt, or otherwise unusable water, to water suitable for domestic, agricultural, and industrial use by such methods as evaporation, distillation, and ion exchange. [Hawaii Revised Statutes, §176-4]

The board of land and natural resources may cooperate with and receive grants and matching funds from the United States Geological Survey or any other public or private agency to survey and plan for the use of water resources within the State. The board may also hire qualified personnel for this purpose without regard to state civil service laws and shall keep for public inspection and publish the information resulting from any such survey or assessment. [Hawaii Revised Statutes, §§176-5, 176-6, 176-7]

The board of land and natural resources shall assist and cooperate upon request with the boards and departments of water supply in each county and with the Hawaiian homes commission to plan the development of and the domestic and industrial use of water resources, provided that no board action

or provision of state laws concerning water resources shall impair the authority of any county board or department of water supply to survey or plan for the use of any water supply within its jurisdiction. The board may design or construct any domestic or industrial water system. [Hawaii Revised Statutes, §§176-8, 176-9]

The director of planning and economic development shall cooperate with the department of land and natural resources to determine the need for and feasibility of establishing water systems and sources for underdeveloped or arid areas within the State. [Hawaii Revised Statutes, §201-30]

State General Plan Provisions

The State shall have as a planning objective for water facility systems the provision of water to adequately accommodate domestic, agricultural, commercial, industrial, recreational, and other needs within resource capacities. In order to achieve this objective the State, as a matter of policy, shall support research and development of alternative methods to meet future water requirements well in advance of anticipated needs. [Hawaii Revised Statutes, §226-16]

The State shall have as a priority guideline for water use and development an increase in the support for research and development of economically feasible alternative water sources. [Hawaii Revised Statutes, §226-103]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the provision of adequate water supplies for planned urban growth. In order to achieve this objective the State, as a matter of policy, shall promote the planning and development of new water supplies, giving priority to those areas experiencing critical water problems. The county water agencies, where practicable, shall consider alternative means of increasing water supplies, such as blending brackish water with fresh water, desalting brackish water or seawater, and substituting lower-quality water for potable-quality water now used for non-domestic purposes, provided that such actions shall not adversely affect the environment. [Hawaii Water Resources Development Functional Plan, Objective D, Policy D(1), Implementing action D(1)(b)]

Hawaii, Department of Land and Natural Resources, Proposed Demonstration Desalting Plant: Volume 1, Executive Summary, August, 1985. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Land and Natural Resources, Proposed Demonstration Desalting Plant: Volume 2, Engineering Report, August, 1985. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Land and Natural Resources, A Proposal to Construct a Demonstration Desalting Plant, (Circular C86), March, 1984. The department has cited this document as a basis for policy in the subject area.

V. Marine Research and Development Activities

The department of planning and economic development shall:

- (1) Assist state agencies in developing and analyzing plans, including their objectives, programs, funds, and criteria to measure the accomplishment of state goals, for the development of marine resources;
- (2) Assist departments with an interest in marine affairs, coordinate projects among departments, and encourage the timely and effective implementation of authorized marine projects and programs;
- (3) Promote Hawaii's leadership potential as a center for marine affairs to the governments of the United States, other states and other nations with Pacific basin interests, and to private and public organizations involved in commercial and noncommercial marine science and technology;
- (4) Coordinate state involvement in the national and international development of Pacific basin marine resources;
- (5) Encourage the private and public development of improved technological capabilities through marine exploration and research; and
- (6) Formulate and assist state agencies in formulating program and project proposals to attract federal funding for the development of Hawaii's marine resources. [Hawaii Revised Statutes, §201-13]

The department of planning and economic development shall have administrative control over the high technology development corporation, which shall:

- (1) Adopt bylaws for its internal organization and adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, to exercise its powers with respect to any industrial park or project and with respect to its own operations, facilities, and properties;
- (2) Prepare or contract for the preparation of development plans, specifications, designs, and cost estimates for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or industrial park and amend such plans as needed;

- (3) Own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber, with easements or otherwise, any project or designate a qualified agent to undertake such activities;
- (4) Construct, reconstruct, rehabilitate, improve, alter, repair, or contract for any such services for any project;
- (5) Initiate or arrange for the planning, opening, grading, or closing of streets, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition of property or property rights or the furnishing of property or services in connection with an industrial park;
- (6) Insure its property and other assets and operations in such amounts and from such insurers as it desires;
- (7) Accept and expend gifts or grants from any public agency or from any other source;
- (8) Issue bonds to finance projects or to provide security for loans and lend or otherwise apply the proceeds from those bonds to acquire, construct, install, or modify any project or industrial park or agree with any trustee or otherwise qualified person to undertake such activities;
- (9) Enter or possess, without terminating a project agreement, any project upon a contractor's breach of contract or for the payment of any rentals, user charges or taxes or any other sum due the corporation under the project agreement;
- (10) Agree with qualified county development agencies to provide financial support to qualified projects; and
- (11) Appoint officers, agents, and employees, prescribe their duties and fix their salaries without regard to state civil service laws and contract for the professional and technical services of consultants. [Hawaii Revised Statutes, §§206M-2, 206M-3]

Any person undertaking a project for which the high technology development corporation shall have issued bonds shall not enjoy any exemption from state or county laws, ordinances or rules governing the construction, operation or maintenance of any project or industrial park, the obtaining of building permits or any building, health, or zoning codes governing such projects or industrial parks. [Hawaii Revised Statutes, §206M-4]

The high technology development corporation, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt such rules governing health, safety, building, planning, zoning, and land use in connection with any project for which it uses bond proceeds as shall conform as closely as possible with similar existing laws, ordinances and rules. Such rules, upon the final adoption of a development plan for such an industrial

park, shall supersede all inconsistent provisions governing such areas. [Hawaii Revised Statutes, §206M-5]

The governor may set aside available public lands for the establishment of an industrial park, provided that such action shall not impair any agreement between any state agency and any holder of bonds issued by any state agency; the high technology development corporation may also lease public lands from the department of land and natural resources. [Hawaii Revised Statutes, §206M-6]

The high technology development corporation shall deposit all legislative appropriations and all monetary contributions for high technology research into the high technology research and development fund and shall fund those high technology research and development projects as it determines are economically viable and will benefit the State. [Hawaii Revised Statutes, §206M-15]

The department of planning and economic development shall have administrative control over a capital loan program and over the Hawaii capital loan revolving fund, into which the department shall deposit all funds received as repayments for capital loans made. The director of planning and economic development, in order to administer the program, shall prescribe rules to determine the eligibility of loan applicants, to establish priorities and preferences for determining eligibility, to establish conditions for the granting of a loan, to provide for the inspection of an applicant's plant, books, and records, and to require the applicant to submit progress and final reports. [Hawaii Revised Statutes, §§210-2, 210-3, 210-4, 210-5]

Department of Planning and Economic Development Rules for the Capital Loan Program

The program makes loans of up to \$100,000 to small businesses. Loans cannot be used for aquaculture. [§15-2-3, Hawaii Administrative Rules]

Unlike the fishing vessel loan program, the capital loan program is not geared specifically to businesses involved in ocean related activities, but is open to them on the same basis as most other types of businesses. [Chapter 15-2, Hawaii Administrative Rules]

The department of planning and economic development may make loans alone or in conjunction with other lending agencies, including the Small Business Administration, to small businesses to finance plant construction, conversion, or expansion, land acquisition, the acquisition of equipment, machinery, supplies, or materials or to provide the business with working capital. The department shall make such loans in accordance with the following conditions:

- (1) The department shall not grant a loan to an applicant unless the applicant has no other means of financial assistance;
- (2) No applicant may borrow at any one time more than \$250,000 or for a term longer than 20 years;

- (3) The department shall charge seven and one-half per cent annual interest; and
- (4) The department may defer the first date of repayment not more than five years, and the payment of interest for not more than two years. [Hawaii Revised Statutes, §210-6]

The department of planning and economic development may make loans to development companies incorporated in the State to supplement the funds such companies must have in order to qualify for a loan under Title V of the Federal Small Business Investment Act of 1958; such loans shall be subject to departmental conditions that shall approximate as closely as possible those conditions the Small Business Administration may specify by rule. [Hawaii Revised Statutes, §210-7]

The department of planning and economic development shall administer the Hawaii invention development fund and shall make loans to inventors to develop new products or inventions. The director of planning and economic development may appoint an advisory committee to advise the director concerning loan applications. The department, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt rules to determine the eligibility of loan applicants, establish preferences and priorities for determining eligibility, determine the necessity for and the extent of security needed for any loan and establish the interest rates, not to exceed seven and one-half per cent, that the State shall charge for each loan. [Hawaii Revised Statutes, §§211E-2, 211E-4]

Department of Planning and Economic Development Rules for the Hawaii Invention Development Loan Program

Persons who invent products, devices, techniques, or processes which have not been exploited commercially, but which are, or may be exploitable, may qualify for these loans. [Chapter 15-5, Hawaii Administrative Rules]

The department of planning and economic development shall establish a venture capital information center, which shall:

- (1) Develop a promotional program to generate and attract venture capital to Hawaii;
- (2) Provide interested investors with information on prospective investors, new products, innovations, and inventions;
- (3) Maintain a list of prospective investors, investors, and developers of new products; and
- (4) Provide a referral service to bring together investors with venture capital and investors or developers seeking financing. [Hawaii Revised Statutes, §211E-3]

The department of planning and economic development shall have administrative control over a research and development industry promotion program which shall:

- (1) Encourage by direct contact or otherwise research and development and science-related industrial firms to locate and conduct operations in Hawaii;
- (2) Encourage federal and other agencies to support research and development activities in Hawaii;
- (3) Prepare and disseminate scientific and technological information to attract research and development industry and scientific projects to Hawaii;
- (4) Promote conferences, symposia, seminars, and institutes in research, development, science, and technology;
- (5) Prepare and disseminate information about the State's resources to assure fuller participation in national research and development and science-related programs; and
- (6) Provide staff support to the governor's committee on science and technology and to other agencies engaged in science-related programs.

All personnel in the program shall cooperate with those state agencies that may coordinate federal-state relations. [Hawaii Revised Statutes, §213-1]

The governor shall administer a state system of grants-in-aid to the counties in order to encourage, assist, and stimulate the economic development of the counties through capital development projects in accordance with the state general plan. The executive officer of each county shall identify, subject to the governor's approval, projects to be included under the program. The governor shall make such awards on the basis of relative need. The departments of budget and finance and planning and economic development may adopt rules, subject to the governor's approval, for the administration of the program. [Hawaii Revised Statutes, §§214-1, 214-2, 214-3, 214-4]

The University of Hawaii shall have administrative control over the Pacific international center for high technology research, which shall assist the high technology development corporation, promote educational, scientific, technological and literary pursuits in high technology, and provide support to Hawaii's high technology industry by:

- (1) Fostering scientific and technological interchange between students and scholars of the United States and other nations;
- (2) Encouraging, initiating, aiding, developing, and conducting scientific investigations and research in high technology;

- (3) Encouraging and aiding the education and training of persons from the United States and other nations for the conduct of such investigations, research, and study; and
- (4) Assisting in the dissemination of knowledge by establishing, aiding, and maintaining professorships or other staff positions, fellowships, scholarships, publications, and lectures.

The center shall seek, receive, and accept grants, gifts and other monies, properties, or interests from public and private sources within and outside the United States to further its purposes. [Hawaii Revised Statutes, §304-65]

The research corporation of the University of Hawaii shall insure that any vessel it or any of its agents may charter meets the research vessel standards recommended by the guidelines of the university national oceanographic laboratory systems. [Hawaii Revised Statutes, §307-3.5]

State General Plan Provisions

The State shall have as a planning objective the development and expansion of potential growth activities that increase and diversify Hawaii's economy. In order to achieve this objective the State, as a matter of policy, shall increase research and the development of ocean-related economic activities such as mining, food production, and scientific research. [Hawaii Revised Statutes, §226-10]

The State shall have as a priority guideline to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy the expansion of technological research to assist industry development and the support of the development and commercialization of technological advancements. [Hawaii Revised Statutes, §226-103]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

Consistent with state policy to provide professional and job-related training which responds to the needs of, and opportunities within, the State, the University of Hawaii shall strengthen and expand opportunities for education and training in high technology and marine sciences. [Hawaii Higher Education Functional Plan, Policy A(2), Implementing action A(2)(b)]

The State, as a matter of policy, shall maintain and strengthen the University of Hawaii's position as a leading national and international research center. The Pacific international center for high technology research and the University of Hawaii shall promote high technology research in the State and in the Pacific and Asian basin. [Hawaii Higher Education Functional Plan, Policy B(3), Implementing action B(3)(b)]

The State shall have as a planning objective the development of ocean resources of economic and social benefit in a manner that minimizes environmental degradation, reduces conflicts with other public resource

values, and assures their long-term viability. In order to achieve this objective the State, as a matter of policy, shall promote efficient and coordinated management and development of ocean resources by:

- (1) Integrating and making readily available information on the environment, on economic and social resource values, and current and projected needs and demands to identify conflicting and compatible resource uses;
- (2) Seeking appropriate modification of the State's legal and institutional regimes; and
- (3) Fostering intergovernmental communication and participation in ocean resource management and development activities.

Specific actions shall include:

- (1) The department of planning and economic development shall establish a systematic inventory of data on ocean resources activities, user groups, and hazards to support agencies and individuals responsible for resource allocation and ocean use decisions;
- (2) The department of planning and economic development shall establish a network to communicate information concerning ocean resources to foster the involvement of a broad range of specialists with legal, engineering, oceanographic, environmental, social-political, and health backgrounds in specific interest and problem areas;
- (3) The department of planning and economic development shall develop channels of communication and cooperation between Hawaii and other areas of the Pacific basin relating to marine resource programs, development projects, technology transfer, and education;
- (4) The department of planning and economic development shall develop and implement a cooperative system linking local, national, and international marine service training programs to elevate Hawaii's role in providing training and to improve opportunities for Hawaii's people to receive training; and
- (5) The department of planning and economic development shall establish a program for planning, coordinating, and promoting research activities that may benefit from Hawaii's mid-ocean location and the availability of support facilities. [Hawaii Ocean Management Plan, Objective I.A.2., Policies IX.B.1., Implementing actions I.C.1., I.C.2., I.C.3., I.C.9., I.C.10.]

VI. Waterfront Development

The department of planning and economic development shall have administrative control over the Aloha Tower development corporation and the Hawaii community development authority and shall undertake...economic development activities. [Hawaii Revised Statutes, §26-18]

The department of planning and economic development shall have administrative control over the Hawaii community development authority, which shall:

- (1) Adopt bylaws for its internal organization and adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, to exercise its powers with respect to any project and with respect to its own operations, properties, and facilities;
- (2) Prepare or contract for the preparation of plans, specifications, designs, and cost estimates for the construction, reconstruction, rehabilitation, improvement, alteration or repair of any project and amend such plans as needed;
- (3) Acquire, reacquire, or contract to acquire and own, hold, clear, improve, rehabilitate, sell, assign, exchange, transfer, convey, lease, or otherwise dispose of or encumber real, personal, or mixed property or project, by itself or in partnership with other qualified persons;
- (4) Acquire or reacquire by condemnation any real, personal, or mixed property or any interest therein for public purposes, including streets, sidewalks, parks, schools, and other public improvements;
- (5) Initiate or arrange for the planning, opening, grading, or closing of streets, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition of property or property rights or the furnishing of property or services in connection with a project;
- (6) Grant options to purchase any project or renew any lease it may enter in connection with any of its projects on such terms as it may deem advisable;
- (7) Insure its property and other assets and operations in such amounts and from such insurers as it desires;
- (8) Contract for and accept gifts or grants from any public agency or from any other source;
- (9) Appoint officers, agents, and employees, prescribe their duties and fix their salaries without regard to state civil service laws

and contract for the professional and technical services of consultants;

- (10) Provide advisory, consultative, training, education, and technical services and assistance to any person, partnership, or corporation, public or private, to further its purposes; and
- (11) Administer the Hawaii community development revolving fund.
[Hawaii Revised Statutes, §§206E-3, 206E-4]

The Hawaii community development authority, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt such rules governing health, safety, building, planning, zoning, and land use in connection with any project it authorizes as shall conform as closely as possible with similar existing laws, ordinances, and rules. Such rules, upon the final adoption of a community development plan, shall supersede all inconsistent provisions governing such areas. The authority may provide by rule or in the community development plan that lands within a community development district shall not be developed beyond existing uses or that development in the area will not demolish or substantially reconstruct any existing uses or improvements thereon. [Hawaii Revised Statutes, §206E-7]

The governor may set aside available public lands located within community development districts for the Hawaii community development authority's use, provided that such action shall not impair any agreement between any state agency and any holder of bonds issued by any state or county agency, department, or board. The authority may request any state agency, with the approval of the governor, to convey any state lands under that agency's control to the authority under such terms as the authority and the agency may agree upon. [Hawaii Revised Statutes, §206E-8]

The governing body of any county may sell, lease for not more than 65 years, grant, or convey by resolution any real property under its control to the Hawaii community development authority upon the authority's formal request and after a public hearing. [Hawaii Revised Statutes, §206E-9]

The Hawaii community development authority may condemn any real property for community development pursuant to the condemnation provisions in chapter 101, HRS. No person or agency may thereafter take such property for public use without the authority's consent. [Hawaii Revised Statutes, §206E-10]

The Hawaii community development authority may require all state or county agencies undertaking any project within a community development district to consult with the authority concerning such a project. [Hawaii Revised Statutes, §206E-13]

The Kakaako community development district shall include that area described in section 206E-32 and known in the community development plan as the Makai Area. The Hawaii community development authority shall undertake development therein according to the following guidelines:

- (1) Development shall result in a community with an appropriate mixture of residential, commercial, industrial, and other uses, provided that existing and future industrial uses meeting reasonable performance standards shall be permitted and encouraged within appropriate areas in the district;
- (2) Rules and design reviews shall preserve major view planes, view corridors, and such other environmental elements as natural light and prevailing winds;
- (3) Development shall preserve historic sites and culturally significant facilities, settings, or locations; and
- (4) Public facilities within the district shall be planned, located and developed to support the district redevelopment policies contained in the community development laws and any rules adopted thereunder. [Hawaii Revised Statutes, §§206E-32, 206E-33]

Hawaii Community Development Authority Rules for the "Makai Area" of the Kaka'ako Community Development District

As a general rule, the standards for development in the Makai area are substantially similar to those which apply in the rest of the development district, and a broad range of commercial uses is allowed.

Section 15-17-206, Hawaii Administrative Rules, eliminates requirements for public facilities dedication and on-site open space and recreation space for the "waterfront industrial emphasis (WI)" zone in order to ensure that "harbor-related industrial activities that are vital to the performance of the port functions at Fort Armstrong are continued and facilitated".

See sections 15-17-200 to 15-17-214, Hawaii Administrative Rules for the rules relating to the "Makai area" specifically. For rules relating to the Kaka'ako community development district generally, see chapters 15-16 to 15-21, Hawaii Administrative Rules.

The department of planning and economic development shall have administrative control over the Aloha Tower development corporation, which shall:

- (1) Adopt bylaws for its internal organization and adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, to exercise its powers with respect to its own projects, operations, properties, and facilities;
- (2) Prepare or provide for the preparation of a development plan that incorporates the needs of the department of transportation, prepare or contract for the preparation of plans, specifications, designs, and cost estimates for the construction, alteration, or repair of any project and make and execute contracts and all other instruments necessary for the redevelopment of the Aloha Tower complex;

- (3) Own, lease, hold, clear, construct, reconstruct, improve, rehabilitate, repair, alter, assign, exchange, transfer, convey, lease, sublease, or encumber, including with easements, any project within the Aloha Tower complex except those facilities needed for maritime purposes;
- (4) Initiate or arrange for the planning, replanning, opening, grading, or closing of streets, roadways, alleys, easements or other places, the furnishing of facilities, the acquisition of property or property rights or the furnishing of property or services in connection with a project;
- (5) Grant options or renew any lease the corporation may have entered on such terms as it may deem advisable;
- (6) Insure its property or other assets and operations in such amounts and from such insurers as it desires;
- (7) Contract for and accept gifts or grants from any public agency or from any other source;
- (8) Provide advisory, consultative, training, educational, and technical services and assistance to any person, partnership or corporation, public or private, for purposes of developing the Aloha Tower complex;
- (9) Appoint officers, agents, and employees, prescribe their duties and fix their salaries without regard to state civil service laws and contract for the professional and technical services of consultants;
- (10) Pledge or assign any or all of its revenues and any insurance or condemnation proceeds, less that amount guaranteed to the harbor special fund for lost revenues or expenses incurred as a result of any corporation activities; and
- (11) Issue bonds to provide funds for the development of the Aloha Tower complex.

The corporation shall impose, collect, and deposit into the Aloha Tower fund such rentals, fees, or charges for the lease, use or services of its projects as will pay the operation, maintenance and repair costs for its projects and the principal and interest payments on any bonds it issues. [Hawaii Revised Statutes, §§206J-4, 206J-5]

The Aloha Tower development corporation shall not:

- (1) Sell any fast or submerged lands within the bounds of the Aloha Tower complex;
- (2) Sell, remove, demolish, deface, or alter Aloha Tower in any manner that will lessen its historical value to the community. The corporation may undertake such repairs, maintenance, or

reconstruction necessary to preserve Aloha Tower as an historical monument;

- (3) Exercise any jurisdiction over any replacement facilities which are necessary for maritime purposes; the department of transportation shall control such facilities.

The corporation shall preserve Irwin Memorial Park as a public park in accordance with Helene Irwin Fagan's deed to the Territory of Hawaii. [Hawaii Revised Statutes, §206J-6]

The Aloha Tower development corporation, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt such rules governing health, safety, building, planning, zoning and land use in connection with any Aloha Tower complex development project as shall not conflict with similar existing laws, ordinances, or rules. Such rules, upon the final adoption of the development plan for the Aloha Tower complex, shall supersede all inconsistent provisions governing such areas. The rules shall also insure that development shall not impair necessary maritime activities. [Hawaii Revised Statutes, §206J-7]

The Aloha Tower Development Corporation Rules

The corporation has adopted procedural rules (concerning proceedings before the corporation, rulemaking, and contested cases) as well as rules controlling the development of the Aloha Tower site. The purposes sought to be accomplished by the development rules include:

- (1) Modernizing passenger ship operations and integrating the maritime facilities with other commercial facilities;
- (2) Creating a public gathering place at the waterfront; and
- (3) Enhancing public access to, and creating new activities which will bring more people to the waterfront.

Some of the design controls upon the development include:

- (1) Height limits of 65 feet;
 - (2) Off-street parking requirements;
 - (3) Review by the department of transportation for appropriate coordination with maritime activities;
 - (4) Preservation of the Aloha Tower as a historical monument; and
 - (5) Controls on glare from reflective surfaces of building walls.
- [Chapter 15-26, Hawaii Administrative Rules]

The governor may set aside applicable portions of the Aloha Tower complex to the Aloha Tower development corporation for redevelopment, provided that such action shall not impair any agreement between any state

agency and any holder of bonds issued by any state agency. The corporation may also lease applicable portions of the Aloha Tower complex from the department of transportation. The corporation shall annually reimburse the department for all maritime revenue lost as a result of any development activity and shall provide at no cost to the department replacement facilities for maritime activities. [Hawaii Revised Statutes, §206J-8]

The Aloha Tower development corporation may require any public agency conducting any project within the Aloha Tower complex to consult with the corporation and the department of transportation concerning such a project. [Hawaii Revised Statutes, §206J-10]

The Aloha Tower development corporation may lease for not more than 65 years any portion or all of any project under its jurisdiction to any qualified person, upon such terms as the corporation shall set, if such lease conforms with the Aloha Tower complex development plan. [Hawaii Revised Statutes, §206J-11]

The department of transportation shall:

- (1) With the approval of the governor and without recourse to public bid, enter into a lease with any person engaged in maritime operations to construct, acquire, remodel, furnish or equip a special facility for that person's sole use, provided that such lease may supplement or amend an existing lease between the person and the department for the land upon which the person shall construct the facility;
- (2) With the approval of the governor, issue special facility revenue bonds in an amount sufficient to cover the construction, acquisition, remodeling, furnishing, and equipping of any special facility, provided that the department shall not issue bonds in excess of a \$50 million total;
- (3) Perform and carry out the terms and provisions of any special facility lease;
- (4) Acquire, construct, remodel, furnish, or equip any special facility or accept the contract assignment any other party to a special facility lease may make;
- (5) Construct any special facility on state land;
- (6) Agree that the other party to a special facility lease shall supervise the acquisition, construction, remodeling, furnishing, or equipping of the special facility or the expenditure of moneys for these purposes, provided that such agreement shall not be subject to section 103-22, HRS, concerning advertising and bid requirements for public contracts. [Hawaii Revised Statutes, §266-52]

The department of transportation shall not enter into any special facility lease until it has determined that:

- (1) The special facility shall not provide such services, commodities, supplies, or facilities as the state harbors system may already provide;
- (2) The use or occupancy of the special facility will not reduce the department's revenue from the state harbors system below that amount needed to maintain self-sufficiency in the department's revenue bond program in accordance with section 39-59, HRS;
- (3) The lease shall not cause a breach in any agreement authorizing any bonds the State or the department may have issued. [Hawaii Revised Statutes, §266-53]

The department of transportation shall issue all leases for special facilities in accordance with the following conditions:

- (1) The lessee shall pay the department at those times and in those amounts as it shall determine such rentals as will cover the cost of paying the principal and interest on any revenue bonds the department may have issued, the fees and expenses of all necessary trustees and paying, transfer, or fiscal officers and of maintaining any reserves for such payments;
- (2) The lessee shall pay the department a fair market rental for any departmental land the special facility may occupy; and
- (3) The lessee shall operate, maintain, and repair the special facility or shall pay the department for such operation, maintenance or repair.

The department shall deposit those monies not revenues of the special facility, including any ground rentals and any monies paid to the department for the operation, maintenance or repair of a special facility, into the harbor special fund. The department shall not make or extend any special facility lease beyond 35 years or the reasonable life of the special facility, whichever may be less. [Hawaii Revised Statutes, §266-54]

The department of transportation shall issue revenue bonds in accordance with specified laws and shall not issue such bonds after June 30, 1987. [Hawaii Revised Statutes, §§266-55, 266-56]

VII. Aquaculture and Fish Marketing and Marketing Associations

The council of the city and county of Honolulu may create, organize, and control a municipal market for the purpose of allowing persons to buy and sell...fishery products under such rules as the council may adopt. [Hawaii Revised Statutes, §70-80]

The provisions for the regulation of the marketing of agricultural commodities outlined in the Hawaii Agricultural Marketing Act, chapter 163, HRS, shall apply to...fish and fish products either in their natural state or as the producer or a processor may process them. [Hawaii Revised Statutes, §163-3]

The department of health shall issue a certificate for the operation of any...fish store or other place conducting noisome or noxious manufactures or trades upon finding that the proposed premises are in a fit and sanitary condition suitable for their intended purpose, that the premises have facilities for proper drainage, water and sewage disposal, ventilation, and air space, that the facilities occupy a location suitable for their purpose and not likely to endanger public health and that the licensee shall maintain the premises in good sanitary condition in accordance with health laws and departmental rules. No person shall operate any such store or place without departmental certification. [Hawaii Revised Statutes, §322-42]

No fish or marine products obtained by any Hansen's disease patients of Kalaupapa may be sold outside the county of Kalawao. The department of health shall adopt rules governing the acquisition of marine products by Hansen's disease patients. [Hawaii Revised Statutes, §326-42]

Agricultural and fishing cooperatives shall pay a fee of \$15 upon incorporation to the department of commerce and consumer affairs. [Hawaii Revised Statutes, §416-97]

Three or more adult persons and bona fide producers of agricultural products, including aquacultural commodities, or two or more associations of such producers, may organize a cooperative association to:

- (1) Produce, assemble, market, buy, sell, harvest, preserve, dry, process, manufacture, blend, can, pack, gin, grade, store, warehouse, handle, ship or utilize agricultural products, or byproducts, provided that 75 per cent of such products or byproducts shall originate within the State;
- (2) Manufacture, buy or supply machinery, equipment, feed, fertilizer, fuel, seeds and other agricultural supplies to its members;
- (3) Perform or furnish business or educational services on a cooperative basis or to its members; and
- (4) Finance any of these activities for its members. [Hawaii Revised Statutes, §§421-1, 421-2, 421-3]

An agriculture association formed in accordance with law shall have the power to:

- (1) Act as broker, agent, or attorney in fact and hold such property as it handles or manages for its members and for any subsidiary or affiliated association;

- (2) Make contracts and exercise all powers necessary suitable or proper for the accomplishment of its purpose not inconsistent with its articles or with law;
- (3) Make loans or advances to its members or producer-patrons or to the members of an association of which it is a subsidiary or member, purchase or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation, or security, provided the association shall not engage in banking;
- (4) Establish and accumulate capital reserves;
- (5) Own or hold membership in, shares of stock, bonds, and obligations of other associations or corporations engaged in any activity related to that of the association or engaged in the warehousing, producing, marketing, or financing of the association's activities. The association shall exercise all voting rights and other rights of ownership attached to such instruments or memberships;
- (6) Acquire, hold, sell, dispose of, pledge, or mortgage any property which its purposes may require, not inconsistent with its articles or with law;
- (7) Borrow money and pledge its notes, bonds, or other obligations for security;
- (8) Deal in agricultural products and handle agricultural machinery, equipment and supplies, and perform such services for nonmembers as do not exceed those performed for members;
- (9) Charge different rates for its goods and services to members and nonmembers as its bylaws may provide;
- (10) Conduct business within the State and elsewhere as the law may provide; and
- (11) Sue and be sued, have a corporate seal, continue as a corporation for however long its articles may provide and dissolve and wind up its affairs. [Hawaii Revised Statutes, §421-9]

Agricultural associations incorporated and operated according to the law governing agricultural associations and any contracts between such associations and their members shall not constitute a monopoly, a conspiracy to lessen competition by arbitrary price-fixing or a combination in restraint of trade. Such associations may acquire, exchange, interpret and disseminate to their members or to other cooperative associations information relating to their businesses and may advise their members concerning the adjustment of their agricultural production to the prospective production, consumption, selling price and existing or potential surpluses of agricultural commodities in order to insure orderly marketing with adequate supplies and without undue

enhancement of prices or the accumulation of undue surplus. [Hawaii Revised Statutes, §421-20]

Laws concerning the merger and consolidation and the general operations of domestic corporations shall apply to agricultural associations unless such laws conflict with the laws governing agricultural associations. Agricultural associations shall pay a fee of \$10 to the director of commerce and consumer affairs in lieu of all corporation, franchise and income taxes and any taxes upon any reserves any association may hold for distribution to members. [Hawaii Revised Statutes, §§421-21.5, 421-23, 421-25]

Five or more persons, the majority of whom produce fishery products and are state residents, may form a nonprofit cooperative association with or without shares of stock and use the word "cooperative" as part of the association's name. The association may:

- (1) Market, sell, preserve, dry, process, manufacture, can, pack, store, handle, or use any fishery product or byproduct its members may produce or deliver and conduct any activity in connection with the purchase, hiring, or use by any member of supplies, machinery, or equipment or the financing of any activity listed;
- (2) Borrow without limitation on its indebtedness or liability and make advances to its members;
- (3) Act as any member's representative in any activity listed;
- (4) Own or hold, guarantee payment on or guarantee the retirement or redemption of shares of stock, bonds, or other obligations of any corporation engaged in any activity related to that of the association or in the handling, marketing, packing, or processing of any of the association's products. The association shall exercise all rights attached to such instruments;
- (5) Establish reserves and invest such funds in bonds or other property as the association's bylaws may provide;
- (6) Buy, hold, and exercise all rights of ownership over such real or personal property as the association may deem necessary for its business;
- (7) Levy assessments in such manner and in such amounts as the association's bylaws may provide;
- (8) Perform or furnish business or educational services on a cooperative basis;
- (9) Purchase, handle, and sell machinery, equipment, and supplies and perform services for nonmembers of a value not to exceed those provided for members, provided that no more than 15

per cent of its total annual purchases may be for nonmembers or nonproducers; and

- (10) Use or employ any of its facilities for any purpose, provided that the revenue arising from such use shall reduce the operation costs of members and provided that the association shall not deal with an amount of nonmember fishery products greater than that of members. [Hawaii Revised Statutes, §§422-3, 422-4, 422-5, 422-6]

A fish marketing association may admit as members and issue common stock only to persons producing fishery products to be handled by or through the association, including the lessees and tenants of boats and equipment used for the production of such fishery products and the lessees and landlords who receive all or part of the producer's fishery products as rent. The association shall specify in its bylaws the conditions under which a member may lose membership and if any member shall have more than one vote and may limit the amount of stock a member may own. The association may become a member or stockholder of any other association organized in accordance with the Fish Marketing Act. [Hawaii Revised Statutes, §422-7]

Fish marketing associations shall sign and file articles of incorporation with the State in the manner provided for domestic corporations. The articles shall include:

- (1) The name, purpose, and powers of the association;
- (2) The location of the association's principal office, which shall be within the State;
- (3) The duration of the association, which shall not exceed 50 years;
- (4) The number, terms of office and names and addresses of the association's officers, not less than three, and of those persons serving as officers for the first year or until the election of their successors;
- (5) Whether the association is organized with or without shares of stock and whether the voting rights of members are equal or unequal, provided that a rule shall specify the manner in which voting rights are determined and provide for the admission of new members, who shall vote and share in the association's property;
- (6) If organized with stock, the association shall specify the number of shares issued, the par value of each share, if any, the aggregate par value of all shares, the classes of stock and the rights and restrictions applying to each class;
- (7) Other provisions necessary for the conduct of the association's business, including voting procedures and provisions for the

issuance, retirement, and transfer of memberships and stock.
[Hawaii Revised Statutes, §§422-8, 422-9]

A fish marketing association may require its members to contract with it to patronize its facilities and to sell all or a specified part of their products to or through it or to buy all or a specified part of their supplies from or through its facilities. This contract, while constituting on its face a relationship of agency, shall not prevent the member from passing exclusive title to the products sold to the agency upon delivery or at any other specified time. The association shall have such remedies for breach of contract as law or sections 422-23 and 422-24, HRS, may provide. [Hawaii Revised Statutes, §422-22]

In any action for breach of contract, the landlord or lessor of equipment used for the production of fishery products covered by the contract shall be presumed to be able to guarantee delivery of such products and shall therefore be held liable. [Hawaii Revised Statutes, §422-27]

Any fish marketing association may organize, form, operate, own, control, or have an interest in, own stock of or be a member of any other corporation or association engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, using, manufacturing or marketing those fishery products or byproducts the association may handle; any two corporations organized as provided in the Fish Marketing Act may merge or consolidate as the law governing domestic corporations provides. [Hawaii Revised Statutes, §422-29]

Any fish marketing association may agree with any other corporation or association to jointly or separately employ the same personnel and use the same methods, means, and agencies for cooperatively and more economically conducting their respective business. [Hawaii Revised Statutes, §422-30]

Any fish marketing association organized pursuant to the Fish Marketing Act and any contracts between the association and its members shall not constitute a monopoly, a conspiracy to lessen competition by arbitrary price-fixing or a combination in restraint of trade. [Hawaii Revised Statutes, §422-31]

Any fish marketing association formed pursuant to the Fish Marketing Act shall submit to the department of commerce and consumer affairs and to the department of land and natural resources, within 90 days of the close of its fiscal year, a report detailing the name of the association, its place of business and a general statement of its operations. [Hawaii Revised Statutes, §422-32]

Associations organized pursuant to the Fish Marketing Act shall pay to the director of commerce and consumer affairs an annual fee of \$10 in lieu of all corporate, franchise, and income tax and any tax on any reserve the association may hold for distribution to its members. [Hawaii Revised Statutes, §422-33]

The laws concerning monopolies and restraint of trade shall not forbid the existence and operation of...fishery or agriculture cooperative

associations instituted for the purpose of mutual help, organized according to either chapter 421 or 422, HRS, and in conformance with the Capper-Volstead Act, provided that such laws shall apply to those associations should they enhance the prices of agricultural or fishery products by monopolizing or restraining trade or commerce. [Hawaii Revised Statutes, §480-11]

For provisions concerning the regulation of shipping contracts see chapter 490, HRS, the Uniform Commercial Code.

State General Plan Provisions

The State shall have as planning objectives for the general economy increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people and a steadily growing and diversified economic base not overly dependent on a few industries. In order to achieve this objective the State, as a matter of policy, shall encourage the formation of cooperatives and other favorable marketing arrangements at the local or regional level to assist Hawaii's small-scale producers, manufacturers, and distributors. [Hawaii Revised Statutes, §226-6]

The State shall have as a planning objective the continued growth and development of diversified agriculture throughout the State. In order to achieve this objective, the State, as a matter of policy, shall strengthen diversified agriculture by developing an effective promotion, marketing, and distribution system between Hawaii's producers and consumer markets locally, on the continental United States, and internationally. [Hawaii Revised Statutes, §226-7]

The State shall have as a priority guideline to promote the growth and development of...aquaculture the formation and operation of production and marketing associations and cooperatives to reduce production and marketing costs. [Hawaii Revised Statutes, §226-103]

Functional Plan Policies

The State shall have as a planning objective the achievement of maximum public benefit from the allocation of resources to assist agriculture. In order to achieve this objective the State, as a matter of policy, shall encourage the development of agricultural cooperatives and associations to promote effective marketing of agricultural commodities in the following manner:

- (1) The governor's agriculture coordinating committee, the University of Hawaii's College of Tropical Agriculture and Human Resources, and the department of agriculture shall encourage the formation of agricultural cooperatives and associations; and
- (2) The department of agriculture shall improve the marketing capabilities of selected local commodity industries. [Hawaii Agriculture Functional Plan, Objective A, Policy A(2), Implementing actions A(2)(a), A(2)(b)]

VIII. International Commerce and Foreign Trade Zones

The department of planning and economic development shall encourage the development and promotion of industry and international commerce. [Hawaii Revised Statutes, §26-18]

The State and any political subdivision or agency thereof approved by the governor may apply to the Foreign Trade Zones Board of the United States to establish, operate and maintain in any port of entry within the State a foreign trade zone, in accordance with the Act of Congress governing such zones. Any such subdivision or agency may establish, operate, and maintain a foreign trade zone in accordance with the Act of Congress and under such rules and for the period of time the Board may set. [Hawaii Revised Statutes, §§212-1, 212-02, 212-3, 212-6]

The governor, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, may adopt such rules as may be necessary to regulate the foreign trade zone in accordance with the Act of Congress governing such zones. The governor may also set aside public lands to the State or to any political subdivision or agency thereof for the purpose of establishing and operating a foreign trade zone. That agency or subdivision may lease, rent, or let such lands and any interest therein, including concession space, without recourse to public auction and under such terms as the subdivision or agency may set. [Hawaii Revised Statutes, §§212-4, 212-5]

Department of Planning and Economic Development Rules for Foreign Trade Zone Number 9

Under the rules, the rates and other rules controlling the use of the facility are specified in a "tariff" and other "zone users directives" issued by the director, which the director reserves the right to change from time to time "as economic conditions and department needs may dictate". [Chapter 15-8, Hawaii Administrative Rules]

Any political subdivision or agency of the State authorized to operate a foreign trade zone may provide such indemnity or assurance and deposit such funds, if available, to the United States or to its agencies as they may request. [Hawaii Revised Statutes, §212-7]

Sales of all products categorized as privileged domestic or foreign merchandise, nonprivileged foreign or domestic merchandise or zone-restricted merchandise admitted into a foreign trade zone or made to any common carrier in interstate or foreign commerce for use or consumption out-of-state by that carrier's crew or passengers shall be exempt from specified taxes. [Hawaii Revised Statutes, §212-8]

The State or any of its political subdivisions or agencies shall deposit all revenues collected from any foreign trade zone into the foreign trade zone special fund for such subdivisions or agencies to use for the maintenance of the zone. [Hawaii Revised Statutes, §212-9]

Agency Document Citations (not law)

Hawaii, Department of Planning and Economic Development Foreign Trade Zone Division, Tariff No. 1 for Foreign-Trade Zone No. 9, Port of Honolulu, Hawaii. The department has cited this document as a basis for policy in the subject area.

IX. Interruption of Commerce/Labor Disputes

The governor, upon declaring that an emergency that impairs the availability of commodities necessary to the public health, safety, or welfare or which substantially interrupts commerce to or within the State exists, may:

- (1) Allocate shipping space as equitably as practicable to and among types of commodities and consignees in order to meet the population's emergency needs, when shipping space depends on such allocation;
- (2) Charter or freight a ship or ships and make any other arrangement to procure ships or other means of transportation to transport cargoes to and from the State;
- (3) Purchase, resell, or otherwise distribute commodities according to rules adopted pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS. [Hawaii Revised Statutes, §§125-1, 125-2]

The State shall charge for any transportation for or sales of commodities it provides pursuant to the law concerning the procurement and distribution of necessary commodities, chapter 125, HRS, an amount sufficient to cover any costs incurred in providing such services. [Hawaii Revised Statutes, §125-3]

The governor or an authorized representative may receive and expend grants and other contributions made for the purposes of providing transportation or selling commodities pursuant to chapter 125, HRS, and may establish suitable funds within the state treasury for the deposit and expenditure of such contributions. [Hawaii Revised Statutes, §125-5]

Note: The attorney general has determined chapter 381, Hawaii Revised Statutes, to be invalid. Att. Gen. Op. 67-7.

Public utilities and their employees shall use the processes of conference and collective bargaining, without recourse to lockouts or strikes, to settle their disputes in order to avoid any interruptions in public utility services to users, consumers and the public. Neither party to the dispute may strike or attempt a lockout except as the law governing labor disputes in public utilities, chapter 381, HRS, may provide. [Hawaii Revised Statutes, §§381-2, 381-9]

Either party in a labor dispute between a public utility and its employees, by filing notice with the director of labor and industrial relations

and with the other party, may declare an impasse in negotiations. Following such a declaration, the public utility may not change the wages, hours, or conditions of employment prevailing prior to the dispute without the agreement of both parties. This provision shall not apply where the parties negotiate according to a collective bargaining agreement unless a dispute concerning a provision of the agreement arises or unless the parties undertake negotiations for a new or amended agreement and do not reach an agreement within the deadline specified in the existing agreement for such negotiations. [Hawaii Revised Statutes, §§381-3, 381-7]

The director of labor and industrial relations, upon receipt of a notice of impasse, shall request each party to designate a representative not affiliated with the utility or with its employees to serve on an emergency board; those designated, or the governor if those designated do not agree, shall choose a third impartial person to serve as the emergency board chairperson. The board shall hold hearings to ascertain the facts in a dispute and attempt by mediation to bring the parties into agreement; the board shall have the power to subpoena persons and records and receive evidence and may apply to circuit court to enforce such power. The board shall report to the governor the results of all such actions taken. [Hawaii Revised Statutes, §§381-4, 381-5, 381-6]

For ten days after the emergency board has filed its report on the dispute with the governor, the public utility may attempt no lock outs and its employees may not strike. If, after the ten-day period has passed, the disputing parties have not resolved their dispute, each shall have twenty days in which to strike or lock out. If neither party strikes or locks out during those twenty days, neither may do so for another thirty days. If the parties have not agreed within the thirty-day period, they may strike or lock out after filing notice with the director of labor and industrial relations and allowing a period of ten days to elapse. [Hawaii Revised Statutes, §381-8]

The attorney general, at the attorney general's own initiative or in response to a request from the director of labor and industrial relations, may apply for injunctive relief against either party in a labor dispute between a public utility or its employees should either violate the provisions governing labor disputes in public utilities. [Hawaii Revised Statutes, §381-10]

The provisions governing labor disputes between public utilities and their employees shall not require an employee to work without that employee's consent or prevent an employee from quitting. Such provisions shall not impair, curtail or destroy the rights of public utility employees to form, join or assist labor organizations, to bargain collectively through their chosen representatives, or to act in concert for the purpose of collective bargaining, provided that those employees shall conform to the requirements of the provisions governing such actions. [Hawaii Revised Statutes, §§381-12, 381-13]

The State, in applying the provisions of the laws governing labor disputes in public utilities, shall exercise police power to protect the public welfare, safety, peace, prosperity and health and may apply those provisions liberally for that purpose. [Hawaii Revised Statutes, §381-14]

The governor, upon finding that an interruption of services furnished by the stevedoring industry imperils the public health, safety, or welfare, may proclaim an emergency and may:

- (1) Seize and operate through any state department or agency the plant and facilities of any stevedoring company which has suspended or substantially reduced its operations;
- (2) Make contracts and arrangements with ship owners, charters, agents and operators, wharf and pier owners and operators, warehouse operators and any others to provide stevedoring services and other related services without a certificate from the comptroller attesting to the existence of an unexpended appropriation to cover expenses for such agreements;
- (3) Exercise such authority as necessary to conduct government operations pursuant to chapter 382, HRS, in a manner consistent with the public health, safety, and welfare;
- (4) Terminate the use of those facilities the governor seized and operated pursuant to chapter 382, HRS, and restore such facilities to their owner when the owner can resume operations independently or when the State no longer needs such facilities to protect the public health, safety, or welfare; and
- (5) Adopt rules to further the purposes of chapter 382, HRS, without regard to the Hawaii Administrative Procedure Act, chapter 91, HRS. [Hawaii Revised Statutes, §§382-2, 382-3, 382-6, 382-9]

The governor, when operating the plant and facilities of a stevedoring company pursuant to chapter 382, HRS, shall to the extent possible and practicable employ those employees, including employees on strike or locked out, that the company employed prior to the suspension or reduction of services that prompted the government seizure of its facilities; such employees shall not, while employed during the government operation of their place of employment, enjoy the benefits provided to other state employees or be required to possess the qualifications of other state employees. All such employees shall receive the same hours and wages and be subject to the same conditions of employment during government employ that they received or were subject to prior to the government seizure of their place of employment. Neither the governor or any designated agency may negotiate with any stevedoring company or labor organization concerning wages, hours, or conditions of employment. The State shall have the obligations and shall make those contributions required of a new employer during the term of its operation of any stevedoring company. Employment in such a facility during government operations shall constitute employment for the purposes of determining benefits due employees pursuant to the unemployment compensation and workers compensation laws, chapters 383 and 386, HRS. [Hawaii Revised Statutes, §382-4]

The governor may expend or may designate a state agency to expend from the general revenues of the State all funds necessary to meet the

expenses of government operation of any stevedoring company, including the provision of just compensation to the company for the use of its facilities pursuant to chapter 382, HRS, up to a limit of \$250,000. The governor may then expend additional funds from the governor's contingency fund or borrow additional funds from the state general fund up to an additional amount of \$250,000. The State shall charge and deposit into the state treasury those rates and fees for any services provided during the operation of a stevedoring company as prevail generally in the industry prior to the disruption of service. [Hawaii Revised Statutes, §382-5]

For the duration of the government operation of any stevedoring company, the following conditions shall apply:

- (1) No person or labor organization may strike or refuse to transport or otherwise handle cargo or refuse to provide services to any vessel or facility;
- (2) No person may consort with others to withhold patronage, employment or business; and
- (3) No person may establish a picket line to interfere with government operations pursuant to chapter 382, HRS, to force any person to cease handling cargo for which the government provides stevedoring services or to cause loss, damage, or injury to any person handling cargo for which the government provides stevedoring services, provided that this section shall not apply to any person who refuses to work because of an unresolved labor dispute or to any person who refuses government employment pursuant to chapter 382, HRS. [Hawaii Revised Statutes, §382-7]

The provisions governing labor disputes between stevedoring companies and their employees shall not require an employee to work without that employee's consent or prevent an employee from quitting. [Hawaii Revised Statutes, §282-8]

The governor's powers under chapter 382, HRS, shall supplement any other powers granted by law, including those granted for the procurement and distribution of necessary commodities in chapter 125, HRS. Nothing in chapter 382, HRS, shall limit the governor's powers or that of any agency the governor may designate to conduct operations pursuant to section 382-3, HRS. [Hawaii Revised Statutes, §382-10]

State General Plan Provisions

The State shall have as a planning objective for the general economy the achievement of a steadily growing and diversified economic base not overly dependent on a few industries. In order to achieve this objective the State, as a matter of policy, shall assure that the basic economic needs of Hawaii's people are maintained in the event of disruptions in overseas transportation. [Hawaii Revised Statutes, §226-6]

The State shall have as a priority guideline to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy the continuation of efforts to seek legislation to protect Hawaii from transportation interruptions between Hawaii and the continental United States. [Hawaii Revised Statutes, §226-103]

Chapter 3

FOOD PRODUCTION

I. Commercial Fishing and Fishing Vessels

The State shall control all marine, seabed and other resources within its boundaries and archipelagic waters and shall have all such rights beyond those boundaries not limited by federal or international law. Any person may enter any sea fishery not included in a fishpond, artificial enclosure or licensed mariculture operation, subject to such vested rights and such state regulation as may exist therein. The legislature shall establish guidelines for mariculture operations in order to protect the public use and enjoyment of the reefs; the State may condemn such rights for public purposes. [Hawaii State Constitution, Art. XI, §6]

The department of land and natural resources shall administer state public lands and the water and mineral resources thereon, aquatic life and wildlife resources, aquaculture programs, and state parks, including historic sites. [Hawaii Revised Statutes, §26-15]

The department of land and natural resources shall manage and administer state public lands and the water and mineral resources thereon, aquatic life and aquaculture programs, aquatic life sanctuaries, public fishing areas, wildlife and wildlife sanctuaries and natural area reserves and shall exercise such powers of disposition over those lands and resources as the law may provide. [Hawaii Revised Statutes, §171-3]

The department of land and natural resources shall:

- (1) Manage and administer aquatic life, aquatic resources and aquaculture programs within the State;
- (2) Establish and maintain aquatic life propagation stations;
- (3) Establish, manage and regulate public fishing areas, artificial reefs, fish aggregating devices, marine life conservation districts, shoreline fishery management areas and refuges;
- (4) Import aquatic life for breeding and stocking;
- (5) Distribute aquatic life free of charge to increase the food supply within the State and propagate and furnish for reasonable charges aquatic life to private parties when the department deems such actions will serve the public interest;
- (6) Compile information and statistics concerning the character and status of aquatic resources within the State;
- (7) Enforce all laws concerning the taking, protection and propagation of aquatic life within the State; and

- (8) Recommend to the governor and legislature additional legislation to further the objectives of the aquatic resource conservation and protection laws contained in title 12, HRS. [Hawaii Revised Statutes, §187A-2]

The department of land and natural resources, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt rules delimiting size and bag limits, establishing open and closed fishing seasons, specifying the type and amount of fishing gear that may be used, prescribing the kind and amount of bait that may be used, and specifying the conditions for entry into areas for taking aquatic life. [Hawaii Revised Statutes, §187A-5]

The department of land and natural resources shall cooperate with federal and other governmental agencies with an interest in the protection, propagation and increasing of aquatic life, and may allow such agencies the use of departmental land and property for those purposes. [Hawaii Revised Statutes, §187A-8]

The department of land and natural resources may designate agents to sell fishing licenses and shall provide for the strict accounting of all licenses sold and all revenues collected; such agents shall receive a five per cent commission on license sales and may administer the oaths required upon application. [Hawaii Revised Statutes, §187A-10]

The department of land and natural resources shall deposit all revenues collected from the sale of fishing permits and licenses into the general fund for use in accordance with legislative appropriation in its programs concerning the importation, management, and propagation of aquatic life and for expenses incurred in the prosecution of violators of the resource and conservation laws. [Hawaii Revised Statutes, §187A-11]

The department of land and natural resources shall pay one-half of the fine collected upon conviction from violators of the aquatic resources and conservation laws to persons whose information led to the conviction; the department shall not pay this amount to any of its regularly employed enforcement officers. [Hawaii Revised Statutes, §187A-14]

The people shall have a right to the use of all fishing grounds upon or appurtenant to government lands or otherwise under the control of the government, provided that such right shall not apply to fishponds and provided that the department of land and natural resources may regulate the taking of aquatic life therein. [Hawaii Revised Statutes, §187A-21]

No person who has acquired any interest in government land shall have any greater right to fishing grounds adjacent to, but not included within, such lands than does any other person. [Hawaii Revised Statutes, §187A-22]

For summaries of the fishing rights and regulations listed in chapter 188, Hawaii Revised Statutes, see part II of chapter 5, Recreation.

The department of land and natural resources shall have administrative control over the Hawaii fisheries coordinating council, which shall advise the

board of land and natural resources on matters concerning fisheries development and the coordination of fisheries activities among state, federal and county agencies and private industry, and shall:

- (1) Propose and prepare plans and policies for fisheries development programs;
- (2) Coordinate state agency requests for federal grants and technical assistance;
- (3) Promote communication between industry and government concerning industry problems and requirements and governmental provision of financial and technical assistance; and
- (4) Perform such services as the governor or legislature may require and report annually to each concerning any activities undertaken pursuant to these requirements. [Hawaii Revised Statutes, §§188E-1, 188E-2]

The Hawaii fisheries coordinating council shall have such staff support as it may need to perform its functions from the department of land and natural resources and shall upon request receive from any state agency or any agency of any political subdivision of the State such data and assistance as it may require. [Hawaii Revised Statutes, §§188E-3, 188E-4]

No person shall take marine life for commercial purposes or offer vessel charter services for the taking of marine life within or outside the State without a commercial marine license from the department of land and natural resources; licensees shall not permit the use of such licenses by any other person and shall show the license upon demand to any fishing law enforcement officer or risk license revocation. All licenses shall expire on the June 30 following the date of issue. [Hawaii Revised Statutes, §189-2]

Unless specifically exempted, commercial marine licensees shall submit a monthly catch report no later than the tenth day of each month to the department of land and natural resources, in such form as it may require, detailing the amount and types of marine life taken and the amount and types of live, fresh or frozen bait used; the department shall not disclose any such information reported without the consent of the licensee except under court order, subpoena or, under an information exchange agreement with federal agencies, for marine life management. The department, however, shall disclose the reported wet weight harvest of *Corallium secundum*, *Corallium regale*, *Corallium laauense*, *Geradia*, *Callogorgia gilberti*, *Narella*, *Calyptraphora*, *Lepidisis olapa* and *Acanella*. Failure or refusal to submit a monthly catch report shall subject the licensee to license revocation. [Hawaii Revised Statutes, §189-3]

Department of Land and Natural Resources Rules Relating to
Commercial Fishing

Commercial marine licensees must obtain bait licenses in order to take specified baitfish. The requirements include:

- (1) Limiting licenses for taking nehu to persons employed on live-bait tuna boats whose principal means of livelihood is tuna fishing, and who do not sell the nehu to others;
- (2) Licenses for other baitfish are limited to persons in fishing operations which bring the fish into the State; and
- (3) Monthly baitfish catch reports.

The department may also restrict the times and places for catching baitfish in order to conserve resources. [Chapter 13-72, Hawaii Administrative Rules]

Departmental rules also license the possession and sale of any marine animals or fishery products of any size taken outside the waters of the State if the taking, possession, or sale of that species is restricted if taken within state waters. [Chapter 13-71, Hawaii Administrative Rules]

No person who has not been lawfully admitted to the United States may take marine life within state waters. [Hawaii Revised Statutes, §189-5]

The department of land and natural resources may permit the possession and sale of marine life or products taken outside state waters during closed seasons or in exception to other such prohibitions. [Hawaii Revised Statutes, §189-6]

Any dealer engaged in the commercial purchase or sale of marine life taken within or adjacent to state waters shall submit to the department of land and natural resources before the tenth day of each month a report detailing the weight, number and value of each species of marine life that dealer buys or sells. That dealer shall also issue to any person from whom the dealer buys or receives marine life and to any commercial licensee working for the dealer a receipt with the dealer's signature setting forth the date of issue, the name of the person to whom the dealer issues the receipt, the weight in pounds of each variety of marine life received, the numbers of each variety when those caught average one pound or more, and the price per pound the dealer paid for each variety; the dealer shall keep a duplicate of each receipt for six months and shall allow the department to inspect those duplicates upon demand. [Hawaii Revised Statutes, §§189-10, 189-11]

The department of land and natural resources may board any vessel used in taking marine life and may enter any premises upon which marine life is sold, stored, processed, cooked, canned, or cured in order to inspect any and all books and records detailing marine life taken, bought or sold; any person refusing such right shall upon conviction be guilty of a petty misdemeanor and punished as provided in this section. [Hawaii Revised Statutes, §189-14]

The department of land and natural resources may adopt and enforce rules concerning the use of fish aggregation devices deployed under the

Statewide Fish Aggregating System that prohibit attaching, mooring, or tying any boat or other watercraft to or boarding, defacing, damaging, removing or destroying any such devices, provided that the department may engage in any such activity in order to enhance the system. [Hawaii Revised Statutes, §189-15]

Department of Land and Natural Resources Rules for Fish Aggregating Devices

These rules prohibit:

- (1) Attaching any water craft or other structure to; or
- (2) Damaging, destroying, or removing;

any fish aggregating device, unless permission has been obtained from the board of land and natural resources. [Chapter 13-73, Hawaii Administrative Rules]

The State, as a matter of policy, shall encourage all industries within the State, including the...fishing industry, to protect the environment. [Hawaii Revised Statutes, §344-4]

For summaries of provisions relating to unemployment compensation, workers' compensation, and temporary disability insurance, see part II of chapter 6, Miscellaneous.

No county may require any person to obtain a fishing license from that county. [Hawaii Revised Statutes, §445-15]

Commercial fishing boats and nets personally owned by and used in the exercise of a debtor's trade or business shall be exempt from attachment and execution up to the value set forth in this section. [Hawaii Revised Statutes, §651-121]

For a summary of the provisions of the Statewide Kapu System established in Act 256, Session Laws of Hawaii 1986, see part II of chapter 5, Recreation.

A. Large and Small Fishing Vessel Loan Programs

The director of planning and economic development shall administer the Hawaii loan programs and the related revolving funds for the purchase, construction, renovation, maintenance and repair of large and small fishing vessels and shall:

- (1) Prescribe eligibility qualifications for loan applicants;
- (2) Establish preferences and priorities to determine loan eligibility;
- (3) Establish conditions for the granting of a loan;

- (4) Provide for the inspection, at reasonable hours, of the vessel, books, and records of an individual or enterprise who has applied for or has received a loan and require from such person or enterprise the submission of progress and final reports; and
- (5) Adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, to administer each loan program. [Hawaii Revised Statutes, §§189-22, 189-23, 189-24, 189-43, 189-44]

The department of planning and economic development may make loans to individuals or businesses to finance the purchase, construction, renovation, maintenance, or repair of large vessels -- those exceeding five net tons -- or small vessels -- those under five net tons -- in conjunction with loans from such financial institutions as the Financial Services Division of the United States National Marine Fisheries Service and the Small Business Administration; the director may determine the necessity and extent of the security needed for the loan and may subordinate the department's security requirement to that of other loaning agencies if those agencies require such subordination in order to lend to an individual or business. The department shall make such loans under the following restrictions:

- (1) No loan of state funds shall exceed 80 per cent of the cost of purchase, construction, renovation, maintenance or repair of a large vessel;
- (2) No loan for a small vessel or for the renovation, maintenance or repair of a large vessel shall exceed a \$50,000 amount or a ten-year term;
- (3) No loan for the purchase or construction of a fishing vessel shall exceed a 20-year term;
- (4) Each loan shall bear a simple seven and one-half per cent annual interest rate;
- (5) The director may defer repayment of the loan principal for no more than two years; and
- (6) The State shall not resell to the individual to whom the department made a loan or to any person with a financial interest in any vessel financed under the loan program and then repossessed. [Hawaii Revised Statutes, §§189-21, 189-25, 189-42, 189-45]

The department of planning and economic development shall report annually to the governor and the legislature concerning its activities under the provisions of the large and small fishing vessel loan programs. [Hawaii Revised Statutes, §§189-26, 189-46]

Department of Planning and Economic Development Rules for Fishing Vessel Loan Programs

The department of planning and economic development has adopted rules to implement the fishing vessel loan programs for purchasing, constructing, renovating, maintaining, and repairing large and small fishing vessels. In order to be eligible for loans, applicants must be bona fide residents having the ability to operate and maintain the vessel, who derive a majority of their income from commercial fishing, and who are unable to obtain sufficient credit from other sources. In addition, the vessel must deliver its full catch to a port in the State. Preference for loans is given to modern, well equipped vessels, and, among loans for large vessels, to those with a range of over 1,500 miles. [Chapter 15-3, Hawaii Administrative Rules]

State General Plan Provisions

The State shall have as a planning objective for potential economic growth activities the development and expansion of potential growth activities that increase and diversify Hawaii's economic base. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Facilitate investment and employment in economic activities that have the potential for growth, including...marine-related industries; and
- (2) Increase research and the development of ocean-related economic activities, including...food production. [Hawaii Revised Statutes, §226-10]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the sound management and development of Hawaii's...marine resources for potential economic benefit. In order to achieve this objective the State, as a matter of policy, shall establish and manage Hawaii's...marine fishing areas and encourage the expansion of Hawaii's fishing industry in the following manner:

- (1) The department of land and natural resources shall test the feasibility of expanding the range of aku and bottom fisheries;
- (2) The department of land and natural resources shall build and operate facilities for the propagation of fish, including aku bait; and
- (3) The department of land and natural resources shall assist fishermen in locating fish at sea by installing and maintaining fish aggregation buoys and artificial reefs. [Hawaii Conservation Lands Functional Plan, Objective D, Policy D(2), Implementing actions, D(2)(a), D(2)(b), D(2)(c)]

The State shall have as a planning objective the protection of state interests in selected areas. In order to achieve this objective, the State, as

a matter of policy, shall assess the marine resources of the Northwestern Hawaiian Islands for state use and regulation in the following manner:

- (1) The department of land and natural resources shall assess and survey the marine resources of the Northwestern Hawaiian Islands for state use and regulation and shall formulate a plan for managing fisheries in this area. [Hawaii Conservation Lands Functional Plan, Objective E, Policy E(2), Implementing action E(2)(a)]

The State, as a matter of policy, shall develop a skilled workforce meeting future ocean resource and development demands. [Hawaii Ocean Management Plan, Policy I.B.2.]

The State shall have as a planning objective the development of fisheries that would benefit the State's economy while protecting, preserving, and, where desirable, restoring fishery resources having...commercial value and minimizing conflicts among users. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Coordinate a broad range of planning, regulatory, and resource management programs which directly or indirectly contribute to the enhancement of fisheries resources;
- (2) Improve information on fishery resources for planning and management decisions;
- (3) Resolve fishery user conflicts and assure compliance with fishery regulations;
- (4) Enhance, where desirable and economically feasible, private development of fishery resources for long-term economic and social benefits to the State; and
- (5) Improve the long-term production of commercially and recreationally valuable species by controlling the taking of stock and enhancing marine environments.

Specific actions shall include:

- (1) The department of land and natural resources and the Hawaii fisheries coordinating council shall examine the current roles of government in developing the fishery industry and regulating fishery resources, and shall formulate a strategy to resolve policy conflicts;
- (2) The department of land and natural resources shall assess in detail and improve fishery data by assessing...subsistence fishery data, establishing an automated fishery information system relating catch and effort data, important habitats and ecosystems to geographical locations, and researching the population dynamics of selected species;

- (3) The department of land and natural resources shall prepare a plan for fisheries management which coordinates various federal, state, and county programs to provide effective and comprehensive management of fishery resources for a variety of user groups. The plan shall include programs limiting the taking of fish and providing controls over consumptive activities, such as fishery management areas (kapukus) and marine life conservation districts;
- (4) The department of land and natural resources shall facilitate communication of pertinent fishery information to interested parties and insure timely agency response to the various federal, state, and county land and water development permits concerning potential impacts on fishery resources;
- (5) The department of land and natural resources shall improve fishery management capabilities by educating...commercial fishers, especially recent in-migrants, concerning applicable laws and rules, by expanding the State's fishery enforcement capabilities with a volunteer officer program, by supporting a program for public reporting of violations of fishery laws and rules and by mediating conflicts involving fishers; and
- (6) The department of land and natural resources shall formulate and implement programs to develop state fisheries by:
 - (A) Researching and developing artificial reefs, fish aggregation devices and other fishery enhancing technologies;
 - (B) Supporting research, production, and tuna industry use of cultured baitfish and promoting programs to enhance the protection and increase the production of natural baitfish;
 - (C) Supporting research on the handling and processing of seafood to improve and maintain the quality of Hawaii products;
 - (D) Developing fishing facilities in the Northwestern Hawaiian Islands, in consideration of National Wildlife Refuge policies, for seafood processing, transshipment, and research;
 - (E) Investigating the effectiveness of new or underused fishing techniques and technologies to improve yields, including the development and production of fishing vessels and equipment uniquely suited to Hawaii fisheries;
 - (F) Promoting the development of markets for fishery species caught or processed in Hawaii and

researching market development for underused species;

- (G) Promoting programs to help commercial fishers obtain financing for vessel construction, acquisition, modernization, maintenance and repair, and to minimize insurance costs through crew and navigation safety improvements; and
- (H) Periodically updating the Hawaii Fisheries Development Plan. [Hawaii Ocean Management Plan, Objective VI.A., Policies VI.B.1., VI.B.2., VI.B.3., VI.B.4., VI.B.5., Implementing actions VI.C.1., VI.C.2., VI.C.3., VI.C.4., VI.C.5., VI.C.6.]

Hawaii, Department of Land and Natural Resources, Midway Islands Albacore Tuna Fishery Feasibility Study, April, 1984. The department has cited this document as a basis for policy in the subject area.

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Hawaii, Department of Land and Natural Resources, Shrimp Industry Development Project, February, 1983. The Department has cited this document as a basis for policy in the subject area.

F. Hester and G. Broadhead, Tuna Fishery Development Plan, (Pacific Tuna Development Foundation, April, 1980). The department of planning and economic development has cited this document as a basis for policy in the subject area.

II. Aquaculture and Mariculture

Any person may enter any sea fishery not included in a fishpond, artificial enclosure or licensed mariculture operation, subject to vested rights.... The legislature shall establish guidelines for mariculture operations in order to protect the public use and enjoyment of the reefs; the State may condemn such rights for public purposes. [Hawaii State Constitution, Art. XI, §6]

The State, as a matter of policy, adopts as state law the provisions of the Hawaiian Homes Commission Act of 1920; the legislature shall use the proceeds from Hawaiian home lands only in accordance with the terms and spirit of the Act and shall make funds available for...aquaculture loans. [Hawaii State Constitution, Art. XII, §1]

The department of Hawaiian home lands may lease to those individual native Hawaiians it deems qualified to perform the conditions of the lease the right to occupy and use not less than one and not more than forty acres of Hawaiian home lands each for...aquacultural purposes, provided that the department may lease to the individual two detached...aquacultural lots located within reasonable distance from each other on the same island, one of which the department shall designate as the individual's home, that together do not exceed forty acres in area. The State shall retain title to the land leased. [Hawaiian Homes Commission Act, §207]

Each lessee of Hawaiian home lands shall be subject to the following conditions, whether or not the lease so stipulates:

- (1) The original lessee shall be a native Hawaiian not less than 21 years of age. Lessees who marry shall decide who shall retain a lease and shall transfer, quitclaim or cancel the other in accordance with the Act;
- (2) The lessee shall pay a rental of one dollar per year;
- (3) The lessee shall occupy and use the tract for...aquacultural purposes within one year from the lease date; and
- (4) The lessee shall thereafter occupy and use the land for such purposes for at least as much of the year as the department of Hawaiian home lands may prescribe by rule. [Hawaiian Homes Commission Act, §208]

Each lessee of Hawaiian home lands, subject to the approval of the department of Hawaiian home lands, shall designate from among the lessee's husband or wife, children or their widows or widowers, grandchildren, brothers and sisters or their widows or widowers, and nieces and nephews, which shall inherit the lessee's interest in any tract of Hawaiian home land or any crop or livestock growing thereon, provided that those designated shall qualify to lease Hawaiian home lands and provided that the department shall make such a designation if the lessee has died without so doing or if the department does not approve the lessee's choice. The department shall appraise the value of all improvements and...aquacultural stock on all lands

leased and shall pay to the legal representative of the deceased lessee or to the previous lessee, as warranted, that value -- less any indebtedness the department may certify -- should the lessee die or surrender the lease and leave no relative qualified to assume the lease; Hawaiian home lands so left shall revert to departmental control and may be leased to any native Hawaiian. [Hawaiian Homes Commission Act, §209]

The department of Hawaiian home lands may make loans from revolving funds to any person or cooperative association possessing a lease issued pursuant to section 207, HHCA, for:

- (1) The repair, maintenance, purchase or erection of any improvement on any tract;
- (2) The purchase of...aquaculture stock and equipment;
- (3) Other assistance for the development of tracts and...aquacultural operations, including:
 - (A) Initial and on-going development, improvement, operation, and expansion of homestead...aquaculture enterprises;
 - (B) Liquidation of indebtedness incurred for reasons in subparagraph (A) relating to farm loans less than five years old;
 - (C) Normal and reasonable living expenses of a full-time farmer;
 - (D) Planning, layout, and installation of soil and water conservation practices; and
 - (E) Providing relief and rehabilitation to farmers for damage resulting from storms, droughts, tidal waves, earthquakes, volcanic eruptions, other natural catastrophes, and for livestock disease, epidemics, crop blights, and serious effects of prolonged shipping and dock strikes;
- (4) The cost of excavating or constructing aquaculture ponds and tanks and of constructing fences and other permanent improvements for aquaculture operations, the purchase of seeds, fertilizers, feeds, insecticides, medicines and chemicals for disease and pest control for animals, fish, shellfish and crops and the expenses involved in marketing aquacultural products.

The department may also use such funds to make needed loan guarantees or to match other funds available for the same purposes from other public and private lending institutions subject to conditions outlined in this section and in section 215, HHCA. [Hawaiian Homes Commission Act, §214]

The department of Hawaiian home lands may require any of its borrowers to insure or may itself insure and charge the borrower for the cost of such insurance, any...aquacultural stock, machinery, equipment and permanent improvements purchased or constructed with departmental funds, in such amounts as the department may prescribe. The department shall also have a first lien and priority over all other claims upon any borrower's interest in any lease, growing crops, aquaculture stock, machinery, equipment or improvement purchased or constructed with departmental funds to the amount of unpaid principal, interest, taxes or other indebtedness the department has assured; the department may enforce such lien by declaring forfeited any borrower's interest in property subject to the lien or by cancelling any borrower's lease and taking possession of such property or leasehold premises, provided that the department shall pay to the borrower after disposition any remainder due. [Hawaiian Homes Commission Act, §216]

The department of Hawaiian home lands may employ...aquacultural experts at such compensation and in such numbers as it deems necessary to instruct and advise any of its lessees concerning the best methods for conducting...aquacultural operations. [Hawaiian Homes Commission Act, §219]

The department of Hawaiian home lands may assist its lessees as it deems necessary to develop leased lands to their highest and best use and to operate...aquacultural facilities and market...aquacultural produce and livestock. [Hawaiian Homes Commission Act, §219.1]

The department of Hawaiian home lands may contract with public or private profit or non-profit individuals or other entities to develop aquaculture projects; such contracts shall not require competitive bidding if the department does not use state funds for their execution. [Hawaiian Homes Commission Act, §220.5]

The department of Hawaiian home lands may use free of charge all government-owned water not covered by a water license or covered by a water license that contains a reservation for water use for public benefit, or may contract for or condemn as needed any privately owned or government-owned surplus water in order to supply...aquaculture operations. The board of land and natural resources shall subject all water licensees after the passage of the Hawaiian Homes Commission Act to the condition that they shall permit the department of Hawaiian home lands to use free of charge as much water as it deems necessary to supply the...aquaculture operations of its lessees. [Hawaiian Homes Commission Act, §221]

The department of land and natural resources shall manage and administer state...aquaculture programs. [Hawaii Revised Statutes, §26-15]

The department of agriculture shall have the following powers in order to control infestations of noxious weeds, including those that threaten harm to aquaculture operations:

- (1) To establish criteria and procedures for the designation of noxious weeds and the designation of areas free from noxious weeds;

- (2) To make cooperative agreements with landowners to eradicate or control noxious weed infestations;
- (3) To adopt rules concerning the control or eradication of noxious weeds; and
- (4) To publish and make available a list of species designated as noxious weeds. [Hawaii Revised Statutes, §§152-1, 152-2, 152-4, 152-5]

No person may transport any part of a designated noxious weed into any area reasonably free of such weed unless for educational or research purposes when so permitted by the department of agriculture. [Hawaii Revised Statutes, §152-3]

The department of agriculture shall seek out infestations of noxious weeds and shall use such methods as practicable and feasible to control and eradicate such infestations. The department shall notify the owner and occupier of the property with an infestation of the intended method of control after determining the practicability and feasibility of that method and shall agree with the landowner to jointly control the infestation. The department may undertake control or eradication of any infestation alone when it determines that the landowner will not materially or financially benefit from such control or eradication, or when the infestation is on state-owned and -controlled land. [Hawaii Revised Statutes, §152-6]

The department of agriculture and any member of a county agency authorized to undertake a noxious weed control program may enter private property upon which exists an infestation of noxious weeds capable of harm to a county's agricultural or livestock industries for the purpose of abating, destroying, removing or controlling the infestation. The department and the county agency may compel permission for such entry upon application to district court for an appropriate warrant. [Hawaii Revised Statutes, §152-7]

The State, as a matter of policy, shall support the preservation and promotion of farming, including aquacultural operations. [Hawaii Revised Statutes, §§165-2, 165-3]

No court, official, public servant, or public employee shall declare any farming operation, including aquaculture operations, a nuisance if:

- (1) During the twelve-month period preceding the filing of the complaint, the operation complied with statutes, ordinances, regulations, or rules relevant to the nuisance complaint; and
- (2) The farming operation has used reasonable care in conducting its operation.

The operation may still be declared a nuisance if:

- (1) The department of health, the department of agriculture, or a court has previously determined that the farming operation or any aspect of it injures public health or safety; and

- (2) The complaint shows by a preponderance of evidence that the alleged nuisance resulted from the injurious operation or any aspect thereof. [Hawaii Revised Statutes, §165-4]

The State, as a matter of policy, shall seek to provide lands of appropriate size and productive potential at reasonable cost, with long-term tenures and with an adequate supply of water to new, displaced and otherwise qualified farmers in order to preserve agricultural lands for productive purposes and to expand the importance of...aquaculture to the State's economy. [Hawaii Revised Statutes, §166-1]

The department of agriculture shall plan, develop, and maintain agricultural parks, alone or in cooperation with a federal agency, a county or a private party, on public lands the governor shall set aside, and may exempt such parks from zoning, construction, subdivision or building statutes, ordinances or rules, provided that:

- (1) The park falls within an agricultural land use district;
- (2) The park meets all safety and tariff requirements the public utilities commission shall set for public utilities;
- (3) The department has presented its plans and specifications for approval to the legislative body of the county within whose jurisdiction the park shall lie and the body has either approved such plans or has failed to act on such plans within 45 days;
- (4) The final plans and specifications approved by the county legislative body shall constitute the zoning, building, construction and subdivision standards for the park; and
- (5) The State shall maintain all roads within the park with funds from the agricultural park special fund. [Hawaii Revised Statutes, §166-4]

The board of agriculture shall agree with any of its partners in any joint program of agricultural park development that:

- (1) Such a partnership will serve the public interest;
- (2) The land comprising the park shall be used in the long term for agricultural purposes;
- (3) The State shall approve the park development plans and specifications;
- (4) The State shall review the selection and management of park lessees; and
- (5) The public shall benefit from any expenditure of state funds. [Hawaii Revised Statutes, §166-5]

The board of agriculture may lease by negotiation, public auction, or the drawing of lots public lands within agricultural parks, provided that a reasonable proportion of qualified new farmers shall receive such leases, and shall provide upon disposition, in addition to any provisions in board rules, that:

- (1) The property shall be disposed of for agricultural purposes only;
- (2) The lessee shall derive the major portion of the lessee's total income from activities on the leased premises;
- (3) The lessee shall comply with all federal and state laws concerning environmental quality control;
- (4) The board shall parcel the leased land into minimum-sized units sufficient for such use as the board shall direct, shall make or require the lessee to make necessary improvements for such intended use, shall set as an upset price the market value of land with such an intended use and shall set a lease term at not less than 15 years and not more than 55 years; and
- (5) No person who owes taxes, rents or other obligations to the State or any of its political subdivisions shall obtain a park lease.

The board may cancel any park lease upon violation of any of these provisions. [Hawaii Revised Statutes, §166-6]

Any person or agricultural cooperative -- if 75 per cent of its members qualify individually -- meeting the qualifications for a bona fide or new farmer pursuant respectively to section 171-68 and section 155-1, HRS, or to board of agriculture rules, may apply for an agricultural park lease. [Hawaii Revised Statutes, §166-7]

The board of agriculture shall give preference for agricultural park leases to qualifying displaced farmers, to farmers whose farm constitutes a non-conforming use in the land use district within which it falls and to qualifying new farmers. [Hawaii Revised Statutes, §166-8]

The board of agriculture shall deposit into the agricultural park special fund all funds appropriated by the legislature for agricultural park purposes, all revenue from any park project or from residential and agricultural lease rents, all money collected or received for the maintenance of an irrigation system or other type of infrastructure and all interest accrued on any of these moneys and shall use such funds to:

- (1) Pay rent to the owners of any private agricultural land the State shall have leased for an agricultural park; and
- (2) Establish, operate and maintain park infrastructural improvements, including irrigation water systems, wind or hydro power projects and pumping systems, waste disposal

systems, domestic water systems, roads, street lights, drains, and bridges. [Hawaii Revised Statutes, §166-10]

The department of land and natural resources shall manage and administer...state aquatic life and aquaculture programs. [Hawaii Revised Statutes, §171-3]

The board of land and natural resources may investigate and develop scientific commercial management practices for government-owned fishponds and may reconstruct, rehabilitate, improve and stock such fishponds. [Hawaii Revised Statutes, §171-28]

The board of land and natural resources may lease, exchange, purchase or condemn private property for disposition for agricultural purposes and may set aside any such land acquired upon the department of agriculture's request for use as an agricultural park. [Hawaii Revised Statutes, §171-112]

The department of agriculture may request that public lands used or designated as agricultural parks be transferred to its control for use as agricultural parks. The department shall deposit all revenues from any leased park lands into the agricultural park special fund, notwithstanding any lease terms. [Hawaii Revised Statutes, §171-117]

The board of land and natural resources, when granting or during the term of any...aquacultural or maricultural lease, may modify or eliminate any of the lease restrictions set forth in section 171-36, may extend or modify the fixed rental period for the lease, or may extend the lease as necessary to qualify a lessee for a mortgage or loan guaranty from any state or federal mortgage lending agency qualified to do business within the State or from any private lending institution similarly qualified, provided that the board shall subject any extension to board rules and to the following conditions:

- (1) The lessee will continue to use the land for the purpose for which the board first leased it;
- (2) The lease shall not exceed a combined initial and extended term of 55 years; and
- (3) The board shall not charge rent at a rate less than that charged in the initial term. [Hawaii Revised Statutes, §171-36]

The board of land and natural resources shall adopt rules concerning permits for the repair, strengthening, reinforcement, and maintenance of fishponds that shall:

- (1) Specify which repairs, strengthening, reinforcement, and maintenance shall not require a permit but shall require written notice to the board of such intent; and
- (2) Specify which repairs, strengthening, reinforcement, and maintenance shall require the owner to apply for and receive a board permit.

Fishpond repair, strengthening, reinforcement and maintenance shall not constitute a "proposed use" for the purpose of determining the need for an environmental assessment pursuant to section 343-5, HRS. [Hawaii Revised Statutes, §183-44]

The department of land and natural resources, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt rules concerning permits for the taking of wild birds, game birds and game mammals, provided that the department shall not require a permit or report from persons who destroy such species when they pose a health hazard or nuisance or when they harm...aquaculture. [Hawaii Revised Statutes, §183D-61]

The department of land and natural resources shall:

- (1) Manage and administer...state aquaculture programs;
- (2) Establish and maintain aquatic life propagation stations;
- (3) Import aquatic life for breeding and stocking; and
- (4) Propagate and furnish for reasonable charges aquatic life to private parties when that action will serve the public interest.
[Hawaii Revised Statutes, §187A-2]

The department of land and natural resources shall have administrative control over an aquaculture program, which shall:

- (1) Keep abreast of industry and federal, state, county and private agency actions concerning aquaculture and promote and support worthwhile aquacultural activities;
- (2) Serve as an information clearinghouse for aquaculture activities in Hawaii;
- (3) Coordinate projects seeking to solve biological and technical problems involved in raising species with commercial potential;
- (4) Seek federal funding for aquacultural activities; and
- (5) Develop and expand as practicable Hawaii's aquaculture industry.

The board may employ temporary staff members for the program without regard to state civil service laws. [Hawaii Revised Statutes, §187A-3]

The department of land and natural resources shall have administrative control over the Hawaii aquaculture advisory council, which shall advise the board of land and natural resources on all matters concerning aquaculture and the coordination of aquacultural activities among state, federal, and county agencies and private industry, and shall:

- (1) Propose and prepare plans and policies for aquaculture development within the State for the approval of the board of land and natural resources;
- (2) Monitor and support, as appropriate, state agency and private requests for federal grants and technical assistance;
- (3) Promote communication between private industry and government agencies concerning industry problems, land availability, governmental permit requirements, and governmental provision of financial and technical assistance;
- (4) Develop programs and projects to promote aquaculture development and criteria needed to measure program effectiveness; and
- (5) Perform such other services as the board, the legislature or the governor may require and report annually to each concerning any activities undertaken pursuant to these requirements. [Hawaii Revised Statutes, §§189G-1, 189G-2, 189G-3]

The Hawaii aquaculture advisory council shall have such staff support as it may need to perform its functions from the department of land and natural resources and shall upon request receive from any state agency or any agency of any political subdivision of the State such data and assistance as it may require. [Hawaii Revised Statutes, §§189G-4, 189G-5]

The board of land and natural resources shall require of any person wishing to lease state marine waters or submerged lands a conservation district use application, together with:

- (1) An environmental assessment and, if needed, an environmental impact statement;
- (2) A description of the proposed lease area, the applicant's reasons for selecting the area, and a description of any enclosure, fences, stakes, buoys or monuments the applicant intends to use to mark off the desired area;
- (3) A description of the intended use for the area, including a timetable for the construction, deployment and operation of the proposed facilities, a description of planned levels of production, a statement specifying whether the proposed use is commercial or non-commercial and a statement assessing the probable impact of the proposed use on existing uses of the proposed lease area for navigation, fishing and public recreation;
- (4) For proposed mariculture operations, a description of the species the applicant intends to cultivate and produce; and

- (5) Any other information the board may require, including financial and technical information.

The board shall approve any such application, after serving such public notice and conducting such public hearings as this section or board rules may require, only after finding that the proposed use will serve the public interest despite:

- (1) Any adverse impact the proposed use may have on existing private industry or public activity, including the use of state marine waters for navigation, fishing and public recreation;
- (2) Any adverse impact the proposed use may have on wildlife, aquatic life or the environment of the proposed lease area or surrounding areas; and
- (3) Any adverse impact the proposed use may have on other potential uses, including competing uses, of the area.

The board shall not approve any application unless it finds, further, that the applicant has the capacity to undertake the proposed activity. The board may limit the scope of the proposed activities or of the leased area to that necessary to properly conduct the proposed activity. [Hawaii Revised Statutes, §190D-11]

The board of land and natural resources shall determine whether any proposed ocean lease is commercial or non-commercial and shall issue a lease, with the concurrence of the director of transportation, only for activities listed in an approved conservation district use application; the lease shall comply with the provisions for the reclamation and disposition of submerged lands outlined in section 171-53, HRS. The board shall not issue a lease when the proposed activity will:

- (1) Adversely impact existing department of land and natural resources projects, such as the marine life conservation district program, the shoreline fisheries management area program or the natural area reserves program;
- (2) Interfere with the use of state marine waters for purposes of national defense;
- (3) Not conform with governing federal, state and county statutes, ordinances and rules; or
- (4) Adversely impact the public's use and enjoyment of the reefs within state marine waters.

The board may require any applicant who obtains approval of a conservation district use application for the operation of an OTEC facility or another marine use to enter into a lease for the conduct of such an activity. [Hawaii Revised Statutes, §190D-21]

The board may dispose of areas approved for marine use in a conservation district use application either by negotiation or public auction pursuant to the laws concerning the disposition of public lands outlined in chapter 171, HRS. The board shall require the highest qualified bidder in a public auction to reimburse the person who applied for a conservation district use permit for the proposed use for all expenses incurred in seeking approval for that application. [Hawaii Revised Statutes, §190D-22]

The board of land and natural resources shall specify in each lease its issues:

- (1) The term of the lease and the nature of the exclusive use granted;
- (2) The marine activities or the resources that the lessee may conduct, cultivate, produce, harvest, remove or use;
- (3) The rent and any royalties the board shall charge for the lease, provided that the board shall not charge royalties for non-commercial leases;
- (4) That the lessee's failure to adhere to the conditions of the lease or the lessee's abandonment of the lease area shall constitute grounds for the revocation of the lease and the forfeiture to the State of all structures, plants and animals cultivated, equipment abandoned and any bond conditioned upon the lessee's performance the lessee shall have posted with the State;
- (5) That any person may take any plant or animal not clearly identified as the lessee's property subject to state fishing laws without violating the lessee's rights;
- (6) That the lessee shall remove at the lessee's expense, if necessary to protect public health and safety or the environment or if the board shall so demand, any cultivated plant or animal found outside the leased area but within state marine waters or submerged lands. The board may undertake such removal and may charge any costs incurred to the bond the lessee shall have posted with the board;
- (7) That the lessee shall construct and maintain gates, openings or lanes through the leased area for navigation, unless such navigation will unduly interfere with the lessee's operation. The lessee shall place such buoys, fences or other devices and such warning signs as do not unnecessarily interfere with navigation or other uses of the water surface to mark the leased area and to enumerate any limitations on its public use;
- (8) That the board shall in all cases retain the right to suspend the lessee's activities temporarily or permanently, remove any equipment or cultivated plants and animals or take any other measures necessary should the chairperson of the board find

that such activities endanger human or marine life or the environment of state marine waters or submerged lands; and

- (9) That the lessee may assign or mortgage any lease in whole or in part if the board determines that such assignment or mortgage serves the public interest and complies with the ocean leasing laws outlined in chapter 190D, HRS, and, for mortgages, with the provisions of section 171-22, HRS.

The board or its agents may enter and inspect any leased area to determine if the lessee has complied with all lease terms and provisions. [Hawaii Revised Statutes, §190D-23]

The board of land and natural resources shall not issue a lease that in any way conflicts with or impairs those konohiki rights recognized by law, including the right to sublease konohiki fishing grounds for marine activities; neither shall any provision of the Hawaii Ocean and Submerged Lands Leasing Act, chapter 190D, HRS, abridge or alter such rights. Any fishing or marine activity conducted within konohiki fishing grounds shall be subject to state laws and rules governing fisheries and navigable waters. [Hawaii Revised Statutes, §190D-24]

The board of land and natural resources shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, in order to further the purposes of the Hawaii Oceans and Submerged Lands Leasing Act and shall enforce the provisions of the leasing act in accordance with chapter 199, HRS. [Hawaii Revised Statutes, §§190D-31, 190D-32]

The board of land and natural resources shall deposit all revenues collected from any leases issued pursuant to the Hawaii Oceans and Submerged Lands Leasing Act, chapter 190D, HRS, into the general fund, provided that the board shall deposit any funds subject to the provisions of chapter 10, HRS, concerning the office of Hawaiian affairs, into the public land trust fund. [Hawaii Revised Statutes, §190D-33]

Agriculture land use districts shall include those areas used for...aquaculture, game and fish propagation, agricultural parks and uses accessory to such uses. [Hawaii Revised Statutes, §205-2]

Agriculture land use districts with lands the land study bureau has classified as having an overall productivity rating of A or B shall be restricted to specific uses, including...game and fish propagation, the raising of livestock, including...fish or aquatic life propagated for economic or personal use, agricultural parks and such improvements and buildings as are necessary to these uses. [Hawaii Revised Statutes, §205-4.5]

The board of agriculture shall have administrative control over the Hawaii aquaculture loan program and the aquaculture loan revolving fund, from which the department of agriculture may make loans and into which the department shall deposit all principal payments. The department, in order to administer the program, may:

- (1) Prescribe eligibility qualifications for loan applicants;

- (2) Establish preferences and priorities for determining an applicant's eligibility for loans and loan repayment requirements;
- (3) Establish conditions for granting or continuing loans;
- (4) Provide for the inspection of plant facilities, books and records of any applicant or borrower and require the submission of progress and final reports;
- (5) Make loans for the construction, conversion, expansion, acquisition of land for expansion, acquisition of equipment, machinery, supplies or materials, or for working capital for aquacultural product development;
- (6) Secure program loans with fee simple farm land, with leaseholds of farmland where such lease has an unexpired term two years longer than the term of the aquaculture loan, with aquacultural products, with other chattels, with a second mortgage when any prior mortgage will not jeopardize the department's security or the borrower's ability to pay or with written agreements, such as an assignment of income;
- (7) Insure loans from private lenders to an amount not to exceed \$1 million;
- (8) Participate in loans made to qualified borrowers by private lenders;
- (9) Establish the interest rates the State and private lenders shall charge for aquaculture loans; and
- (10) Maintain a reserve in the aquaculture loan revolving fund sufficient to guarantee repayment of those loans the department insures. [Hawaii Revised Statutes, §§219-3, 219-4, 219-5]

The department of agriculture shall make aquaculture loans for the following purposes and under the following terms:

- (1) The purchase or improvement of aquaculture farm land and waters, the purchase, construction or improvement of adequate aquacultural farm dwellings and other facilities and the liquidation of indebtedness incurred for any of the foregoing purposes. Such loans shall not exceed an amount of \$100,000 or a term of 40 years. Eligible applicants shall devote most of their time and derive most of their income from aquaculture operations and shall have or be able to obtain necessary operating capital;
- (2) The purchase of aquacultural equipment and fishstock, the payment of such production and marketing expenses as materials, labor and services, the payment of living expenses

and the liquidation of indebtedness incurred for any of the foregoing purposes. Such loans shall not exceed an amount of \$75,000 or a term of ten years. Eligible applicants shall devote most of their time and derive most of their income from aquaculture operations;

- (3) For aquaculture cooperatives or corporations to purchase or improve land, buildings, and equipment. Such loans shall not exceed an amount of \$250,000 or a term of 20 years. At least 75 per cent of the board of directors and members of eligible corporations or cooperatives must meet the board's eligibility requirements and devote most of their time to aquaculture operations; and
- (4) For aquaculture cooperatives or corporations to finance inventories of supplies, warehousing and shipping commodities, extension of consumer credit to qualified farmer-members, and other normal operating expenses. Such loans shall not exceed an amount of \$150,000 and a term of three years. At least 75 per cent of the board of directors and members of eligible corporations or cooperatives must meet the board's eligibility requirements and devote most of their time to aquaculture operations. [Hawaii Revised Statutes, §219-6]

The department of agriculture may:

- (1) Insure up to 90 per cent of the principal and interest due on an aquaculture loan from a private lender made for the purposes outlined in section 219-6, HRS, provided that the board of agriculture shall determine the interest rate the lender shall charge;
- (2) Receive, in return for a loan guaranty, an annual insurance fee from the lender's revenues of one-half of one per cent on the unpaid principal and require the lender to collect all payments from the borrower and otherwise service the loan;
- (3) Pay the lender the amount of any payment due for more than 60 days and thereby acquire an interest in the borrower's collateral proportional to the payment. The department shall receive a reimbursement and all interest due on such payments when the lender collects the appropriate amount;
- (4) Assume, at the lender's request, a portion or all of the outstanding loan principal as a participating share. The lender may reduce at any time the amount of principal the department must insure; and
- (5) Assume the loan after paying to the lender any remaining balance when the lender informs the department of its intent to foreclose. The lender shall not commence foreclosure until it has informed the department of such intent and has allowed

the department to assume the loan. [Hawaii Revised Statutes, §219-7]

The department of agriculture may:

- (1) Provide funds for a share, not to exceed 90 per cent, of a private lender's aquaculture loan made for the purposes outlined in section 219-6, HRS, in lieu of such funding from the Farmers Home Administration;
- (2) Permit the lender to charge no more than two per cent above the prime rate;
- (3) Insure the lender's share of the loan up to 90 per cent of the loan principal, in accordance with the provisions outlined in section 219-7, HRS;
- (4) Pay to the private lender its share of the loan for disbursement. The lender shall then collect all payments from the borrower and otherwise service the loan;
- (5) Pay to the lender a service fee not to exceed one per cent of the unpaid loan principal, provided that the department shall not add such fee to the amount the borrower must pay;
- (6) Determine that the borrower can pay any additional interest charges resulting from shifting an increased proportion or all of the remaining loan balance to the private lender before allowing the lender to take over any such portion; and
- (7) Hold an interest in the borrower's collateral proportional to the amount of the department's participation. The lender shall hold all collateral documents and the department shall limit such collateral to that specified in section 219-5, HRS. [Hawaii Revised Statutes, §219-8]

Department of Agriculture Rules to Implement Aquaculture Loan Programs

Provisions include, among other things:

- (1) Restrictions on who is eligible for loans;
- (2) Restrictions on what the loans may be used for;
- (3) Conditions with which borrowers agree to abide; and
- (4) Security for the loans.

The major thrust of the program is to provide loans to persons (individual or corporate) who have been unable to obtain loans from private lenders, the farm credit system, or the Farmers Home Administration at

reasonable rates. [Chapter 4-9, Hawaii Administrative Rules]

The board of land and natural resources, pursuant to section 183-41, HRS, shall adopt rules governing the review of applications and the issuance of permits for aquaculture farms. These rules shall specify permitted uses for aquaculture lands, provided that all such uses permitted by the board of agriculture shall constitute permitted uses, and shall specify those uses which shall and those repairs and maintenance actions that shall not require a permit and an environmental impact statement. [Hawaii Revised Statutes, §220-1]

The State, as a matter of policy, shall promote and foster the aquaculture industry of the State and preserve and conserve productive aquacultural lands. The State shall also encourage all industries within the State, including...the aquaculture industry, to protect the environment. [Hawaii Revised Statutes, §344-4]

For purposes of determining the applicability of the wage and hour law, the term "employee" shall not include any individual employed in the...taking, catching, or harvesting of aquatic life, including the loading and unloading of such products prior to first processing. [Hawaii Revised Statutes, §387-1]

State General Plan Provisions

The State shall have as a planning objective for agriculture the...continued growth and development of diversified agriculture throughout the State. In order to achieve this objective, the State, as a matter of policy, shall expand Hawaii's agricultural base by promoting growth and development of...aquaculture and other potential enterprises. [Hawaii Revised Statutes, §226-7]

The State shall have as a planning objective for the potential growth of the state economy the development and expansion of potential growth activities that increase and diversify Hawaii's economic base. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Facilitate investment and employment in economic activities that have growth potential, including...aquaculture and marine-related industries; and
- (2) Increase research and development of ocean-related economic activities, including...food production. [Hawaii Revised Statutes, §226-10]

The State shall have as a priority guideline to stimulate economic growth and business expansion and development and to provide needed jobs and a stable and diversified economy the expansion of vocational training in...aquaculture and other desired areas of growth.

The State shall have as priority guidelines to promote the growth and development of diversified agriculture and aquaculture the following:

- (1) Identify, conserve, and protect...aquacultural lands of importance and initiate affirmative and comprehensive programs to promote economically productive uses of such lands;
- (2) Assist in providing adequate, reasonably priced water for agricultural activities;
- (3) Encourage public and private investment to increase water supplies and to improve transmission, storage, and irrigation facilities in support of...aquaculture;
- (4) Encourage the development and expansion of...aquacultural activities which offer long-term economic growth potential and employment opportunities; and
- (5) Continue the development of agricultural parks and other programs to assist small independent farmers to secure agricultural lands and loans. [Hawaii Revised Statutes, §226-103]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The department of education, in accordance with state policy to expand vocational training programs in...aquaculture, shall:

- (1) Continue to inform students of the impacts of tourism...agriculture and other viable industries on Hawaii's economy and future;
- (2) Expand the aquaculture program as research findings warrant;
- (3) Arrange for in-service training for teachers to implement the aquaculture program; and
- (4) Improve the...aquaculture curriculum by seeking the assistance of the department of agriculture and the University of Hawaii's College of Tropical Agriculture and Human Resources on such topics as loan programs, formation of cooperatives and the use of pesticides. [Hawaii Education Functional Plan, Implementing actions E.2.1, E.2.2., E.2.3., E.2.5.]

The State shall have as a planning objective the assurance of adequate water for agriculture. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Preserve water for existing beneficial agricultural uses and provide additional irrigation water where needed by further development of existing surface and ground water sources and improvements to diversion, storage and transmission facilities in the following manner:

- (A) The department of land and natural resources shall develop water source and delivery systems in support of agriculture and aquaculture, including in particular those agricultural parks located at Pahoa, Panaewa, Keahole, and Lalamilo on the island of Hawaii, Waimanalo, Waianae and Kahuku on Oahu, Kula on Maui and those that might be planned on Kauai; and
- (B) The department of land and natural resources shall seek federal assistance to increase the water supply and improve transmission, storage, and irrigation facilities in order to promote...aquaculture.
- (2) Provide adequate, reasonably priced water supplies for agricultural production. The department of land and natural resources shall maintain reasonable water rates for state-operated irrigation systems to encourage diversified crop production. [Hawaii Water Development Functional Plan, Objective E, Policies E(1), E(4), Implementing actions E(1)(b), E(1)(c), E(4)(a)]

The department of land and natural resources, in accordance with state policy to provide timely historic property reviews integrated into the land use regulatory system, shall establish rules for fishponds as authorized by section 183-44, HRS. [Hawaii Historic Preservation Functional Plan, Policy C(2), Implementing action C(2)(e)]

The State, as a matter of policy, shall provide professional and job-related training which responds to state needs and available employment opportunities. The University of Hawaii community colleges shall expand and improve programs for vocational training in...aquaculture. [Hawaii Higher Education Functional Plan, Policy A(2), Implementing action A(2)(a)]

The State shall have as a planning objective the achievement of productive agricultural use of lands most suitable and needed for agriculture. In order to achieve this objective, the State, as a matter of policy, shall:

- (1) Systematically determine the most suitable locations for increased agricultural production. The departments of agriculture, land and natural resources, and planning and economic development, the United States Soil Conservation Service and the University of Hawaii College of Tropical Agriculture and Human Resources shall design and implement a statewide geographic information system;
- (2) Provide suitable public lands at reasonable cost and with long-term tenure for commercial agricultural purposes. The departments of land and natural resources and Hawaiian home lands shall...give priority in developing and awarding new leases on agriculturally suitable public lands to diversified agricultural activities with growth potential;

- (3) Continue to develop a statewide system of agricultural parks in the following manner:
 - (A) The departments of agriculture and land and natural resources shall complete agricultural park projects presently committed;
 - (B) The departments of agriculture and land and natural resources shall use Phase II of the Agricultural Park Action Plan to specify the future planning, development, administration, and funding of the agricultural park program; and
 - (C) The departments of agriculture and land and natural resources shall develop additional agricultural park projects in accordance with the statewide Agricultural Park Action Plan;
- (4) Encourage the productive agricultural use of the most suitable agricultural lands;
- (5) Provide greater protection to agricultural lands in accordance with the Hawaii State Constitution in the following manner:
 - (A) The land evaluation and assessment commission shall propose amendments to the state land use law to conserve and protect important agricultural lands;
 - (B) The land evaluation and site assessment commission shall identify important agricultural lands to promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands; and
 - (C) The land use commission and the county planning departments shall classify important agricultural lands within the agricultural land use district and zoned for agricultural use, where such classification will not damage the public interest in other economic or social objectives of the Hawaii state plan, pending standards and criteria from the legislature. [Hawaii Agriculture Functional Plan, Objective B, Policies B(1), B(2), B(3), B(4), B(5), Implementing actions B(1)(a), B(2)(a), B(3)(a), B(3)(b), B(3)(c), B(5)(a), B(5)(b), B(5)(c)]

III. Health

The board of supervisors in each county shall have the power to inspect and condemn unsafe...fish; the board may also appoint county physicians and inspectors with powers similar to those of department of health inspectors to enforce such powers. [Hawaii Revised Statutes, §62-34]

The council of the city and county of Honolulu shall make and enforce ordinances relating to...the inspection of fish; the council may also appoint city physicians and inspectors with powers similar to those of department of health inspectors to enforce such ordinances. [Hawaii Revised Statutes, §70-62]

The council of the city and county of Honolulu may regulate the method and type of construction, the location and the conditions under which...canneries and fish markets may be maintained, used or operated, provided that department of health and department of agriculture regulations shall prevail in cases of conflict between those regulations and any such city ordinance. [Hawaii Revised Statutes, §70-69]

The department of agriculture shall accept as its own standards such standards for grading and classifying food products, including...fish and fishery products, as the United States Department of Agriculture may have adopted, announced or prescribed, provided that the department may establish different or additional standards for such grading to the extent that United States law so permits and provided that the department may adopt or prescribe official grading standards governing those food products for which neither Congress nor the Department of Agriculture has adopted standards. The department's grading standards as adopted or as modified from time to time shall serve as the State's official grading standards. [Hawaii Revised Statutes, §§147-51, 147-52]

The department of agriculture, in establishing grades, standards or classifications for food products, shall consider, as appropriate, the product's:

- (1) Degree of maturity;
- (2) Size, either by dimensions or weight; degree of freshness, established by physical examination or chemical analysis;
- (3) Moisture content, uniformity, color, firmness, tenderness, defects, injury, damage, diseases, appearance, mixture of varieties, decay, conformation, soundness;
- (4) Varietal characteristics or type;
- (5) Number of specimens per pound;
- (6) Nature of pack;
- (7) Presence of dirt or other foreign material;
- (8) Temperature; degree of sourness;
- (9) Suitability for human consumption or other use;
- (10) Condition after handling or treatment;
- (11) Commercially objectionable flavor or odor, if any; and

(12) Other indications of class, quality or condition.

The department shall also consider such grading standards for that product as the United States Department of Agriculture may have established. [Hawaii Revised Statutes, §147-53]

The department shall establish, alter or modify any of its grades, standards or classifications by rule and in consideration of their suitability for the State's agricultural and horticultural interests and the interests of the State's inhabitants, following a public hearing convened for that purpose. [Hawaii Revised Statutes, §§147-55, 147-56]

The department of agriculture, in order to establish and enforce its grading standards, may:

- (1) Adopt rules concerning food grades and grading, food inspection, certification of grade, the licensing and duties of food inspectors, methods for testing, analyzing and examining, the design and form of grade labels and official descriptive words, and continuous factory inspection and food grading, classification and certification;
- (2) Provide under contract departmental inspectors to and participate in a cooperative inspection service with the United States Department of Agriculture or any United States government agency concerned with grading standards; and
- (3) Fix, assess, adjust as needed and collect in uniform amounts such inspection fees as will cover the cost of such inspections, provided that the department may adjust such fees for different localities and may charge reasonable amounts for travel expenses and other services. The department shall charge fees for continuous factory inspection in amounts sufficient to cover the cost of its inspector's salary and of necessary administrative expenses. [Hawaii Revised Statutes, §147-57]

The board of agriculture may designate any department of agriculture employee to inspect food products upon request or to make continuous factory inspections of food products upon request in order to certify to interested persons the grade, classification, quality or condition thereof. The department may use or allow the use of a state label or mark on food continuously inspected and passed under such terms and conditions as it may establish. [Hawaii Revised Statutes, §§147-58, 147-59]

The board of agriculture shall investigate any complaints or reported instances of improper classification or grading and shall collect a reasonable fee for such inspection. The board shall refund the fee should its investigation find for the complainant. [Hawaii Revised Statutes, §147-60]

No person shall remove imported eggs from any dock or landing until the department of agriculture has certified that such eggs bear correct markings

indicating their origin, grade, size and any other information the department may require. [Hawaii Revised Statutes, §147-75]

The department of health may regulate as necessary to protect public health and safety...fish and fishing. [Hawaii Revised Statutes, §321-11]

No person shall cold store any diseased, tainted or otherwise deteriorated food, provided that any person may so store fishing bait in rooms set aside for bait storage. [Hawaii Revised Statutes, §328-44]

Any person catching weke, ahuluhulu, kumu, uhu, opelu, oama, manini, moi, amaama, papiopio, ulua, awa, akule, oio, nehu, maomao, iao, omaka, lauhau, laenihi, puhikii, akilolo, hahalalu, iheihe, opae, piha, laipala, aholehole, uiui, malolo, kole, paoo, puhi, auau, ohua aliko, ohua palemo, alaihi, upapalu, uu, ahaaha, puili, alalauwa, aweoweo, maikoiko, kala, aloiloi, maili, aalaheo, pakii, oopu nopili, oopu nakea, mamamo, oopukai, hinalea, hinana, goldfish, catfish, mudfish and all other species of smaller fishes after twelve o'clock noon of any day shall market such catch upon reaching shore, provided that that person may place in cold storage for future sale any fish left unsold when the market closes. No person may cold store any fish caught more than 12 hours prior to such intended storage or any bruised, torn or otherwise spoiled fish. [Hawaii Revised Statutes, §328-49]

Any person on a commercial fishing vessel may sell such fish as that person shall have caught and immediately placed on ice or chilled upon arrival in port. That person may place any unsold fish in cold storage for future sale any time thereafter, provided such fish have not spoiled or become unfit for human consumption. [Hawaii Revised Statutes, §328-50]

Any person who causes or permits the preventable deterioration or waste of fish in connection with their marketing or preservation or who prevents or attempts to prevent the lawful storage of such fishes, shall be fined not more than \$200 or imprisoned not more than three months, or both. [Hawaii Revised Statutes, §328-51]

Department of Health Rules for Shellfish Sanitation

The rules establish sanitation requirements for shellfish which are sold to the public for human consumption. Every person who operates a plant or business engaged in growing, harvesting, shucking, packing, repacking, or reshipping fresh or fresh-frozen shellfish must obtain a permit from the department. Among other things, the department:

- (1) Must approve the growing area (whether a natural area or an artificial system). In so doing, the department conducts a survey to determine that pathogenic microorganisms, paralytic shellfish poisons, heavy metals, and pesticides are not present in concentrations which exceed approved levels;
- (2) May allow shellfish to be moved from unapproved areas to approved areas for natural purification--provided they are kept in the area for at least fourteen days and harvested

under supervision of the department, subject to laboratory tests;

- (3) May allow shellfish from restricted (but not prohibited) areas to be depurated, or placed in a clean water environment for the purpose of removing harmful substances. Depuration must be done pursuant to departmental standards;
- (4) For the purpose of preventing contamination or deterioration, has established requirements for harvesting, transporting, packing, and shipping shellfish in the shell;
- (5) Has established requirements for facilities where shellfish are shucked and packed, including requirements for plant arrangement, storage, light and ventilation, water supply, plumbing facilities, sewage discharge, shucking tables, equipment, vermin control, sanitation requirements, and personnel; and
- (6) Has established requirements for the sale of shellfish, including conditions for storage, display, and record keeping.
[Chapter 11-35, Hawaii Administrative Rules]

Functional Plan Policies

The State shall have as a planning objective for health the protection of consumers by insuring the safety of...foods and ensuring that sellers honestly and informatively label, package and advertise...food products. In order to achieve this objective the State, as a matter of policy, shall use a combination of education, technical assistance and rules to achieve compliance with applicable standards in the following manner:

- (1) The food and drug branch of the department of health shall ensure compliance with food and drug laws and rules by inspecting, monitoring and investigating firms that manufacture, store or sell questionable...foods.

Chapter 4

TRANSPORTATION

I. Harbors

A. Generally, and Commercial Harbors

The department of transportation shall have the power to establish, maintain and operate harbor facilities, and additionally, the power to regulate:

- (1) All ocean waters and navigable streams;
- (2) All harbors, roadsteads, or waterfront improvements owned or controlled by the State; and
- (3) All vessels and shipping within the harbors, roadsteads, waters, and streams. [Hawaii Revised Statutes §§26-19, 266-1]

The department, in order to control the areas of its jurisdiction, may:

- (1) Use, permit, and regulate the use of wharves, piers, and other such facilities and the shipping using those facilities;
- (2) Collect various rents and charges for:
 - (A) Demurrage, wharfage or the discharge of passengers and the loading and landing of merchandise;
 - (B) Mooring vessels;
 - (C) Warehouse or office space or the use of donkey engines, derricks or other equipment;
 - (D) Freight passing over or across state wharves or docks; and
- (3) Appoint and fix compensation for wharfingers, clerks, pilot boat crews, and all other employees as may be necessary.

The department's powers regarding the planning, construction, operation, and maintenance of harbor facilities, including the acquisition and use of lands necessary to stockpile dredged spoils, do not require county approval. [Hawaii Revised Statutes §§266-2, 266-7]

Whenever the department of transportation makes any disposition of lands under its jurisdiction to any persons or entities, the leases, licenses, permits, or rights of entry covering the disposition must reserve adequate public right of way or public access to adjacent public areas over and across the lands disposed. [Hawaii Revised Statutes §266-4.5]

The following watercraft must pay dockage at rates fixed by the department of transportation:

- (1) Those lying idle alongside any wharf, pier, bulkhead, quay, or landing controlled by the State;
- (2) Those discharging or receiving freight or passengers on or from any harbor facility;
- (3) Those receiving or discharging freight or passengers:
 - (A) From or upon any harbor facilities by means of boats, lighters, or otherwise, while lying at anchor or under steam in any bay, harbor, or roadstead; or
 - (B) While lying in any slip or dock controlled by the State but not while made fast to or lying alongside any wharf, pier, bulkhead, quay, or landing.

Any watercraft that leaves the harbor facility or state waters without paying the required charges with the intent to evade payment is liable to pay double rates. [Hawaii Revised Statutes §266-13]

No person may erect any structure or similar object or sink or abandon any watercraft on or within the ocean waters of the State without written permission from the department of transportation. The department may require the person to remove the watercraft or object, or do so itself and charge the person for the cost of removal. [Hawaii Revised Statutes §266-16]

Department of Transportation Rules for Shore Waters

These rules prohibit persons from engaging in dredging, filling, or construction activity or from installing buoys within shores, shore waters, navigable streams, and harbors controlled by the State without first obtaining a permit from the department of transportation. This requirement supplements any other which the departments of health or land and natural resources or the United States Army Corps of Engineers may impose on such activities. [§§19-42-161 to 19-42-164, Hawaii Administrative Rules]

The department of transportation shall charge sufficient dockage, wharfage and other fees for the use of all harbor facilities, except those used principally for recreation or landing fish, to:

- (1) Pay the principal and interest on all revenue bonds and other obligations for which the department has pledged such revenues;
- (2) Provide for departmental operation and maintenance expenses, including necessary reserves, related to harbor facilities; and
- (3) Reimburse the general fund for all bond requirements for general obligation bonds issued for harbors, or to refund

improvement bonds for revenue producing facilities. [Hawaii Revised Statutes §266-17]

The department of transportation shall deposit all revenues from dockage, demurrage, wharfage, and other rates and fees pertaining to harbors and wharves into the harbor special fund. The fund shall first pay for any outstanding bond obligations or other priorities the law may set. From time to time, the director of finance, after deducting all amounts pledged to the payment of bond obligations, may use five per cent of all special fund receipts to defray a prorated share of those government expenses incurred in the administration of the special fund. Transfers from the special fund to the general fund shall occur only after the fund has paid for those obligations set forth in any priorities set by law.

The department of transportation may also make expenditures from a harbor special reserve fund for those purposes authorized for the special fund, and subject to the same limitations. The department may make transfers from the harbor special fund to the reserve fund, but may not use such transfers as a basis for raising rates and charges. The reserve fund must contain the aggregate amount specified in all resolutions or certificates authorizing bond issues drawn on the harbor special fund. [Hawaii Revised Statutes §§36-29, 266-19]

The department of transportation must waive mooring charges for any sea scout craft when moorings are available, and when the craft are owned and used exclusively for the purpose of regular organized sea scout groups. [Hawaii Revised Statutes §266-18]

The department of transportation shall pay the city and county of Honolulu for the operation and maintenance of the fire boat transferred to the county in 1951. [Hawaii Revised Statutes §266-22]

The director of transportation, with the approval of the governor, may accept gifts of personal property for harbor purposes. Moneys must first be deposited into an appropriate fund or account. [Hawaii Revised Statutes §266-23]

The director of transportation, for the purpose of enforcing harbor laws, shall have and may confer police powers upon any designee. All state and county officers charged with the enforcement of laws and ordinances shall enforce and assist in the enforcement of harbor laws and rules. Except where required by law to make arrests, enforcement officers may either arrest offenders or issue citations. [Hawaii Revised Statutes §§266-24, 266-24.1]

No person may exercise control over a vessel or other property that the department of transportation has taken into legal custody, seized, or detained, with the intent to defeat such custody, seizure or detention, or to impede or oppose the procedure. [Hawaii Revised Statutes §266-24.2]

Unauthorized control of a propelled vehicle, including motorboats and other motor-propelled vehicles, is a class C felony. [Hawaii Revised Statutes §708-836]

Any person who violates any harbor laws or rules or the lawful commands of any harbor master, agent, or district manager may be fined not more than \$1000, prohibited from operating or mooring any vessel in state waters for two years, or both. [Hawaii Revised Statutes §266-25]

For the purpose of determining responsibility for a violation of laws or rules concerning the mooring or placement of a vessel, the state registration number, the documented name or number of a vessel and any other identifying name or number shall constitute prima facie evidence that the owner placed the vessel at the place where the violation occurred. [Hawaii Revised Statutes §266-26]

No person may moor a vessel in state harbors without a valid and effective use permit. The department of transportation, after giving notice to remove any vessel in violation of this requirement, may impound any vessels not removed within 72 hours without regard to the notice and hearing requirements of the Hawaii Administrative Procedure Act, chapter 91, HRS. The department shall return custody of the vessel to its owner upon the payment of all applicable fees, costs, and fines. The department may sell as an abandoned vessel any unclaimed vessel. [Hawaii Revised Statutes §266-27]

Department of Transportation Rules for Commercial Harbors

Generally, anyone who uses commercial waterways and facilities under the jurisdiction of the department gives implied consent to be governed by the department's rules. [§19-41-5, Hawaii Administrative Rules]

In addition:

- (1) Owners, operators, charterers, and others who load and unload at state wharves must indemnify and hold harmless the department and its employees from all claims for damages resulting from operations on the property of the department; and
- (2) All craft at state harbor facilities must be kept in such a state of repair, maintenance, and neatness as not to constitute a common nuisance or substantial danger to persons or property. [§§19-41-7, 19-41-8, Hawaii Administrative Rules]

Other general rules regarding commercial harbors include:

- (1) All persons in charge of vessels must follow all orders of the harbor master with regard to movement within harbors; such permission is not required for movements at Kewalo Basin or Kailua-Kona;
- (2) Vessels in certain harbors may not try their engines without permission from the harbor master;
- (3) Specified vessels must have both anchors clear;

- (4) Ropes and mooring lines from vessels other than small craft must be fastened to equipment specified;
- (5) Large vessels lying at wharves must have a light on at night;
- (6) Information must be provided concerning arrival and departure schedules, and cargo to be offloaded;
- (7) Floating objects which could cause damage to wharves must be removed;
- (8) Failure to handle explosives and other dangerous articles in accordance with the regulations of the United States Interstate Commerce Commission and the Coast Guard are violations of state rules;
- (9) Deposits of legal tender must be made to guarantee payment of charges for services;
- (10) Bonds must be posted for vessels not actively engaged in commerce to guarantee removal;
- (11) Any person who communicates with the department on behalf of a vessel assumes responsibility for all sums due the State;
- (12) Damage to state property must be reported and repaired by the persons responsible;
- (13) Inspections may be made of vessels to ascertain cargo and to ensure public health, safety, and welfare;
- (14) Users of harbors are subject to all federal, state, and county laws, including air and water pollution and fire laws; and
- (15) The harbor master may order the suspension of any loading activities needed to insure public health, safety, and welfare.
[§§19-42-1 to 19-42-17, Hawaii Administrative Rules]

With regard to small craft in commercial harbors, priority for berths and moorings is given to operators licensed by the public utilities commission. In facilities other than Kewalo Basin, second priority goes to commercial fishing boats, and third priority to charter and cruise boats. In Kewalo Basin, second and third priorities are divided by area between the latter two categories. Otherwise, berths are generally awarded on a first-come-first-served basis, although in some cases the department reserves the right to make awards on the basis of the "best usage" (i.e., that the size of the vessel is most appropriate to the berth available). Because of the priority given to commercial fishing boats, the department has a procedure for inspection to determine whether or not a vessel is a bona fide commercial fishing boat. [§§19-42-53, 19-42-54, Hawaii Administrative Rules]

The mooring of small craft used principally as living accommodations is prohibited in commercial harbors, although one person may remain aboard

twenty-four hours a day as a safety watch. [§§19-42-53, 19-42-54, Hawaii Administrative Rules]

For other rules concerning:

- (1) Procedures for obtaining and revoking mooring and other permits;
- (2) Removal, impoundment, and sale of vessels; and
- (3) Other responsibilities of owners of small craft in commercial harbors, see §§19-42-21 to 19-42-70, Hawaii Administrative Rules.

Other rules applicable to commercial harbors include provisions relating to:

- (1) Waterways, e.g., control signals and speeds of vessels and priorities for and scheduling of vessel movements; [§§19-42-81 to 19-42-89, Hawaii Administrative Rules]
- (2) Safety, cleanliness, and use of facilities, including controls on explosives, dangerous, and flammable substances, repair operations, equipment usage, animals, litter and pollution, and fire fighting equipment; [§§19-42-101 to 19-42-158, Hawaii Administrative Rules]
- (3) Motor vehicles, including parking, operation, inspection, and fees; [Chapter 19-43, Hawaii Administrative Rules]
- (4) Fees and charges for dockage, small craft, office and storage space, parking, wharfage, demurrage, port entry, and services such as fresh water, electricity, telephones, and refrigerated devices. [Chapter 19-44, Hawaii Administrative Rules]

B. Small Boat Harbors

See part III, chapter 5, Recreation.

C. Special Facilities, Aloha Tower, Foreign Trade Zone, and Fort Armstrong (Kaka'ako)

See part VI, chapter 2, Economic Development.

D. Vessels

See also part III, chapter 5, Recreation.

The department of transportation shall seize and dispose of any vessel left continuously unattended for more than 30 days or left within the waters of the State, on public property or on private property without the authorization of the property owner or occupant. [Hawaii Revised Statutes, §267A-1]

The department of transportation, upon seizing a vessel, shall post a written notice on the vessel and mail a copy to the registered owner and to all lien-holders. The notice shall describe the vessel, specify the place of custody and set forth the department's intended disposition of the vessel if not repossessed within 20 days. [Hawaii Revised Statutes, §267A-2]

The department of transportation shall dispose of vessels not repossessed within 20 days by public auction or, when no bid is received, by negotiation, donation to any governmental agency or disposition as junk. [Hawaii Revised Statutes, §267A-3]

Any person having an interest in the vessel seized, upon payment to the department of transportation of all harbor use fees, towing, handling, storage, appraisal, advertising or other departmental expenses, may take possession of the vessel. If the person repossessing the vessel is not the registered owner, that person, in addition to the expenses listed, shall post security in an amount not to exceed the value of the vessel. The department shall return the security, if not forfeited, after two years. [Hawaii Revised Statutes, §267A-4]

The department of transportation shall not require a public auction for any vessel appraised at less than \$100 in value by a qualified appraiser. The department, after notice of its intent, may dispose of such vessel by negotiation or donation to any government agency, or may discard it as junk. [Hawaii Revised Statutes, §267A-5]

The department of transportation shall deposit all revenue from the disposition of seized vessels into either the boating special fund or the harbor special fund to reimburse the appropriate fund for expenses connected to the vessel. The department shall deposit any remainder into the general fund to await for not more than 5 years a claim for recovery from either the owner or any lien holder, provided that a lien holder shall have priority in recovery to the extent of that lien holder's interest in the vessel. The department shall take action against either the owner or the lien holder for that amount of the department's expenses not covered by the disposition of the vessel. [Hawaii Revised Statutes, §267A-7]

A derelict vessel is one which has been left unattended for more than 24 hours and:

- (1) Has sunk or is in danger of sinking, obstructs a waterway or endangers life or property; or
- (2) Is moored or has been left in state waters, on public property or on private property without the authorization of the owner or occupant, and:

- (A) Displays a registration certificate or number that has expired and whose owner no longer resides at the address on file with the department of transportation or the United States Coast Guard;
- (B) Whose last owner of record disclaims ownership and whose current owner cannot be identified or located;
- (C) Has no number or other indications of identity; or
- (D) The department or Coast Guard have no records indicating the previous registration of the vessel or of the identity or location of the owner. [Hawaii Revised Statutes, §267A-8]

The director of transportation shall immediately seize a derelict vessel and serve notice of its intended disposition in a newspaper of general circulation and to the last known owner or lien holder by certified mail, and, if possible, shall post notice on the derelict vessel. The department of transportation shall dispose of the vessel by negotiation except when two or more parties express interest in buying it. The department shall then dispose of the vessel by public auction. If no person wishes to buy it, the department may destroy the vessel. [Hawaii Revised Statutes, §267A-9]

An abandoned vessel is one for which:

- (1) The owner or authorized agent of a repair business has performed the requested repair or service upon the vessel;
- (2) The vessel owner has not authorized any further repairs or services but has left the vessel on the premises of the repair business;
- (3) The owner or authorized agent of a repair business has notified the owner and any person with an interest in the vessel that the business owner or agent shall dispose of the vessel if not claimed within 30 days; and
- (4) The vessel owner does not repossess the vessel within 30 days. [Hawaii Revised Statutes, §267A-22]

The owner of a vessel repair business may dispose of abandoned vessels by negotiation five days after giving notice of such intended action in a newspaper of general circulation in the State. [Hawaii Revised Statutes, §267A-23]

The authorized seller of an abandoned vessel may keep the proceeds of the sale of such vessel to satisfy any expenses connected with the repair, servicing, or disposition of the vessel and shall forward the remainder to the vessel's lien holders or to the owner. If the authorized seller cannot locate the owner or lien holder, the seller shall deposit the remainder with the director of finance, who shall hold the money for one year pending a claim

for recovery. The State shall retain any money not claimed at the end of the one year period. [Hawaii Revised Statutes, §267A-24]

A bill of sale executed by the authorized seller of an abandoned vessel shall evidence a transfer of the title to the vessel. [Hawaii Revised Statutes, §267A-25]

An enforcement officer may detain and demand of any person suspected of trespassing that person's name and address and the nature of that person's business upon the vessel, or, having reason to believe that the person has no right to be on the vessel, may arrest that person. Trespassers within state waters shall be fined not more than \$250 or imprisoned for not more than three months, or both. [Hawaii Revised Statutes, §§267B-2, 267B-3]

No person shall remove or alter any vessel's hull identification number, provided that vessel owners may restore damaged numbers when so authorized by the department of transportation and provided that manufacturers may place marks or numbers upon new hulls in the course of their business. [Hawaii Revised Statutes, §267C-2]

No person shall knowingly possess a vessel or hull from which the hull identifying number has been removed or otherwise altered in order to change the vessel's identity. The director of transportation shall seize any such vessel and, if it cannot be identified, the director shall notify the owner and all lien holders of record, authorize the restoration of the identifying number or issue the vessel a new number and return the vessel or hull to the owner. [Hawaii Revised Statutes, §267C-3]

Department of Transportation Boating Rules for Hull Identification Numbers

Unless the vessel falls into one of the ten categories of exemptions, the vessel must be numbered. Examples of exempted vessels include those which:

- (1) Have numbers issued pursuant to federal law and which have not remained in the State for more than 60 days;
- (2) Are from foreign countries and have not been in state waters for more than 60 days;
- (3) Are owned by the United States, are used exclusively in public service, and are clearly identifiable as such;
- (4) Are lifeboats used solely for lifesaving purposes;
- (5) Are manually propelled; or
- (6) Are motorboats used exclusively for racing.

The rules establish a numbering system, specify procedures for obtaining numbers, certificates, decals, and other required records, list fees and charges, and provide for the appointment of "vessel registration agents"

to conduct the registration of vessels. [Chapter 19-72, Hawaii Administrative Rules]

For provisions concerning marine and transportation insurance, see §§431-5, 431-9, 431-11, 431-13, 431-88, 431-90, 431-95, 431-105, 431-110, 431-265, 431-318, 431-341, 431-411, 431-420, 431-420.5, 431-426, 431-711 through 726.

The owner of a self-service locker or storage facility shall have a lien on all personal property, including...vessels, stored in such a facility for the satisfaction of any unpaid fees or charges relating to the storage. [Hawaii Revised Statutes, §507-61]

E. Transportation Planning

The legislature finds that a need exists for a statewide transportation planning council consisting of representatives of the state government and each of the counties to ensure the continuing involvement of the counties in the formation of the statewide transportation plan. The statute authorizing the creation of such a council shall not diminish or preempt any existing county authority or responsibility for planning and implementing transportation systems. The director of transportation shall serve as the council's chairperson, and the department of transportation shall provide staff support. [Hawaii Revised Statutes, §§279A-1, 279A-4]

The department of transportation shall prepare a statewide transportation plan and a related financial plan, which the legislature shall adopt by resolution. The plan shall have as a goal the development of a balanced, multi-modal statewide transportation system that serves clearly identified social, economic and environmental objectives. The plan shall include...harbors and water borne transit. The department shall pay particular attention to the interfacing of the various modes of transportation. [Hawaii Revised Statutes, §§279A-2, 279A-3]

The statewide transportation council shall coordinate the development of a statewide transportation plan and shall:

- (1) Have responsibility for planning and the authority to approve for submission to the legislature any project exclusively involving state harbors and water borne transit or...state lands; and
- (2) Review and comment on county projects regarding the degree to which an intra-island transportation project interfaces efficiently with existing proposed interisland transportation systems. [Hawaii Revised Statutes, §279A-7]

The council shall limit and curtail the numbers and kinds of transportation units in the State in consideration of the following needs:

- (1) The preservation, safeguarding, and enhancement of the physical and mental health of state residents, and the ecology and environmental quality of the State; and

- (2) The need for high priority and vital movement of people and goods. [Hawaii Revised Statutes, §279A-9]

Each county with a population over 200,000 shall have a metropolitan planning organization (MPO), which shall carry out a continuing and comprehensive transportation planning process in cooperation with the State and the appropriate county. The MPO shall assist the legislature, the state departments of transportation and planning and economic development, and the legislative body and transportation planning agencies of the appropriate county to plan metropolitan transportation, including...harbors...and waterways within the appropriate county. [Hawaii Revised Statutes, §279E-2]

Each metropolitan planning organization shall:

- (1) Advise the legislature, the county legislative body and appropriate state and county agencies concerning continuous, comprehensive and cooperative transportation planning;
- (2) Obtain information to formulate, among other things, a master multi-modal long range transportation plan for the county in order to provide advice regarding those plans; and
- (3) Act as liaison with the Secretary of Transportation's intermodal planning group. [Hawaii Revised Statutes, §279E-7]

F. Port Pilots

The department of commerce and consumer affairs shall regulate port pilotage in order to:

- (1) Provide maximum efficiency in navigating vessels entering or leaving the waters of the State;
- (2) Maintain a pilotage system devoted to the preservation and protection of lives, property, and vessels entering or leaving waters of the State; and
- (3) Ensure an adequate supply of qualified pilots to aid commerce and navigation. [Hawaii Revised Statutes, §462A-3]

Provisions for licensing port pilots shall include:

- (1) Requirements for examinations and fees;
- (2) A requirement to renew licenses granted every other year;
- (3) Conditions under which the department of commerce and consumer affairs may deny, suspend or refuse to renew a license, including:
 - (A) A licensee's violation of any relevant law or departmental rule;

- (B) Loss, damage, or injury resulting from a licensee's negligent pilotage;
 - (C) A licensee's physical or mental inability to perform the duties of a pilot, including any inability resulting from the habitual use of controlled substances;
 - (D) A licensee's failure to report marine accidents; and
 - (E) A licensee's failure to maintain a federal pilot's license issued under federal law.
- (4) A requirement that the licensee shall display the license upon boarding a vessel; and
 - (5) A penalty for any unlicensed person piloting or offering to pilot a vessel not exempt from pilotage requirements. [Hawaii Revised Statutes, §§462A-6 to 462A-10]

The director of commerce and consumer affairs shall adopt pilotage rates by rule pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS. Such rates shall provide a fair compensation for pilotage services rendered and shall take due consideration of:

- (1) The operating expenses and the maintenance costs of, the depreciation on, and the pilot's right to a return on any investment in any property the pilot may use to provide service; and
- (2) Rates and charges for pilotage services at comparable ports of the United States. [Hawaii Revised Statutes, §462A-11]

Pilots shall have a lien for the pilot's fees upon the whole of any vessel liable to the pilot. [Hawaii Revised Statutes, §462A-14]

Those waters in the areas of Port Allen, Nawiliwili, Honolulu, Kahului, Hilo, Kawaihae and Barber's Point and described more specifically in this section shall be "pilotage waters." [Hawaii Revised Statutes, §462A-17]

All vessels involved in trade or commerce entering or departing from any port in or traversing those waters of the State designated as pilotage waters must employ a licensed pilot unless the vessel poses an immediate hazard to public safety and the crew cannot immediately secure a pilot's services. Exempt vessels shall include:

- (1) Vessels required by federal law to be under the direction and control of a federally licensed pilot;
- (2) Public vessels of the United States;
- (3) Motorboats, as defined in the Federal Motorboat Act of 1940; and

- (4) Fishing vessels with a fishery license or an appropriately endorsed registry under federal law.

The provisions of this section shall not limit the responsibility of the department of transportation to provide for the safety of all ports and shore waters in the State, nor limit the department's right to require additional pilotage if the department deems it necessary to insure safety. [Hawaii Revised Statutes, §§462A-18, 462A-19]

Department of Commerce and Consumer Affairs Rules for Port Pilots

The rules divide licensed pilots into categories of port pilots and deputy port pilots, and adds certain qualifications for both, most notably, experience requirements. Deputy port pilots must have:

- (1) Four years of service as a licensed deck officer, including one year as chief officer on vessels of not less than 1,000 gross tons; or two years of that type of experience plus one year of pilot service docking vessels of not less than 5,000 gross tons; and
- (2) At least 50 round trips in and out of Honolulu harbor to and from various piers as an observer.

For purposes of experience, port pilots must have served as deputy port pilots for not less than six months.

The rules also establish pilotage rates and charges for a variety of activities involving port pilots. [Chapter 16-96, Hawaii Administrative Rules]

State General Plan Provisions

The State shall have as a planning objective for transportation facility systems the development of an integrated, multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe and convenient movement of people and goods. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Provide for improved access to shipping, docking, and storage facilities; and
- (2) Increase the capacities of...harbor systems and support facilities to effectively accommodate transshipment and storage needs. [Hawaii Revised Statutes, §226-17]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the development of a balanced, multi-modal statewide transportation system that serves clearly

identified social, economic and environmental objectives of the Hawaii State Plan. [Hawaii Transportation Functional Plan, Objective A]

The State shall have as a planning objective the development and updating of harbor master plans which service statewide needs for the efficient, safe and convenient movement of people and goods to accommodate planned growth objectives. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Maintain an effective harbor system. The department of transportation shall continue the Hawaii Cooperative Port Planning Study for the Year 2000;
- (2) Maximize the utilization of Honolulu Harbor in accordance with the 1995 Honolulu Harbor Master Plan in the following manner:
 - (A) The department of transportation shall develop additional container facilities at Sand Island; and
 - (B) The department of transportation shall consolidate inter-island barge operations at piers 39 and 40.
- (3) Develop the Barber's Point Deep Draft Harbor incrementally in order to supplement facilities at Honolulu Harbor in the following manner:
 - (A) The department of transportation shall dredge the Barber's Point entrance channel, harbor basin, and berthing area;
 - (B) The department of transportation shall provide design guidelines and prepare a land-site development plan for Barber's Point Harbor; and
 - (C) The department of transportation shall incrementally develop the Barber's Point Harbor backup area.
- (4) Plan dock storage and handling facilities in accordance with sound management policies to foster and support state commerce, industry and agriculture in consonance with the needs of each county in the following manner:
 - (A) The departments of transportation and agriculture, the governor's agriculture coordinating committee, and private industry shall establish communication links between agricultural and transportation industries and the appropriate governmental agencies so that transportation services may be designed to meet their needs;
 - (B) The department of transportation shall plan and develop improvements to improve efficiency and

reduce hazardous conditions at port facilities statewide;

- (C) The department of transportation shall plan and develop small commercial boat facilities statewide; and
- (D) The department of transportation shall review the feasibility of a marine highway system to enhance the interisland movement of people and goods. [Hawaii Transportation Functional Plan, Objective D, Policies D(1), D(2), D(3), D(4), Implementing actions D(1)(a), D(2)(a), D(2)(b), D(3)(a), D(3)(b), D(3)(c), D(4)(a), D(4)(b), D(4)(c), D(4)(d)]

The State shall have as a planning objective the achievement of transportation services, facilities and economically feasible rates to meet agricultural needs. In order to achieve this objective the State, as a matter of policy, shall provide adequate...surface support facilities to meet present and future agricultural needs. The department of transportation shall ensure that all harbor plans address the needs of agriculture and that facilities are provided to meet these needs. [Hawaii Agriculture Functional Plan, Objective F, Policy F(2), Implementing action F(2)(a)]

The State shall have as a planning objective the development of environmentally compatible commercial harbor facilities in the State to meet anticipated population needs and promote a diversified economic base. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Maximize the planning, coordination and responsiveness of the State's harbor system to meet rapidly changing harbor facilities needs; and
- (2) Minimize potential environmental degradation and conflicts of harbor activities with other ocean activities and urban development.

Specific actions shall include:

- (1) The departments of planning and economic development and transportation shall formulate strategies to finance facilities that support economically valuable ocean-related or harbor industries, and shall explore as possible funding sources the federal government, the state general fund, and the private sector;
- (2) The department of transportation shall refine the present state intergovernmental planning system dealing with commercial fishing to assure that the development of commercial and small boat harbors is coordinated to satisfy the total statewide needs of the commercial fishing fleets;
- (3) The departments of planning and economic development and transportation shall comprehensively assess the role of the

harbor system in achieving the State's economic development potentials, and formulate recommendations reconciling divergent land and water use interests and facilitating the processing of necessary permits and approvals while providing for the proper assessment of potential adverse impacts;

- (4) The department of transportation shall develop a program to upgrade hazardous materials safety regulations and enforcement procedures in harbor complexes and shall develop a plan for the orderly movement of explosive products -- such as the transfer of petroleum storage facilities in excess of harbor needs to the Barber's Point Harbor. Such a plan should also deal with the economic impacts and land use implications of such a move on the community and the development of facilities, either afloat or ashore, to prevent at Barber's Point Harbor the dangerous situation that now exists at Honolulu Harbor; and
- (5) The department of transportation shall develop a computerized system for monitoring harbor revenues and costs as a planning tool to aid in formulating alternative harbor improvement strategies. [Hawaii Ocean Management Plan, Objective VII.A., Policies VII.B.1., VII.B.2., Implementing actions VII.C.1., VII.C.2., VII.C.3., VII.C.4., VII.C.5.]

Hawaii, Department of Transportation, 1995 Honolulu Harbor Master Plan, February, 1976. The department has cited this document as a basis for policy in the subject area.

United States, Department of Transportation-United States Coast Guard, Oil Spill Disaster Plan 78-3, 1978. The department of transportation has cited this document as a basis for policy in the subject area.

Hawaii, Department of Transportation, Design Guide for Barber's Point Harbor, October, 1983. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Transportation, Kewalo Basin Task Force Recommendations, Volume I, November, 1980. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Transportation, O'ahu Coastal Zone Atlas, 1981. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Transportation, Maui Coastal Zone Atlas, 1981. The department has cited this document as a basis for policy in the subject area.

II. Water Carriers

A. Public Utilities

The legislature, as a matter of policy, declares that the transportation of persons and property by water within the State or between points within the State for commercial purposes constitutes a business affected with the public interest. By regulating water carriers as a public utility, the legislature intends to provide fair and impartial regulation that recognizes and preserves the inherent advantages of such transportation, that preserves for the public the full benefit and use of the waterways consistent with public safety and the needs of commerce. Such regulation shall also:

- (1) Promote safe, adequate, economical, and efficient service among carriers;
- (2) Encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices in order to develop, coordinate, and preserve a sound water transportation system. [Hawaii Revised Statutes, §271G-2]

The laws governing water carriers shall not apply to those:

- (1) Conducting commerce with foreign nations;
- (2) Conducting interstate commerce, except as the Constitution and laws of the United States may permit;
- (3) Persons transporting their own property for a primary business purpose or enterprise -- unless a carrier undertakes such transportation in order to evade the water carrier law;
- (4) Nonprofit agricultural cooperative associations transporting their own property or the property of their members;
- (5) Persons engaged in transporting passengers or property over water for compensation under continuing contracts with one or a limited number of persons for either:
 - (A) The furnishing of transportation services through the assignment of vessels for a continuing period of time and to the exclusive use of each person served;
or
 - (B) For the furnishing of transportation services designed to meet the distinct need of each individual customer;
- (6) Persons transporting their own property or employees in furtherance of a business or a fishing enterprise; and

- (7) Persons who transport persons for sightseeing and other recreational activities. [Hawaii Revised Statutes, §§271G-4, 271G-6]

The public utilities commission, in order to regulate water carriers, shall:

- (1) Investigate carriers. For this purpose the commission may require water carriers to furnish information and allow the commission to inspect their books, contracts, and other records, and to report accidents which occur in connection with its operations;
- (2) Establish reasonable classifications of water carriers based on the nature of the services each may perform.

Whenever the public utilities commission inquires into or investigates carrier operations, operating rights, rates, or operational safety, it must make a report of its findings of fact, conclusions of law, and its decision, order, or requirement. [Hawaii Revised Statutes, §§271G-3, 271G-7, 271G-8]

For laws regarding the public utilities commission generally, see chapter 269, Hawaii Revised Statutes.

The public utilities commission shall hold as public documents all copies of schedules and classifications, tariffs, rates, fares, charges, contracts, agreements, and arrangements between water carriers that any carrier may file with the commission. [Hawaii Revised Statutes, §271G-9]

No water carrier shall operate without a certificate of public convenience and necessity issued by the public utilities commission. The commission shall issue such certificates if it finds that:

- (1) The applicant is fit, willing, and able to perform properly the service proposed, and to conform to the requirements of law and public utilities commission rules; and
- (2) The present or future public convenience and necessity, to the extent authorized by the certificate, requires or will require the service.

No certificate shall confer any proprietary or property right to the use of the waterways.

The commission may grant temporary authority to a carrier to provide service between points or within an area having no service but having an immediate and urgent need for such service, without hearings or other proceedings. The commission shall specify the duration of such authority, provided it shall not exceed a period of 120 days.

Certificates of public convenience and necessity shall have effect until suspended or terminated. The commission may suspend, change, or revoke such certificates in whole or in part, for wilful failure to comply with

applicable laws, rules, or conditions or limitations upon the certificate. [Hawaii Revised Statutes, §§271G-10, 271G-11, 271G-12, 271G-15]

Carriers must post surety bonds, policies of insurance, or such other security as the public utilities commission may require in order to obtain certificates. [Hawaii Revised Statutes, §271G-13]

No water carrier, unless permitted by the public utilities commission, shall:

- (1) Sell, lease, assign, mortgage, or otherwise dispose of or encumber in whole or in part, any property it may need to perform any transportation service under any certificate of public convenience and necessity; or
- (2) Merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier.

This prohibition shall apply to water carriers subject to the laws of other states or subject to federal law regulating interstate or foreign commerce.

Similarly, no water carrier may purchase, acquire, take, or hold any part of the capital stock of any other water carrier organized or existing under state law without commission authorization. [Hawaii Revised Statutes, §271G-14]

Any carrier, including a public utility, may waive passenger charges for blind persons and their guides. [Hawaii Revised Statutes, §347-15]

All water carriers of passengers or property have a duty to provide safe and adequate service, equipment, and facilities, and to establish, observe, and enforce just and reasonable rates, charges, fares, and classifications. Unlawful practices shall include:

- (1) Charging unjust or unreasonable rates; and
- (2) Giving, making, or causing any undue or unreasonable preference or advantage or unreasonable prejudice or disadvantage or any unjust discrimination to any particular person, locality, region, district, island, or description of traffic.

The commission may conduct investigations or hearings on its own initiative or in response to complaints concerning unjust rates or charges. Should the commission determine that the rate is unjust, it shall determine and prescribe a lawful rate, fare, or charge, or shall specify an appropriate maximum or minimum. [Hawaii Revised Statutes, §271G-16]

For provisions relating to water carrier operations and concerning:

- (1) Filing water carrier tariffs;
- (2) Issuing securities;
- (3) Limitations on leases;
- (4) Penalties for unlawful operations;
- (5) The recovery of overcharges and undercharges;
- (6) The furnishing of services in connection with transportation by shippers; and
- (7) Hearings and appeals by the public utilities commission;

See sections 271G-17, 271G-17.5, 271G-19, 271G-21, 271G-22, 271G-23, and 271G-24, Hawaii Revised Statutes.

The public utilities commission may prohibit by rule any water carrier from delivering or relinquishing possession of any freight it has transported until it has received all fees and charges, provided that any carrier may extend credit to government agencies. [Hawaii Revised Statutes, §271G-20]

Public Utilities Commission Rules for Water Carrier Accounts

The public utilities commission shall specify the manner in which water carriers shall maintain their accounts. [Public Utilities Commission, State of Hawaii, General Order No. 5-A, Uniform System of Accounts for Water Carriers]

For provisions relating to rates for property and marine and transportation insurance, see sections 431-711 to 431-725, Hawaii Revised Statutes.

B. Introduction and Transportation of Living Species

See part VII of chapter 1, Conservation.

C. Health

The department of health shall prescribe restrictions for those vessels permitted or required to carry persons having Hansen's disease or other contagious diseases, and shall also prescribe methods for disinfecting such vessels. Masters or owners of vessels who knowingly violate such restrictions or methods shall be subject to a \$200 fine. [Hawaii Revised Statutes, §321-17]

The department of health shall examine all causes of sickness or disease which may be dangerous or injurious to health in any vessel. [Hawaii Revised Statutes, §322-1]

When any person from the department of health is prevented from entering any vessel for the purpose of examining or removing causes of sickness or disease, the person may obtain a court order directing a police officer to take sufficient aid and remove from the vessel the cause of sickness or disease under department of health supervision. [Hawaii Revised Statutes, §322-4]

Masters of vessels must immediately report to the department of health any person whom the master has reason to believe has gotten sick or has died from any infectious, communicable, or dangerous disease. Any vessel master failing to make such a report is subject to a fine. [Hawaii Revised Statutes, §325-3]

The master of a vessel shall be liable to the department of health for any money the department may expend to care for a sick person from the master's vessel. [Hawaii Revised Statutes, §325-10]

State General Plan Provisions

The State shall have as a planning objective the development and expansion of potential growth activities that increase and diversify Hawaii's economy. In order to achieve this objective the State, as a matter of policy, shall facilitate investment and employment in economic activities with growth potential, including...marine-related industries. [Hawaii Revised Statutes, §226-10]

The State shall have as a planning objective for transportation facility systems the development of an integrated, multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe and convenient movement of people and goods. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Coordinate state, county, federal and private transportation activities and programs toward the achievement of statewide objectives;
- (2) Encourage a reasonable distribution of financial responsibilities for transportation among participating governmental and private parties;
- (3) Promote a reasonable level and variety of mass transportation services that adequately meet statewide and community needs; and
- (4) Encourage a variety of carriers to offer increased opportunities and advantages to inter-island movement of people and goods.
[Hawaii Revised Statutes, §226-17]

The State shall have as priority guidelines to promote the growth and development of...aquaculture the following:

- (1) The encouragement of and assistance with the development of a...waterborne freight and cargo system capable of meeting the needs of Hawaii's agricultural community; and
- (2) Negotiation with interisland and overseas transportation operators for favorable freight rates for Hawaii's agricultural products. [Hawaii Revised Statutes, §226-103]

Functional Plan Policies, Ocean Management Plan Policies, and Agency Document Citations (not law)

The State shall have as a planning objective the achievement of transportation services, facilities and economically feasible rates to meet agricultural needs. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Provide adequate, timely and reasonably priced...surface transportation to meet present and future agricultural needs. The department of agriculture shall establish communication links between the transportation and agricultural industries so that transportation services may be designed or adjusted to meet agricultural needs; and
- (2) Provide adequate...surface support facilities to meet present and future agricultural needs. The department of transportation shall ensure that all harbors plans address the needs of agriculture and that facilities are provided to meet these needs. [Hawaii Agriculture Functional Plan, Objective F, Policies F(1), F(2), Implementing actions F(1)(a), F(2)(a)]

The State, in accordance with state policy to provide for the efficient, safe, and convenient movement of people and goods, shall review the feasibility of a marine highway system to enhance the interisland movement of people and goods. [Hawaii Transportation Functional Plan, Implementing action D(4)(d)]

III. Ferries

The department of transportation may construct or acquire by lease, charter, contract, purchase, or condemnation and may operate as a public undertaking with the name "Hawaii State Ferries" any ferry system for transportation between the islands of the State. The department shall determine the types of vessels, wharves, approaches, licenses, landings, franchises and appurtenances that best contribute to the efficient operation of the system. The department shall have the powers necessary to carry out the purpose of the system, including the power to acquire by purchase, condemnation, or construction and include in the ferry system such approaches and connecting roadways as may help to channel traffic to points the ferry system serves. The department may contract with public or private persons or corporations for the operation of any ferry or ferry system, whether acquired by the department or not. The department may also

exercise eminent domain powers to acquire personal property necessary for the ferry system. [Hawaii Revised Statutes, §§268-1, 268-2]

The department of transportation may issue revenue bonds to establish and build the ferry system. [Hawaii Revised Statutes, §§268-5, 268-6]

The department of transportation may operate the ferry system, whether intrastate or international, upon any routes as a revenue-producing undertaking. The State shall agree with holders of any bonds issued in connection with the system that the State will continue to operate the system and collect rents and charges for as long as bonds remain outstanding. The department of transportation shall also:

- (1) Construct, rehabilitate, rebuild, enlarge, improve, and maintain the system;
- (2) Grant concessions pursuant to state law; and
- (3) Collect tolls and other charges.

The department shall apportion all revenues from the system in accordance with those priorities state law has established for apportioning revenue from any project for which the State has issued bonds. [Hawaii Revised Statutes, §268-7]

The department of transportation shall collect rates and charges for ferry services that are:

- (1) Reasonable and consistent with the purpose of providing economical interisland transportation; and
- (2) Adequate to pay principal and interest on all bonds issued and to establish reserves for that purpose. [Hawaii Revised Statutes, §268-8]

The department of transportation shall have liability for its ferry operations in the following manner:

- (1) The department is subject to laws relating to a common carrier's liability for loss or damage to property, or personal injury or death to persons transported;
- (2) Injured persons shall have a right to action against the department for damage, loss, injury, or death;
- (3) The right of action for damages to persons or property from the operation of ferries or terminals applies to persons other than shippers or passengers, but recovery shall not exceed the maximum amount payable from any insurance the department may carry; and

- (4) Seamen shall have a right to action against the State for injuries occurring upon state ferries. [Hawaii Revised Statutes, §§268-9, 268-10, 268-11, 268-12]

The department of planning and economic development shall study the economic feasibility of further development of...water transportation to facilitate the inexpensive movement of persons and goods among and across the various islands of the State. The study shall compare the relative feasibility of a water and highway transportation system as compared with an air and highway system, and shall include a comparison of the relative advantages of long-haul and short-haul ferry systems. [Hawaii Revised Statutes, §201-30]

State General Plan Provisions

The State shall have as a planning objective for transportation facility systems the development of an integrated, multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe and convenient movement of people and goods. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Design, program, and develop a multi-modal system in conformance with desired growth and physical development as the state plan provides;
- (2) Coordinate state, county, federal and private transportation activities and programs toward the achievement of statewide objectives;
- (3) Encourage a reasonable distribution of financial responsibilities for transportation among participating governmental and private parties;
- (4) Promote a reasonable level and variety of mass transportation services that adequately meet statewide and community needs;
- (5) Encourage the development of transportation systems and programs which would assist statewide economic growth and diversification;
- (6) Encourage the design and development of transportation systems sensitive to the needs of affected communities and the quality of Hawaii's environment; and
- (7) Encourage safe and convenient use of low-cost, energy-efficient, non-polluting means of transportation. [Hawaii Revised Statutes, §226-17]

Functional Plan Policies and Agency Document Citations (not law)

The State, in accordance with state policy to provide for the efficient, safe, and convenient movement of people and goods, shall review the feasibility of a marine highway system to enhance the interisland movement of

people and goods. [Hawaii Transportation Functional Plan, Implementing action D(4)(d)]

Hawaii, Department of Transportation, Hawaii Marine Highway System Study, 1976. The department has cited this document as a basis for policy in the subject area.

Hawaii, Department of Transportation, Hawaii Marine Highway System Study: Review of a Stable Semisubmerged Platform (SSP), March, 1976. The department has cited this document as a basis for policy in the subject area.

IV. Miscellaneous

The board of land and natural resources may dispose of public land by negotiation for maritime activities for a period of not more than 35 years, provided that such dispositions encourage competition within the maritime industry. [Hawaii Revised Statutes, §171-59]

The department of transportation shall have jurisdiction over all airports, including water areas used or set aside for aircraft take-offs and landings. [Hawaii Revised Statutes, §§26-19, 261-1, 262-1]

Honolulu International Airport shall include that area set aside by executive order No. 1016 for the Keehi Lagoon Seaplane Harbor. [Hawaii Revised Statutes, §261-23]

Hydroplanes shall abide by rules governing water navigation when at rest or in transit on or immediately above the water. [Hawaii Revised Statutes, §263-1]

The State shall have sovereignty in the space above state...waters except where the State has granted and the United States has assumed such a right. [Hawaii Revised Statutes, §263-2]

Aircraft flight over the...waters of the State is legal unless the operator:

- (1) Flies at an altitude low enough over any property so as to interfere with an owner's existing use of such property or the space above it;
- (2) Flies in a manner which poses imminent danger to persons or property lawfully on the...water;
- (3) Lands on any property without the consent of the owner, except when forced to land. The owner, the lessee or the pilot of the aircraft, as appropriate, shall be liable for any damages caused by a forced landing. [Hawaii Revised Statutes, §263-4]

Owners of aircraft operated above the...waters of the State shall have absolute liability for damages caused by the aircraft, or resulting from the

dropping or falling of any object therefrom. [Hawaii Revised Statutes, §263-5]

Railway corporations may alter the course of any rivers which are not navigable, as well as other watercourses. The corporation may make such piers, jetties, stations, sidings, wharves, warehouses, tollhouses, and other apparatus, works, and conveniences as the corporation may deem proper. The corporation may not enter upon or take possession of any tidewaters, nor in any way hinder, obstruct, or interfere with navigation in or upon any public navigable waters nor erect, build, or maintain any pier, jetty, or wharf in, upon, or over any harbor, bay, or river beyond the high-water mark. [Hawaii Revised Statutes, §273-3]

The liquor commission shall grant liquor licenses to vessels in the following manner:

- (1) The commission shall grant a class 7 license for the sale of liquor other than alcohol to the owner of any vessel performing a regular water transportation passenger service between two or more state ports, provided that the owner shall sell such liquor only for passenger consumption, and only on board the vessel when the vessel is en route;
- (2) The commission shall grant a class 8 license to the owner of any vessel which does not fall within the requirements for a class 7 license for the sale of liquor other than alcohol on board the vessel while in any state port, provided that the licensee shall sell such liquor only for consumption by passengers and their guests while on board the vessel;
- (3) The commission shall grant a class 9 tour or cruise vessel license to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while within state waters, provided that the licensee shall sell such liquor only for consumption by passengers on board while the vessel operates outside the port or dock of any island of the State. [Hawaii Revised Statutes, §281-31]

Boat manufacturers or dealers having an established place of business within the State may move a boat trailer, and any boat on the trailer, without license number plates on public highways in one continuous movement from the point of its entry into the State to the manufacturer's or dealer's storage, sales or display area. [Hawaii Revised Statutes, §286-53.1]

The commanding officer of a vessel must surrender to any law enforcement officer upon the officer's demand any person who commits an offense on shore and escapes on board the vessel. Any commanding officer who secretes or allows to be secreted on board, or conveys out of state jurisdiction any prisoner, shall be subject to fines for the payment of which the law enforcement officer may seize and dispose of the vessel. Law enforcement officers may search any vessel for deserters, criminals, or other offenders without warrant. [Hawaii Revised Statutes, §§803-21, 803-22, 803-23]

Chapter 5

RECREATION

I. Beaches, Public Lands, and Public Access

Each county shall require the developer for any parcel bordering the ocean to provide land for public access from the highway or street to land below the high-water mark on the coastal shoreline; the county shall pay for the maintenance and improvement of such right-of-way after dedication and shall clearly designate such right-of-way on maps of the area. [Hawaii Revised Statutes, §46-6.5]

The council of the city and county of Honolulu is prohibited from selling real property bordering on the ocean. [Hawaii Revised Statutes, §70-92]

The State, as a matter of policy, shall provide for public access to the sea, shorelines, inland recreational areas and transit along shorelines and shall acquire such land as shall provide for the establishment and maintenance of public rights-of-way and transit corridors. [Hawaii Revised Statutes, §115-1]

Each county shall purchase such land as needed to provide access to the sea and shoreline when section 46-6.5 does not apply and where the topography of the area permits safe transit. [Hawaii Revised Statutes, §115-2]

The maximum distance between points of access shall consist of reasonable intervals that heed the topography of the land toward which the access leads. [Hawaii Revised Statutes, §115-3]

A public right to access shall include a right to safe shoreline transit. [Hawaii Revised Statutes, §115-4]

The public shall have a right to transit along the shoreline below the property lines of abutting owners. The property lines of these owners shall not include lands below the reach of ocean waves, as evidenced by a line of vegetation or of debris. The counties may establish transit corridors not less than six feet wide across such property lines where shoreline topography below them does not permit safe transit. [Hawaii Revised Statutes, §115-5]

The counties shall further the purposes of this chapter, where appropriate, with recourse to the eminent domain provisions of chapter 101, HRS. [Hawaii Revised Statutes, §115-6]

The department of land and natural resources shall agree with the councils of each county to provide funds for the acquisition of rights-of-way and transit corridors, provided that the counties shall match such funds and shall establish and maintain such corridors. [Hawaii Revised Statutes, §115-7]

The department of land and natural resources shall expend all appropriations made for the purposes of this chapter and for the specific purposes outlined in section 115-7, HRS. [Hawaii Revised Statutes, §115-8]

The board of land and natural resources, before disposing of any public lands, shall establish rights-of-way across such lands for public access to public beaches and game management areas; the board shall apportion the cost of establishing and maintaining such rights-of-way between the State and the lessee prior to disposal. [Hawaii Revised Statutes, §171-26]

The board of land and natural resources shall include in each lease it issues provisions providing for the reservation of right-of-way and access to other public lands, to public beaches and to game management areas. [Hawaii Revised Statutes, §171-36]

The board of land and natural resources shall not issue a lease for any public lands, including submerged lands, to any person for the construction or maintenance of any private sunbathing or swimming pier or for any similar use of such lands that excludes the public. [Hawaii Revised Statutes, §171-36]

The board of land and natural resources, with the approval of the governor or by concurrent resolution of the legislature and without recourse to public auction, may lease or sell public lands--including submerged lands--to private developers for the purposes outlined in this section, provided that the board shall in each case determine the need for and establish as appropriate public rights-of-way from proposed or established public highways to public beaches and game preserves and apportion the costs of establishing and maintaining such rights-of-way between the State and the lessee or buyer. [Hawaii Revised Statutes, §171-60]

Conservation land use districts shall include lands necessary to provide beach reserves and areas of value for recreational purposes. [Hawaii Revised Statutes, §205-2]

The department of transportation shall adopt rules, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, concerning safety measures, requirements and practices in or on the ocean waters, navigable streams, and beaches encumbered with easements favoring the public; the department may also prohibit commercial activities, the storage, parking and display of any personal property, the placement of structures or obstructions and any other use which may interfere with public use of such areas. [Hawaii Revised Statutes, §266-3]

Department of Transportation Shore Water Rules--Waikiki and Kaanapali

The rules primarily place controls on vessels.

In Waikiki and Kaanapali catamaran captains, canoe captains, and second captains carrying passengers for hire, surfboard and sailboard instructors, and commercial motorboat operators must obtain permits. The rules specify:

- (1) Who can obtain the permits;
- (2) The procedures (including examinations) necessary to obtain the permits;
- (3) That the permits be carried; and
- (4) That the department may suspend or revoke permits, require re-examination, or, in cases of renewals, waive the re-examination.

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

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

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

- (1) Operation of vessels according to "rules of the road";
 - (2) Keeping vessels out of designated areas reserved for swimming, or other activities. In Kaanapali, ingress and egress corridors are specified in certain areas;
 - (3) Prohibitions on operating vessels in a careless manner, or by persons under the influence of liquor or drugs;
 - (4) Specified crews for canoes and catamarans carrying passengers; and
 - (5) Prohibitions on soliciting business.
- [Chapter 19-82, Hawaii Administrative Rules]

Shore Water Rules--Other Areas

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

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

- (1) Operators have a duty to render aid, give information, and give assistance in accidents involving vessels, surfboards which cause injury, death, or property damage. The accident must also be reported to a lifeguard or police department;
- (2) Operators must report damage to the owner of the property damaged;
- (3) Operators may not pollute or throw litter into the water;
- (4) Police and enforcement officers have the authority to arrest for violations; and
- (5) Fees for permits and the registration of the equipment.
[Chapters 19-83 and 19-84, Hawaii Administrative Rules]

The department of transportation shall provide for adequate public rights-of-way and public access in any lease, license or entry permit it may issue for any public lands under the department's jurisdiction. [Hawaii Revised Statutes, §266-4.5]

The State, as a matter of policy, shall establish, preserve and maintain scenic, historic, cultural, park and recreation areas, including the shorelines, for public recreational, educational and scientific uses; the State shall also protect its shorelines from the encroachment of man-made improvements, structures and activities. [Hawaii Revised Statutes, §344-4]

Land owners shall have no duty beyond that specified in section 520-6, HRS, to keep their premises, including any watercourses thereon, safe for entry or use for recreational purposes, nor shall they have a duty to warn any person of a dangerous condition, use, structure or activity on such premises. Similarly, no land owner who directly or indirectly permits entry onto the land owner's premises shall thereby:

- (1) Extend any assurance concerning the safety of the premises;
- (2) Confer upon any person entering the legal status of an invitee or licensee toward whom the owner owes a duty of care; and
- (3) Assume responsibility or incur liability for any injury to any person or any property resulting from that person's act of omission or commission. [Hawaii Revised Statutes, §§520-3, 520-4]

No provision of the land owner liability law, chapter 520, HRS, shall limit any land owner's liability for the following conditions or actions:

- (1) Wilful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity the owner creates, pursues or perpetuates;
- (2) Any injury to any person or property in any case where the land owner charges a fee for admission to the premises, provided that any rent or other consideration the owner receives from the State for land leased to it shall not constitute a charge for admission; and
- (3) Injuries a house guest may suffer while engaged in any recreational activity on the owner's premises. [Hawaii Revised Statutes, §520-5]

No provision of the land owner liability law, chapter 520, HRS, shall:

- (1) Create for a land owner a duty of care or grounds for liability for any injury to persons or property entering the land owner's premises; or
- (2) Relieve any person using the owner's premises from any obligation to exercise care in the use of the land or from any legal consequence resulting, in the absence of any provision of the land owner liability law, from that person's failure to exercise such care. [Hawaii Revised Statutes, §520-6]

No person shall gain any rights to any land, by prescription or otherwise, as a result of using such land for recreational purposes as provided in the land owner liability law, chapter 520, HRS. [Hawaii Revised Statutes, §520-7]

The department of land and natural resources, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt such rules as necessary to administer the land owner liability law, chapter 520, HRS. [Hawaii Revised Statutes, §520-8]

State General Plan Provisions

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

- (1) Provide a wide range of activities and facilities to fulfill the...recreational needs of all diverse and special groups effectively and efficiently;
- (2) Enhance the enjoyment of recreational experiences through safety and security measures, educational opportunities, and improved facility design and maintenance;

- (3) Promote the...recreational potential of natural resources having scenic, open space, cultural, historic, geological, or biological values, and insure the preservation of those values;
- (4) Ensure opportunities for all persons to use and enjoy Hawaii's recreational resources;
- (5) Assure the availability of sufficient resources to provide for future...recreational needs; and
- (6) Assure adequate access to significant natural and cultural resources in public ownership. [Hawaii Revised Statutes, §226-23]

The State shall have as a priority guideline for land resource utilization the identification of critical environmental areas, including...scenic and recreational shoreline resources, open space and natural areas, areas particularly sensitive to reduced...water quality, and scenic resources. [Hawaii Revised Statutes, §226-104]

II. Non-Commercial Fishing

The public shall have free access to all fisheries not located within a private fishpond or within a government-licensed mariculture operation. [Hawaii State Constitution, Art. XI, Section 6]

The department of land and natural resources shall manage and administer public fishing areas. [Hawaii Revised Statutes, §171-3]

The department of land and natural resources shall prevent illegal activities, unlawful occupation of or trespassing on public lands and shall remove any persons or personal effects involved in these activities. [Hawaii Revised Statutes, §171-7]

The board of land and natural resources may investigate and develop scientific commercial management practices for government-owned fishponds and may expend funds from the special land and development fund to reconstruct, rehabilitate, improve and stock such ponds, provided that the board shall redeposit in the fund any revenues derived therefrom. [Hawaii Revised Statutes, §171-28]

The State, as a matter of policy, shall develop instream flow standards and programs for windward Oahu to protect fishery uses for estuarine areas. [Hawaii Revised Statutes, §§176D-2, 176D-3]

The department of land and natural resources shall:

- (1) Manage and administer the State's aquatic life;
- (2) Establish, manage, and regulate public fishing areas, artificial reefs, fish aggregation devices, shoreline fishery management areas and other areas;

- (3) Import aquatic life in order to propagate or disseminate it within the State;
- (4) Distribute or sell, as appropriate, aquatic life for the purposes of increasing the State's food supply when such action will contribute to the public interest;
- (5) Compile needed information concerning the State's aquatic resources which shall contribute to the care and propagation of aquatic life for productive purposes; and
- (6) Enforce all laws concerning the protection, taking, and killing of aquatic life. [Hawaii Revised Statutes, §187A-5]

The department of land and natural resources shall adopt rules, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, delimiting size and bag limits, establishing open and closed fishing seasons, specifying the type and amount of fishing gear that may be used, prescribing the kind and amount of bait that may be used and specifying conditions for entry into areas for taking aquatic life. [Hawaii Revised Statutes, §187A-5]

The department of land and natural resources may designate agents to sell fishing licenses and shall provide for the strict accounting of all licenses sold and all revenues collected; such agents shall receive a five per cent commission on license sales and may administer the oaths required upon application. [Hawaii Revised Statutes, §187A-10]

The department of land and natural resources shall deposit all revenues collected from the sale of fishing permits and licenses into the general fund for use in accordance with legislative appropriation in its programs concerning the importation, management, and propagation of aquatic life and for expenses incurred in the prosecution of violators of the resource and conservation laws. [Hawaii Revised Statutes, §187A-11]

The department shall pay one-half of the fine collected upon conviction from violators of state fishing laws to persons whose information led to the conviction; the department shall not pay this amount to any of its regularly employed enforcement officers. [Hawaii Revised Statutes, §187A-14]

The people shall have a right to the use of all fishing grounds upon, appurtenant to or otherwise under the control of the government, provided that such right shall not apply to fishponds and provided that the department of land and natural resources may regulate the taking of aquatic life. [Hawaii Revised Statutes, §187A-21]

No person who has acquired any interest in government land shall have any greater right to fishing grounds adjacent to, but not included within, such lands than does any other person. [Hawaii Revised Statutes, §187A-22]

No person shall possess or use on or near state waters any explosives, blasting fuse caps, electrofishing devices or other device for taking aquatic life with electricity or any of the poisonous substances listed in this section unless so permitted by the department of land and natural resources; the

possession of any of these substances in or near fishing grounds shall constitute evidence of the violation of this section. [Hawaii Revised Statutes, §188-23]

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

No person may take aquatic life with a bullpen trap as defined in this section when such trap:

- (1) Exceeds, when including the guides and pen, 2,000 feet in length;
- (2) Lies in the same place for more than 16 hours; or
- (3) Lies within 1,000 yards of the shoreline, except for areas seaward of the shore of Molokai described in this section, or as designated by the department of land and natural resources. [Hawaii Revised Statutes, §188-28]

No person may use a net or trap, including a bullpen trap, that has a stretched mesh measuring less than two inches, is not portable or is more than 10 feet in length or more than six feet in height or width, with those exceptions listed. The department of land and natural resources shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, concerning requirements for escape openings or devices on any type of trap. [Hawaii Revised Statutes, §188-29]

No person may possess a throw net that has a stretched mesh measuring less than one and one-half inches while in or near any fishing ground. No person may sell a throw net that has a stretched mesh measuring less than two inches after July 1, 1988; no person may possess such a net after December 31, 1994. [Hawaii Revised Statutes, §188-30]

No person fishing with a gill net may leave that net unattended for more than 12 hours. [Hawaii Revised Statutes, §188-30.2]

The board of land and natural resources or an agent may issue a permit for the taking of aquatic life for aquarium purposes to qualified persons which shall permit such persons to take aquatic life with fine-meshed nets other than throw nets; no person may sell fish taken under an aquarium fish permit unless that person sells such fish alive and for aquarium purposes. [Hawaii Revised Statutes, §188-31]

No person may take or kill fish with any draw, drag or seine net within the waters of Honolulu Harbor, provided that commercial fishing licensees may

use such methods within the harbor to take bait fish when so permitted by the harbor master; such provisions shall also apply to Hilo Bay, except that persons may fish with such nets when fishing solely for home consumption. [Hawaii Revised Statutes, §188-34]

No person may take aquatic life from:

- (1) The Waikiki reclamation canal, Oahu;
- (2) The drainage canal constructed in connection with Kapiolani Blvd., Oahu;
- (3) The Kapalama drainage canal, Oahu;
- (4) Heeia-Kea wharf, Oahu;
- (5) Portions of Waialua Bay;
- (6) Portions of Pokai Bay;
- (7) The Kapaa and Waikaena canals, Kauai; and
- (8) Kailua Bay, Hawaii, in those areas designated by the department of land and natural resources by rule pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS,

provided that:

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

In the Waikiki reclamation canal any person may take up to 50 tabai or mosquito fish, or o'opu akupa or tilapia or any combination thereof per day for noncommercial purposes with a net measuring no more than three feet in any dimension. The department of land and natural resources may permit commercial fishing licensees to take nehu or iao with nets from these areas for bait purposes only; the department may revoke some or all such licenses when it deems it necessary to preserve fish stock. [Hawaii Revised Statutes, §188-35]

No person may take aquatic life from the Hawaii marine laboratory refuge unless that person is an officer, faculty member, employee or student of the University of Hawaii and is taking aquatic life for scientific purposes; all laws concerning the protection of aquatic life shall apply to the laboratory except those permitting any persons except those named above to take aquatic life. [Hawaii Revised Statutes, §188-36]

The department of land and natural resources may adopt rules and issue permits for the taking of aquatic life within the waters of the Northwestern Hawaiian Islands when the department determines that such taking will not deplete marine life in the area; such rules may specify open and closed seasons, size limits and allowable methods and appliances. [Hawaii Revised Statutes, §188-37]

No person may possess or sell any:

- (1) Aholehole or manini less than five inches in length;
- (2) Mullet, moi, weke, moana, or kumu less than seven inches in length;
- (3) Awa, oio, kala, or opelu kala less than nine inches in length;
- (4) Opakapaka, ulaula, uku, ulua, paio, uhu, slipper lobster, or squid less than one pound in weight;
- (5) Kauhonu crab or Kona crab less than four inches in length along its back; or
- (6) Clams less than one and one-half inches, measured the long way. [Hawaii Revised Statutes, §188-40]

No person may sell or trade at any time any dried or cured nehu or iao taken from state waters. [Hawaii Revised Statutes, §188-41]

No person may take hinana or o'opu with traps or weirs. [Hawaii Revised Statutes, §188-43]

No person may take, possess or sell any mullet, known as amaama, or anaeholo during the months of December, January, or February, provided that an owner or operator of a fishpond may legally catch young mullet, known as pua, during the closed season for purposes of stocking the owner's pond; such owner or operator may furthermore sell pond-raised mullet during the closed season with a license from the department of land and natural resources for each outlet from which the owner or operator sells mullet. An owner or operator convicted of selling sea mullet during the closed season shall forfeit that owner's permit or permits to sell pond-raised mullet. [Hawaii Revised Statutes, §188-44]

No person may take nehu or iao from any state waters, provided that any person may take nehu for personal consumption with a net not longer than 50 feet. The department of land and natural resources may issue a commercial license permitting the taking of nehu, iao, or other species for bait during such open seasons as the department may declare, provided that commercial licensees may take nehu only if employed on a live-bait tuna boat on which the licensee derives the licensee's principal means of livelihood and provided the licensee does not sell the nehu. The department of land and natural resources may revoke such license in order to conserve the supply of listed fish. [Hawaii Revised Statutes, §188-45]

No person may take opelu with fish or animal bait from the waters off the coast of South Kona at any time, except with hook and line. [Hawaii Revised Statutes, §188-46]

The department of land and natural resources or its agents shall issue fishing licenses upon application to all persons above nine years of age. The department or its agent shall require an oath attesting to the descriptive information included on the license and may require the bearer to show the license upon demand to departmental enforcement officers. Such licenses are not transferrable and shall expire on June 30 following the date of issue, except for tourist licenses, which shall expire 30 days following the date of issue. The department shall charge the fees listed in this section for each license, provided that it shall charge no fee to persons 65 years or older. The department may also issue a group license to a club or group of minors as provided in this section when licensed adults accompany such group. Each licensee may take only one bag where the department specifies a bag limit. [Hawaii Revised Statutes, §188-50]

The department of land and natural resources may establish, maintain and manage fish reserves, refuges and public fishing areas or may agree with private owners to take control of private areas in order to protect, conserve and propagate marine life. The department may adopt such rules or issue such permits as it may deem necessary for the purposes of this section; no person may enter those areas requiring permits without a departmental permit or violate any departmental rule concerning the area. [Hawaii Revised Statutes, §188-53]

No person may take, possess, or sell any Kona crabs, spiny lobster (ula) or slipper lobster (ula-papapa) during the months of June, July, and August, provided that any dealer may sell and any hotel or eating place may serve during the closed season those crustaceans caught during the open season under the terms of a permit issued by the department of land and natural resources, for which the vendor shall pay the fees and give the information required in this section. Possession of any of these species without a permit during the closed season shall constitute evidence of the violation of this section. [Hawaii Revised Statutes, §188-57]

No person may take, possess or sell any spiny lobster (ula), slipper lobster (ula-papapa), kuahonu crab, Samoan crab or Kona crab while with egg. Possession of any of these crustaceans with egg or with indications of the eggs having been removed therefrom shall constitute evidence of the violation of this section. [Hawaii Revised Statutes, §188-58]

Any person violating any provision of this chapter except section 188-23, upon conviction, shall be guilty of a petty misdemeanor and shall be punished as provided in this section. Any person violating section 188-23, HRS, upon conviction, shall be guilty of a misdemeanor and shall be punished as provided in this section. A fine of \$25 per specimen of aquatic life taken in violation of this chapter may be assessed in addition to the penalties herein provided; such fine shall be assessed for a subsequent conviction within five years of the first. [Hawaii Revised Statutes, §188-70]

The department of health shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, concerning fishing and the acquisition of marine products by Hansen's disease patients; state fishing laws shall not apply to such patients provided they fish along the shorelines and in waters immediately adjacent to the county of Kalawao. No person may sell any marine products obtained by such patients outside Kalawao County. [Hawaii Revised Statutes, §326-29]

No county may require any person to obtain a fishing license from that county. [Hawaii Revised Statutes, §445-15]

The department of land and natural resources shall administer a statewide kapu system on the model established for the Waikiki-Diamond Head Shoreline Fisheries Management Area; this system shall allow the department to open and close certain areas on an alternating basis to prevent the depletion of fish stocks and shall effect a permanent ban on all net fishing except for the netting of nehu or other baitfish within state harbors under the jurisdiction of the department of transportation. No provision of this act shall diminish traditional or customary native Hawaiian rights. [Session Laws of Hawaii 1986, Act 256]

For department of land and natural resources rules concerning:

- (1) Marine fisheries management areas;
- (2) Restrictions on the taking or removal of specified types of marine life; and
- (3) Marine life conservation areas,

See part II of chapter 1, Conservation. All of the rules place varying types of restrictions on fishing activities, recreational or otherwise.

State General Plan Provisions

The State shall have as a planning objective the achievement of adequate resources to accommodate diverse...recreational needs. In order to achieve this objective the State, as a matter of policy, shall promote the...recreational potential of natural resources with...biological value and insure that those values are preserved. [Hawaii Revised Statutes, §226-23]

III. Boating and Small Boat Harbors

The boating special fund shall pay for the cost of administering a statewide boating program, which shall:

- (1) Operate, maintain, and manage all boating facilities under the control of the department of transportation;
- (2) Improve boating safety;

- (3) Operate a vessel registration and boating casualty investigation and reporting system;
- (4) Enforce boat harbor, navigation, shore waters and beach laws and regulations;
- (5) Assist in abating air, water, and noise pollution from small craft; and
- (6) Conduct other boating activities.

The boating special fund or the general fund, as the legislature may authorize, shall pay for the cost of capital improvements for boating facilities, except for the construction of navigation channels, breakwaters, aids to navigation and harbor protective structures, funds for which shall come exclusively from the general fund. [Hawaii Revised Statutes, §266-20]

No vessel in poor condition or incapable of regular navigation beyond the confines of the harbor shall moor in state small boat harbors or use any harbor facilities. Except for the Ala Wai and Keehi boat harbors, within which no commercial vessel--except for department of transportation-authorized catamarans--may moor, all state small boat harbors shall serve recreational and commercial boating activities and the landing of fish. Vessels used as an owner's or operator's principal residence shall occupy no more than 15 per cent of the available moorage space in the Ala Wai and Keehi boat harbors. The department of transportation shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, to effect the provisions of this section. [Hawaii Revised Statutes, §266-21]

No person may moor a vessel in a state small boat harbor without a permit and without proof of ownership. The department of transportation shall issue or renew a mooring permit to an owner upon application; such application shall include evidence of a marine surveyor's inspection less than two years old certifying that the vessel meets departmental standards, and proof of ownership. The owner shall pay the department moorage fees for harbor use as provided in this section, which shall be deposited in the special boating fund. Live-aboard fees shall also be paid if a recreational vessel is used as a principal habitation. Fees may be increased at the rate of the cost of living index. Commercial and commercial fishing vessels may be transferred between personal and corporate or business ownership without losing the right to moor. The department may designate space within the harbors for commercial fishing vessels. [Hawaii Revised Statutes, §266-21.1]

Owners permitted to use their vessels as principal places of residence may continue to moor and to renew such a permit after June 9, 1976, provided the owner conforms to the conditions outlined in sections 266-21 and 266-21.1, HRS. The maximum percentage for such use of the Ala Wai and Keehi boat harbors shall not apply to these boat owners until attrition has reduced their numbers to this percentage. [Hawaii Revised Statutes, §266-21.2]

The department of transportation shall organize a branch within the harbors division to develop necessary rules, organize a comprehensive

program and develop standards, permits, and fees for moorage for state small boat harbors and recreational boating within the State. [Hawaii Revised Statutes, §266-21.4]

Department of Transportation Small Boat Harbor Rules

In order to avoid fee differentials charged to nonresidents, a person using a small boat harbor must have been a continuous Hawaii resident for not less than 12 months before applying for a harbor berth. The department's rules concerning residency also specify:

- (1) Evidence the department will accept as proof of residency;
- (2) The department's procedure for determining residency and its procedure for appeals; and
- (3) The applicant's obligation to report a change of status.
[§§19-61-22 to 19-61-29, Hawaii Administrative Rules]

In order to obtain use permits for small boat harbors, boat owners are required to enter into formal agreements with the department of transportation. Categories of use permits include, but are not limited to: mooring; harbor resident (Ala Wai and Keehi boat harbors only); stay aboard; vacation; principal habitation (Ala Wai and Keehi only); living aboard (Ala Wai and Keehi only); and commercial.

The various use permits are valid for one year, and may be renewed, cancelled, or revoked. Holders of mooring permits may be temporarily assigned or reassigned to other berths for a variety of reasons, including emergencies or to provide accommodations for repairs. Use permits automatically expire if the vessel is absent for more than 14 days, unless the owner clears such absences with the department.

With the exception of the Ala Wai and Keehi harbors, persons generally may not live or stay aboard a vessel. [§§19-62-1 to 19-62-30, Hawaii Administrative Rules]

The operation of boats within small boat harbors is regulated by sections 19-62-40 to 19-62-46, Hawaii Administrative Rules.

The rules require boat operators to:

- (1) Navigate at speeds that will not disturb other boats and property in the boat's wake;
- (2) Operate their vessels or install objects in them in a way which does not interfere with navigation;
- (3) Operate their vessels at their own risk, although the services of port pilots are available;
- (4) Obey time limits on the use of vessel loading zones;

- (5) Allow inspections by marine surveyors; and
- (6) Obey limitations on moorage at the Lahaina loading dock.

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

- (1) Prohibiting the unloading of passengers or cargo at most small boat harbors unless the boat owner has mooring and commercial permits, although the department may make exceptions for transient vessels;
- (2) Issuing commercial permits on the basis of seniority, and renewing them if the permittee has a minimum amount of specified gross receipts;
- (3) Providing that commercial permits are non-transferable;
- (4) Requiring permittees to carry specified amounts of insurance; and
- (5) Allowing more than one commercial vessel to use the same berth.
[§§19-62-50 to 19-62-58, Hawaii Administrative Rules]

Other rules for small boat harbors concern:

- (1) Procedures for allocating berths--the general rule is first-come-first-served, although there is a system of priorities, categories, and specific procedural rules.
[§§19-62-70 to 19-62-80, Hawaii Administrative Rules]
- (2) Sanitation, fire safety, and storage;
[§§19-63-1 to 19-63-44, Hawaii Administrative Rules]
- (3) Public conduct, including restrictions on:
 - (A) Swimming and fishing;
 - (B) Domestic pets at Ala Wai and Keehi harbors;
 - (C) Sleeping and camping;
 - (D) Visitors (they must assume the risk of their visit to any small boat harbor); and
 - (E) Liquor in city and county of Honolulu harbors;
[§§19-63-50 to 19-63-59, Hawaii Administrative Rules]

- (4) Motor vehicle and parking restrictions;
[Chapter 19-64, Hawaii Administrative Rules]
- (5) Fees and charges.
[Chapter 19-65, Hawaii Administrative Rules]

The department of transportation, in implementing this chapter, shall adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, for the use of vessels within state waters which shall conform with and supplement federal boating laws. These rules shall include provisions regulating vessel registration and numbering, the use of equipment aboard vessels and the conduct of persons involved in and the reporting of boating accidents, casualties and losses to the department. [Hawaii Revised Statutes, §§267-2, 267-4]

Department of Transportation Boating Rules--Numbering Boats

Unless the vessel falls into one of the ten categories of exemptions, the vessel must be numbered. Examples of categories of exemptions include vessels which:

- (1) Have numbers issued pursuant to federal law and which have not remained in the State for more than 60 days;
- (2) Are from foreign countries and have not been in state waters for more than 60 days;
- (3) Are owned by the United States, are used exclusively in public service, and are clearly identifiable as such;
- (4) Are lifeboats used solely for lifesaving purposes;
- (5) Are manually propelled; or
- (6) Are motorboats used exclusively for racing.

The rules establish a system for assigning numbers, procedures for obtaining required numbers, certificates, decals, and other required records, making fees and charges, and appointing "vessel registration agents" to conduct the registration of vessels. [Chapter 179-72, Hawaii Administrative Rules]

Boating Rules--Accidents

Operators of vessels involved in boating accidents must:

- (1) Render aid to affected persons and identify themselves and their vessels;
- (2) Take appropriate steps to notify the owner if they strike an unattended vessel or property;

- (3) Provide immediate notice to harbor officials or police of accidents resulting in the death, serious injury, or disappearance of any person; and
- (4) Submit a written report to the department of transportation.

Departmental enforcement officers may:

- (1) Investigate accidents;
- (2) Stop vessels for inspection;
- (3) Order the correction of unsafe conditions, and, if necessary, order the vessel returned to mooring until the problem is corrected;
- (4) Arrest any person without warrant if the officer observes the violation;
- (5) Issue summons or citations; and
- (6) Take legal custody of vessels upon making an arrest. If the operator refuses to navigate the vessel back to shore, the vessel may be towed at the operator's expense.
[Chapter 19-73, Hawaii Administrative Rules]

Boating Rules--Equipment

In establishing equipment requirements for vessels, the rules of the department of transportation incorporate a number of federal requirements. The equipment requirements apply to all recreational boats (including those propelled by sails, oars, paddles, and poles) except racing shells, rowing sculls, and racing kayaks.

In addition:

- (1) Vessels carrying passengers for hire cannot use liquified petroleum gas or any inflammable liquids prohibited by federal regulations; and
- (2) As a general rule, vessels equipped with internal combustion engines must have mufflers.

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

Boating Rules--"Rules of the Road"

"Rules of the road" for boating specify:

- (1) A requirement of general prudence and good seamanship;

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

The rules also limit or prohibit the operation or mooring of vessels in specified shore water areas including Waikiki, Makapuu, Kealahou Bay, Kailua Beach Park, Ahihi-Kinohi, Pokai Bay, Ala Moana Beach Park, Kaanapali, and the Manele-Hulopoe marine life conservation district. Each of the areas has specific exceptions. For example, outrigger canoes are allowed in approximately half of the areas, while other areas allow vessels for search and rescue operations. A few areas are more restrictive. [Chapter 19-75, Hawaii Administrative Rules]

Boating Rules--Waterway Marking System

Waterway markers can include a number of differently colored or designed buoys, flags, signs, or other devices.

Persons are prohibited from defacing, damaging, destroying, or mooring vessels or rafts to any waterway markers. [Chapter 19-76, Hawaii Administrative Rules]

The director of transportation may contract with state-authorized corporations to enforce the boating laws and of all rules adopted thereunder, provided that such corporations undertake such enforcement at no expense to the State and without exposing the State or state officers to liability for their operations. The director may appoint and confer police powers upon no more than 10 corporate officers or employees to serve as boating enforcement officers and may direct all other officers responsible for the enforcement of boating laws to assist such officers. The director may also appoint volunteer enforcement officers. The director shall also have and may confer police powers upon departmental employees for the purpose of enforcing boating laws. State boating laws shall not preclude the enforcement of state or federal laws or of agreements between the director and the officers of other states or of the United States. [Hawaii Revised Statutes, §267-6]

Enforcement officers charged with enforcing the boating laws or of any rules adopted thereunder shall have police powers, including the powers of arrest and citation. [Hawaii Revised Statutes, §267-6.1]

The police chief of every political subdivision within the State shall transmit to the department of transportation a copy of every report submitted in an investigation of any violation of state boating laws. [Hawaii Revised Statutes, §267-7]

Operators involved in boating accidents shall render such assistance as necessary and practicable to others involved in such accidents and as shall not seriously endanger the operator's own vessel or any person aboard; the operator shall furthermore make every reasonable effort to disclose to all persons injured, all owners of property damaged and all operators of other vessels involved in the accident the operator's identity, address and vessel identification and shall cooperate with all enforcement officers investigating the accident. Any person who offers assistance in compliance with this section or any person who offers assistance without the objections of persons assisted at the scene of an accident shall not be liable for that person's acts or omissions except in cases of gross negligence or wanton acts or omissions. [Hawaii Revised Statutes, §267-8]

The operator of any vessel required to be registered or registered with the department of transportation and involved in a boating accident shall file with the department a written report containing all information the department may require unless such operator shall fall under the jurisdiction of the Coast Guard. The department shall forward such copies of reports submitted as the Coast Guard may require. Such reports may be used only for investigations related to the accident, for the compilation of statistical reports or for prosecutions resulting from the submission of false accident reports. [Hawaii Revised Statutes, §267-9]

The department of transportation may confer the privileges due state-registered boat operators upon operators registered in other jurisdictions, provided that those jurisdictions extend such privileges to state-registered boat operators. The department may define by rule the extent of privileges granted to boat operators registered under another jurisdiction that does not have a reciprocal agreement with the State, provided that the department shall recognize the validity of a number awarded to a vessel under a numbering system approved by the Coast Guard for at least 60 days. [Hawaii Revised Statutes, §267-10]

All vessels shall be registered annually with the department of transportation for use within state waters except foreign vessels using state waters temporarily, public vessels of the United States, ship's life boats and other vessels the department may exempt under federal laws or requirements. [Hawaii Revised Statutes, §267-11]

The department of transportation shall collect from every owner having a vessel required to be registered under section 267-11 the specific fees listed in this section. [Hawaii Revised Statutes, §267-12]

The department of transportation shall deposit all fees collected under the provisions of section 267-12, HRS, into the boating special fund. [Hawaii Revised Statutes, §267-13]

The department of transportation shall interpret the boating laws in that manner that best effects unity between the laws of the State, of other states and of the United States. [Hawaii Revised Statutes, §267-14]

State boating laws shall supersede the provisions of any conflicting ordinance or regulation adopted by any political subdivision within the State. Any political subdivision may apply for, and the department of transportation may adopt special regulations for use within that subdivision's waters where such regulations would not unreasonably interfere with the uniformity of state and federal boating laws. [Hawaii Revised Statutes, §267-15]

IV. State, County and National Parks and Park Lands

The United States shall have such jurisdiction over Hawaii National Park territory as does not restrict the State's power to tax residents and to prosecute persons for crimes not committed within park bounds. Fugitives taking refuge within the boundaries of the park shall be subject to state laws concerning fugitives. [Hawaii National Park Act, §1]

The United States Secretary of the Interior shall adopt rules concerning the taking of fish, provided that such taking shall occur only during specified seasons and only with a hook and line; the possession of any part of an animal whose taking is prohibited shall constitute evidence of the violation of the laws or rules governing such taking. [Hawaii National Park Act, §4]

The State assents to United States control of Hawaii National Park as the Admission and Hawaii National Park acts provide. [Hawaii State Constitution, Art. XVI, §10]

The department of land and natural resources shall administer and manage all state parks, including historic sites. [Hawaii Revised Statutes, §26-15]

The governor may contract with the counties for the repair, maintenance and operation of state park buildings and grounds and state historic sites; the governor may also transfer state functions concerning state parks to the counties, subject to the approval of the next legislature. [Hawaii Revised Statutes, §27-32]

The counties shall control, manage and maintain those parks and public recreation areas within their jurisdictions that do not belong either to the city and county of Honolulu or to the state park system. [Hawaii Revised Statutes, §46-65]

The recreation commission of the county of Hawaii shall control all park and public recreation facilities and property within its jurisdiction. [Hawaii Revised Statutes, §64-52]

The council of the city and county of Honolulu may acquire property for parks and public beaches via improvement districts when 50 per cent of the

owners of property that will benefit from such acquisition so request.
[Hawaii Revised Statutes, §70-82]

The council of the city and county of Honolulu may exchange lands under its jurisdiction for other lands, provided that it shall exchange land used for parks only for other land suitable for park use. [Hawaii Revised Statutes, §70-93]

The council of the city and county of Honolulu shall deposit all revenues from the sale of county park land and recreational property in a fund for the sole purpose of acquiring other park land or recreational property. [Hawaii Revised Statutes, §70-123]

Subject to written agreement between the governor and the mayor of the city and county of Honolulu:

- (1) The State's interest in Honolulu Stadium Park, Sans Souci State Recreation Area, and Aina Moana State Recreation Area is transferred to the city and county of Honolulu; and
- (2) The county's interest in Kawainui Marsh, Kahana Bay Beach Park, Hanauma Bay, and Kuilei Cliffs/Diamond Head Beach Park is transferred to the State. [Session Laws of Hawaii 1984, Act 38, §1]

The department of land and natural resources shall manage and administer state parks and historical sites. [Hawaii Revised Statutes, §171-3]

The board of land and natural resources shall classify as lands for recreational use those lands suitable for development and use as parks, playgrounds, historical sites, natural areas, camp grounds, wildlife refuges, scenic sites or other such uses. [Hawaii Revised Statutes, §171-10]

The board of land and natural resources may lease campsites or other recreational sites within state park lands or lands under the control of the department of land and natural resources to any eleemosynary or religious organization without public auction and at nominal consideration, provided that any such lease shall direct the lessee to provide public access to campsites at rates the board shall establish by rule. [Hawaii Revised Statutes, §171-43]

The board of land and natural resources may lease lands within a state park or lands set aside by executive order for recreation-residence use, without public auction and at such rates as the board may set, for not more than 20 years. [Hawaii Revised Statutes, §171-44]

The department of land and natural resources may designate and bring into the state park system under its control and management land, including land under water, beaches and water, for parks and parkways by:

- (1) Setting aside government-owned land under the jurisdiction of the department by resolution, subject to the governor's approval by executive order, provided that the department

shall not set aside lands used as the water supply of any city or community without the approval of the department of health and the county board of water supply or county council;

- (2) Acquiring county parks with the consent of the county council and upon finding that the people of the whole State have an interest in such parks; and
- (3) Establishing new parks and parkways by acquiring land in the name of the State or requesting the governor to set aside government-owned lands. [Hawaii Revised Statutes, §§184-1, 184-2]

The department of land and natural resources shall provide further for the acquisition of park lands by:

- (1) Acquiring land in the name of the State by agreement, gift, lease or eminent domain;
- (2) Receiving gifts, bequests, or contributions of money or other property;
- (3) Accepting any conditions imposed upon such gifts the department deems acceptable and not inconsistent with its responsibilities and functions;
- (4) Accepting title to or lease of United States land and buildings within the State under such conditions as the United States shall impose;
- (5) Caring for, supervising, improving, developing and protecting the state park system with available funds;
- (6) Constructing and operating or contracting for the construction and operation of suitable public facilities, services and conveniences;
- (7) Acquiring, by condemnation or otherwise, rights appurtenant to abutting property for light, air, and access when necessary to the establishment, development, improvement, or extension of any parkway; and
- (8) Cooperating with any political subdivision of the State or the United States in the planning, establishment, development, improvement, or maintenance of any park, parkway, or recreational area. [Hawaii Revised Statutes, §184-3]

The department of land and natural resources, pursuant to the Hawaii Administrative Procedure Act, chapter 91, HRS, shall adopt rules concerning the use and protection of state parks and public monuments, of private lands to which the owner has granted the State rights of entry, their access or use as recreational, park or historic, archeological, natural or scientific sites and the enforcement of rules for such purposes. The department may confer

police powers upon the director of state parks or any parks division employee for the enforcement of laws and rules concerning the use and protection of any of the lands listed above; such powers shall include the power to cite or to arrest any person violating the provisions state park laws or of any rule adopted thereunder. That person shall be liable for the restoration of any damage done, subject to the confiscation of any tools or implements used in the violation and of any plants, objects or artifacts illegally removed from parklands and guilty of a petty misdemeanor. [Hawaii Revised Statutes, §§184-5, 184-5.1]

The department of land and natural resources shall preserve the parks and parkways in the state park system in their natural state or shall improve them in such a manner as to retain to the maximum extent consistent with their use and safety their natural scenic, historic, and wildlife values. [Hawaii Revised Statutes, §184-6]

Any county may convey or lease county land for a nominal consideration to the department of land and natural resources for the development, improvement, extension, operation, or maintenance of the state park system. [Hawaii Revised Statutes, §184-7]

The department of land and natural resources shall plan for, establish and develop a state resort facility and all improvements and utilities necessary to such a facility on available and suitable lands in each county, provided that the department may agree under a concession agreement to provide such facilities by contract. The department shall not contract for such facilities when adequate private accommodations and facilities exist near the area of the resort. [Hawaii Revised Statutes, §§184-11, 184-12, 184-13]

The State adopts as state law those acts of Congress authorizing the acquisition of private lands for the purposes of the Hawaii National Park and the City of Refuge National Historical Park and authorizing the governor to acquire and convey to the United States lands and interests in lands for this purpose. [Hawaii Revised Statutes, §184-21]

The director of planning and economic development shall cooperate with the department of land and natural resources to plan and recommend means for establishing a comprehensive system of state parks, and shall seek agreements with the United States government for the use of recreational areas under United States armed forces jurisdiction, with the national park services for the greatest use of national parks within the State, with county parks boards for the joint development of beaches, parks and other recreational facilities and with private or governmental organizations or persons for the preservation and improvement of cultural or historic sites. [Hawaii Revised Statutes, §201-27]

Conservation land use districts shall include lands necessary to preserve scenic and historic areas and to provide park lands, wilderness and beach reserves. [Hawaii Revised Statutes, §205-2]

The State, as a matter of policy, shall: establish, preserve and maintain scenic, cultural, park and recreation areas, including shorelines, for public recreational, educational and scientific uses; protect state shorelines

from the encroachment of man-made structures, improvements and activities; and promote open space in view of its natural beauty not only as a natural resource but as an ennobling, living environment for its people. [Hawaii Revised Statutes, §344-4]

State General Plan Provisions

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

- (1) Provide a wide range of activities and facilities to fulfill the...recreational needs of all diverse and special groups effectively and efficiently;
- (2) Enhance the enjoyment of recreational experiences through safety and security measures, educational opportunities, and improved facility design and maintenance;
- (3) Promote the...recreational potential of natural resources having scenic, open space, cultural, historic, geological, or biological values, and insure the preservation of those values;
- (4) Ensure opportunities for all persons to use and enjoy Hawaii's recreational resources; and
- (5) Assure the availability of sufficient resources to provide for future...recreational needs. [Hawaii Revised Statutes, §226-23]

V. Tourism

The department of planning and economic development may lease public land for hotel and resort development if the department finds that the land possesses the amenities necessary for such development and that the advantages of such development outweigh those of retaining the land in its natural state; the department shall provide for public access to any beach or historic monument adjacent to land it disposes of for this purpose. The board of land and natural resources may, with the prior approval of the governor and subject to the disapproval of either house of the legislature, sell public lands upon those conditions listed for leasing such lands and other conditions listed in this section, provided that the department shall consider the public need for beach area above the high-water mark. [Hawaii Revised Statutes, §171-42]

The department of planning and economic development shall plan for the development and expansion of the State's tourist industry and shall recommend to the Hawaii Visitor's Bureau and to other appropriate agencies ways and means for developing recreational facilities to accommodate tourists. [Hawaii Revised Statutes, §201-27]

The director of planning and economic development shall develop a system which will monitor the impact of tourism development and activities on the economic social and physical environment of state residents and identify those conditions having or likely to have negative effects on residents. [Hawaii Revised Statutes, §210-27.5]

State General Plan Provisions

The State shall have as a priority guideline to promote the economic health and quality of the visitor industry the encouragement of visitor industry practices and activities which respect, preserve and enhance Hawaii's significant natural, scenic, historic and cultural resources. [Hawaii Revised Statutes, §226-103]

Functional Plan Policies and Ocean Management Plan Policies

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

- (1) Improve the quality of existing visitor destination areas in the following manner:
 - (A) The city and county of Honolulu shall budget and expend funds for the improvement of Waikiki through the widening of Waikiki beach and the improvement of the water quality of the Ala Wai Boat Harbor.
- (2) Encourage greater cooperation between the public and private sectors in developing and maintaining well-designed and adequately serviced visitor industry developments in the following manner:
 - (A) County planning and land use agencies shall encourage hotel and visitor condominium developments to use regional, rather than private, sewerage systems.
- (3) Ensure that developers carefully plan visitor facilities and destination areas in consideration of existing neighboring communities and activities in the following manner:
 - (A) County planning and land use agencies shall ensure that developers set new hotel and condominium projects sufficiently far from the shoreline to facilitate and encourage public use of those areas; and

- (B) County planning and land use agencies shall plan the development of resorts in a coordinated manner to minimize the loss of public recreational opportunities in designated visitor destination areas. [Hawaii Tourism Functional Plan, Objective B, Policies B(2), B(3), B(4), Implementing actions B(2)(a), B(3)(e), B(4)(b), B(4)(d)]

The State shall have as a planning objective the development of better relations and mutual awareness and sensitivity between the visitor industry and the community. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Ensure that visitor industry activities are in keeping with the social needs and aspirations of Hawaii's people in the following manner:

- (A) The department of land and natural resources, the office of consumer protection, the department of planning and economic development and county parks and recreation agencies shall establish a program to monitor and investigate the impact of visitor activities on public recreational areas and shall take appropriate actions as needed.

- (2) Foster visitors' understanding of...the unique and sensitive character of Hawaii's cultures and values in the following manner:

- (A) The department of land and natural resources shall provide relevant interpretation of and public access to sites of archaeological significance whenever feasible and shall establish a program to explain Hawaii's history and values to visitors and residents. [Hawaii Tourism Functional Plan, Objective D, Policies D(1), D(3), Implementing actions D(1)(a), D(3)(b)]

The State shall have as a planning objective the provision of coastal and ocean recreational opportunities for...visitors consistent with concerns for public safety, the conservation of natural, cultural and historic resources, and conflicts with other ocean activities. In order to achieve this objective the State, as a matter of policy, shall:

- (1) Improve informational bases to promote compatibility and minimize conflicts between land and water development activities and ocean recreational activities; and
- (2) Promote knowledge, skills and services required for visitors' safe ocean recreation. [Hawaii Ocean Management Plan, Objective II.A., Policies II.B.1., IIB.5.]

Chapter 6

MISCELLANEOUS

1. Boundaries/Extent of Jurisdiction

The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on March 18, 1959, except Palmyra Island, the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters. [Admission Act, §2]

The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) and the Outer Continental Shelf Lands Act of 1953 (Public Law 212, Eighty-third Congress, first session, 67 Stat. 462) shall apply to the State of Hawaii, and the State shall have such rights thereunder as do existing states. [Admission Act, §5]

The United States shall have authority over all lands the United States controlled or owned and held for defense or coast guard purposes immediately prior to Hawaii's admission as a state. [Admission Act, §16]

The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters, included in the Territory of Hawaii on the date of the enactment of the Admission Act, but shall not include Palmyra Island, the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters. [Hawaii State Constitution, Art. XV, §1]

Each of the districts into which section 4-1, HRS, divides each of the counties shall include the waters and smaller islands adjacent thereto. [Hawaii Revised Statutes, §4-3]

The boundaries of the counties of Hawaii, Maui, and Kauai shall include all other islands lying within three nautical miles of the shores of the islands which comprise the counties, and the waters adjacent thereto. [Hawaii Revised Statutes, §61-1]

The land districts into which the laws concerning public lands divide the State shall include the reefs and reef lands off the shores of the islands included within the respective districts. [Hawaii Revised Statutes, §171-9]

The department of planning and economic development shall prepare such plans and recommendations as shall support the state government's request to the federal government for the return of Fort De Russy...Bellows Field, and Sand Island to civilian use. [Hawaii Revised Statutes, §201-30]

Ocean Management Plan Policies

The department of planning and economic development, in accordance with state policy to promote efficient and coordinated management and development of ocean resources, shall review existing regulations on ocean activities and recommend improvements to increase effectiveness and efficiency in the following manner:

- (1) Streamline permit requirements for developing economically valuable resources;
- (2) Minimize resource use conflicts and environmental degradation;
- (3) Protect and promote long-term public benefits derived from ocean resources such as fishing, recreation, and marine and wildlife conservation and preservation; and
- (4) Resolve issues pertaining to the distribution of development costs and resource benefits among groups in the public and private sectors in recreation, harbors development, and the promotion of ocean-related industries. [Hawaii Ocean Management Plan, Policy I.B.1., Implementing action I.C.6.]

The attorney general, in accordance with state policy to promote efficient and coordinated management and development of ocean resources, shall formulate and implement a strategy to assure appropriate state control over activities occurring in or affecting waters and shores under its jurisdiction. [Hawaii Ocean Management Plan, Policy I.B.1., Implementing action I.C.7.]

The department of land and natural resources, in accordance with state policy to promote interagency coordination and planning in the provision of recreational opportunities, services, and facilities, shall establish a task force with federal, state, county, private, and public representation to improve coordination of ocean recreational services and facilities by clarifying agency responsibilities and authorities and developing a financing strategy that considers the dispersal of development costs among beneficiaries. [Hawaii Ocean Management Plan, Policy II.B.2., Implementing action II.C.4.]

II. Labor

For purposes of determining unemployment benefits due persons employed on commercial vessels, the following definitions shall apply:

- (1) "American vessel" shall mean any vessel documented or numbered under the laws of the United States or any vessel documented neither by the United States or by any other country, but on which a crew employed solely by one or more United States citizens, residents or corporations works;
- (2) "Employment" shall mean all service performed after June 30, 1946, by an officer or member of the crew of an American vessel, provided such vessel, whether it operates within or

outside United States waters, is ordinarily and regularly supervised, managed, directed, and controlled from within the State; and

- (3) "Employment" shall not include service performed on a vessel not an American vessel. [Hawaii Revised Statutes, §§383-1, 383-3, 383-7]

The provisions for workers' compensation outlined in chapter 386, HRS, shall apply to the extent permissible under the Constitution and laws of the United States to employees in maritime employment and to their employers when they are not otherwise provided for by the laws of the United States. [Hawaii Revised Statutes, §386-7]

For purposes of determining the applicability of the temporary disability insurance law outlined in chapter 392, HRS, the following definitions shall apply:

- (1) "American vessel" shall mean any vessel documented or numbered under the laws of the United States or any vessel documented neither by the United States or by any other country, but on which a crew employed solely by one or more United States citizens, residents or corporations works;
- (2) "Employment" shall mean all service performed after June 30, 1946, by an officer or member of the crew of an American vessel, provided such vessel, whether it operates within or outside United States waters, is ordinarily and regularly supervised, managed, directed, and controlled from within the State; and
- (3) "Employment" shall not include service performed on a vessel not an American vessel. [Hawaii Revised Statutes, §§392-4, 392-5]

III. Native Hawaiian Rights

The State reaffirms and shall protect rights that ahupua'a tenants descended from those Hawaiians inhabiting the Hawaiian Islands before 1778 have customarily and traditionally exercised for subsistence, cultural, and religious purposes, subject to the right of the State to regulate those rights. [Hawaii State Constitution, Art. XII, §7]

The trustees of the office of Hawaiian affairs shall exercise power as provided by law to manage and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians. [Hawaii State Constitution, Art. XII, §6]

Fishing grounds from the reefs, and, where there are no reefs, from the distance of one geographical mile seaward of the beach at the low water mark are the private fishery of the konohiki, whose lands by ancient regulation

belong to it. The konohiki shall establish its fishing rights pursuant to section 96 of the Organic Act and pursuant to the judgment of any circuit court. No person shall disturb the private fishery except to the extent of the reservations and prohibitions set forth by law. The konohiki shall hold the private fishery for equal use by the konohiki and its tenants, provided that the tenants may take for home consumption or commercial purposes any aquatic life, subject to restrictions imposed by the konohiki, or by law.

Each year, a konohiki may set apart for its exclusive use one species or variety of aquatic life natural to the private fishery by giving public notice of intent and naming the species of aquatic life so set aside. The konohiki may not reserve more than one species if the konohiki possesses other private fisheries immediately adjacent to each other. Rather than set apart one species of aquatic life, the konohiki may prohibit the taking of all aquatic life during certain months. During the fishing season, the konohiki may exact up to one-third of the aquatic life taken within the private fishery from each fisher.

Any person may take any aquatic life which the konohiki has reserved to its exclusive use within a private fishery if that life strays onto public fishing grounds. Vested rights for a private fishery may be condemned for use as a public fishing ground. Any person who takes any aquatic life which the konohiki has set aside for its exclusive use, or to which the konohiki is otherwise entitled, shall be subject to criminal penalties. [Hawaii Revised Statutes, §187A-23]

IV. Taxation

The governor, upon the occurrence of a natural disaster, including damage resulting from a seismic wave, tsunami, hurricane, volcanic eruption...or typhoon, may declare a natural disaster for the State or any portion thereof and shall thereby authorize the establishment of a claims commission in each county affected, which shall receive, process and pass upon any claim for tax relief. The commission shall make such determinations as the law relating to tax relief for natural disasters, chapter 234, HRS, shall provide. [Hawaii Revised Statutes, §§234-1, 234-2, 234-3]

The University of Hawaii or its designated representative shall establish formulas or standards for each disaster claims commission established pursuant to section 234-3, HRS, to use to equitably determine the amount due claimants for crop losses resulting from a natural disaster. The claimants shall provide all information the University of Hawaii or its representative may deem necessary to make such a determination; the commission shall make no awards to persons who refuse to provide such information. [Hawaii Revised Statutes, §234-7]

The governor may use the governor's contingency fund for the purposes of the law providing for tax relief to victims of natural disasters, chapter 234, HRS. [Hawaii Revised Statutes, §234-11]

Those persons deriving their income principally from...fishing shall allocate their income, in order to determine the amount of their taxable income, as provided in section 235-5, HRS. [Hawaii Revised Statutes, §235-5]

Those persons deriving income from the operation of...ships, if the Internal Revenue Code exempts such income pursuant to an income tax treaty or agreement, shall exempt all such income from their taxable income. Similarly, those persons whose property has been destroyed or damaged as a result of a tidal wave, hurricane, or volcanic eruption, or as a result of flooding, shall deduct that amount of the loss not covered by insurance from their taxable income. [Hawaii Revised Statutes, §235-7]

For the purpose of assessing excise taxes, the following definitions and conditions shall apply:

- (1) Sales to a licensed producer, or to a cooperative association for sale to the producer, of...bait for catching fish, including the catching of bait for catching fish, where the fish are to be disposed of through activities of producers, are considered sales at wholesale;
- (2) "Producer" means any person engaged in the business of fishing or aquaculture in order to sell, ship or transport out of the State any such fish or aquaculture products in their natural or processed state;
- (3) The tax on the gross proceeds from the sale of electric power to a public utility company for resale to the public shall be at the rate assessed producers;
- (4) Amounts received from sales of...fish products grown, raised, or caught in Hawaii, when made to any person or common carrier in interstate or foreign commerce, or both, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes, are exempt;
- (5) Proceeds derived by a contractor or subcontractor arising from the performance of any scientific work, including oceanographic work, under contract with the United States are exempt;
- (6) Gross proceeds arising from shipbuilding and repairs rendered to surface vessels federally owned or engaged in interstate or international trade are exempt. [Hawaii Revised Statutes, §§237-4, 237-5, 237-13.5, 237-24, 237-26]

For purposes of assessing use taxes, the following definitions and conditions shall apply:

- (1) "Use" does not include the use of oceangoing vehicles for transportation of passengers or passengers and goods from one point to another within the State as a public utility;

- (2) Exemptions or exclusions in effect on April 1, 1978 under the Constitution or laws of the United States to persons or common carriers engaged in interstate or foreign commerce, whether ocean-going or air, shall continue undiminished;
- (3) The tax shall not apply to any use or consumption of vessels, the transfer of which to, or the acquisition of which by, the person using or consuming the vessel, or the rental for the use of the vessel, has actually been or actually is taxed under the general excise law, chapter 237, HRS;
- (4) Intoxicating liquor and tobacco products imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by the person, crew, or passengers on the shipper's vessel shall be exempt. [Hawaii Revised Statutes, §§238-1, 238-3]

Public utilities in general shall pay that portion of their annual gross revenue specified in section 239-5, HRS. [Hawaii Revised Statutes, §239-5]

Each common carrier by...water shall pay an income tax equal to four per cent of its annual gross income; this tax shall be in lieu of any tax imposed by chapter 237, HRS, but shall not be in lieu of any other tax. [Hawaii Revised Statutes, §239-6]

Those contract carriers operating vessels having a gross weight exceeding ten thousand gross tons and engaged primarily in the transport of persons for sightseeing or tourism shall be exempt from those taxes imposed under chapter 239, HRS, from July 1, 1981 to June 30, 1991. [Hawaii Revised Statutes, §239-11]

Any person wishing to dedicate that portion of the person's land within an agricultural or conservation land use district shall petition the director of taxation for a rate of taxation equivalent to that imposed upon similar uses elsewhere, and shall abide by those conditions set forth in section 246-12, HRS. [Hawaii Revised Statutes, §246-12]

The tax assessor or collector in any district that has experienced a natural disaster shall remit to the owner of any property destroyed or damaged as a result of a tidal wave, volcanic eruption, or flooding, any taxes due on such property pursuant to the provisions of section 246-54, HRS. [Hawaii Revised Statutes, §246-54]

The director of transportation shall deposit that amount of revenue derived from the tax on sales of liquid fuel for use in small boats imposed under chapter 243, HRS, into the boating special fund. The director, before July 1, 1973 and every three years thereafter, shall establish standards or formulas to determine the percentage of the taxes collected from fuel sales due the boating special fund. [Hawaii Revised Statutes, §248-8]

V. Criminal Acts

The attorney general shall diligently prosecute any person obstructing any...channel, harbor, wharf, stream or public watercourse, or commit any trespass on any portion of the public domain. [Hawaii Revised Statutes, §28-2]

Any person who, within state waters, boards or remains in or upon another person's vessel without the other person's permission shall be fined not more than \$250, or imprisoned not more than three months, or both. [Hawaii Revised Statutes, §267B-2]

An enforcement officer may detain for questioning any person the officer finds aboard a vessel under circumstances suggesting that the person has boarded the vessel without permission; the officer may arrest without warrant any person the officer believes has no right to be aboard the vessel. [Hawaii Revised Statutes, §267B-3]

Any person who obtains transportation from a licensed common carrier but refuses to pay the legally prescribed fare shall be fined not more than \$100 or imprisoned for not more than 30 days, or both. [Hawaii Revised Statutes, §272-1]

The penalty for refusal to pay a common carrier's fare shall not apply to persons who have opened accounts with the owners or operators of the common carrier's vehicles. [Hawaii Revised Statutes, §272-2]

No person having control over a...vessel, nor any agent of that person, shall accept for transportation or transport any motor vehicle unless the person requesting the transportation produces a certificate of ownership for the vehicle and, if the person is not the owner, the owner's written consent for such action. Nor shall any person or agent having control over a...vessel transport any used vehicle between the counties of or outside the State unless, in addition to any other requirements, that person, after physical inspection of the vehicle, records its vehicle identification number and retains the number along with a description of the vehicle in that person's records for three years. The person shall make available for federal, state, or county police officers any such records. [Hawaii Revised Statutes, §286-57]

Any person maintaining, operating or navigating any boat, ship, barge or other watercraft within state waters shall be subject to the jurisdiction of the courts of the State in any action against that person for any accident, collision or damages the vessel may have been involved in. That person also gives the implied consent that any summons or service made against that person, whether the person is a state resident or not, shall have the same legal validity as if the person had received the summons personally while within the State. [Hawaii Revised Statutes, §634-34]

VI. Military

The governor may organize a naval militia consisting of not more than four divisions; the naval militia shall be known as the naval militia of the State of Hawaii and shall conform to any applicable regulations prescribed by the Secretary of the Navy. The governor, as commander in chief of the state militia, may prescribe the organization of the militia, provided such organization conforms to federal requirements for such militias; the governor shall determine all other particulars of organization pursuant to chapter 123, HRS. [Hawaii Revised Statutes, §§123-1, 123-3]

Any person subject to the provisions of chapter 144A who wilfully and wrongfully, or negligently, hazards or allows the hazarding of any military vessel of the United States or the State shall be punished as a court-martial may direct. [Hawaii Revised Statutes, §124A-144]

State General Plan Provisions

The State shall have as a planning objective for the economy a stable federal investment base as an integral component of Hawaii's economy. In order to achieve this objective the State, as a matter of policy, shall promote Hawaii's supportive role in the national defense.

VII. State Symbols

The legislature establishes and designates as the official marine mammal of the State the humpback whale. [Hawaii Revised Statutes, §5-12]

The legislature establishes and designates as the official state fish the humuhumu-nukunuku-a-pua'a (Rhinecanthus rectangulus, also known as the rectangular triggerfish). [Hawaii Revised Statutes, §5-13]

The legislature establishes and designates as the official state team sport outrigger canoe paddling. [Hawaii Revised Statutes, §5-14]

FINDINGS AND RECOMMENDATIONS

House Resolution No. 246 requested that the legislative reference bureau "study the feasibility of centralizing ocean policies on a formal basis by considering its incorporation into a single new chapter of the Hawaii Revised Statutes, the Hawaii State Planning Act, a new state functional plan, or in some other format". The clear, and valid concern behind these suggested modifications is a desire to have a simple and easy way to discern the various state policies relating to the ocean.

The problem with all of the suggested modifications is that each in their own way would change the NATURE of a significant portion of the state policies relating to the ocean for the purpose of making it easier to develop a DOCUMENT which contains all of the policies. For the reasons set forth hereinafter, we recommend that the document be molded to fit the nature of the policies, rather than the reverse.

As the preceding chapters indicate, state policies concerning the ocean are extensive, varied, and interrelated with many other areas. Policies can be extracted from laws, be they constitutional provisions, statutes, or administrative rules, as well as from plans, studies, and other documents which are not laws at all. Because of this variety, any attempt to incorporate all policies into a one dimensional document, such as a plan or a statutory chapter, will be impractical. The cure will be worse than the disease.

To begin with, unless state policymakers make a conscious decision to remove all ocean policies from the ambit of the law (and thereby presumably reduce them to some type of goals or guidelines) incorporation of the policies into a plan would not work. This would virtually eliminate the legal force and effect of all of the laws protecting ocean resources which the state legislature has enacted and administrative agencies have adopted over the years. The Bureau does not imply that there is anything wrong with having a separate functional plan for ocean resources. As a means of providing heightened visibility to or a more centralized focal point for state planning, this idea may have merit. The Bureau simply contends that state policies concerning the ocean which are now law should not be reduced to the level of plans or other documents which do not have the force of law.

Organizing the policies into a plan which is given the force and effect of law would be no different from incorporating them into a single chapter or series of chapters in the Hawaii Revised Statutes.

This latter approach is similarly impractical because:

- (1) Not all policy should be law;
- (2) Not all law should be statutory; and

- (3) Preferably, statutes should be arranged in broad categories according to how they relate to all other laws rather than how they relate to a particular subject area.

A. Not All Policy Should Be Law

The scope of government policies is considerably broader than the scope of the laws which govern them. Laws are included within the scope of the policies. The real question presented here is not WHETHER all state policies relating to the ocean can be enacted into law--in theory, they could. This would simply involve identifying all policies which are not yet law and enacting them into law. The real question is whether this would accomplish anything or serve any purpose. In many cases, the only accomplishment will be to change a label.

As a practical matter, the general thrust of most laws is to:

- (1) Authorize people or entities to do something;
- (2) Prohibit people or entities from doing something; or
- (3) Provide some combination of procedures, penalties, or incentives to accomplish the previous two.

A law that simply says that people should be nice to each other is not likely to be very meaningful as a law. Vagueness aside ("nice" is not a very specific term), saying people "should" do something does not require them to do anything. By the same token, simply enacting into law government policies which are now stated in the form of intentions, plans, or goals will result in little more than a change of labels without affecting substance. If, however, in enacting the policy into law, certain substantive changes were made (for example, if the State chose to impose some type of penalty upon itself for failing to reach a goal by a specific time) the situation might be very different. But in and of itself, a mere change of labels from "policy" to "law" will do little more than clutter the existing statutes with laws that have no "teeth".

A significant disadvantage of requiring that all policy be enacted into law is the danger of making government policymaking more rigid. While it would be true that all policy would be law, the reverse would also be true--that something could not be considered policy until it was enacted into law. Management options and the opportunity for experimentation could be curtailed substantially. For instance, if the state administration wanted to have a policy of promoting energy conservation by encouraging all state employees to ride bicycles to work, and to require the last employee leaving an office to turn off the lights, this could not be implemented directly by management. It presumably would have to be enacted into law through the legislative process or adopted as rules pursuant to administrative rulemaking (which would give it the force and effect of law). If the program could be implemented directly by management, there would be no need for the law.

If the foregoing example appears to be extreme, it serves to highlight some of the differences between policymaking generally and lawmaking

specifically. Policymaking occurs in many different places, at many different levels, both formally and informally, and on an ongoing basis. Lawmaking, whether by administrative rulemaking or legislation, is one of the most limited and formal means of establishing policy, particularly in the case of legislation, which is limited to the periods during which the legislature is in session. Accordingly, any attempt to convert all state policies relating to the ocean into law would:

- (1) Result in the adoption or enactment as law of many plans, goals, and purely internal administrative operations which would be inappropriate or meaningless as laws; and
- (2) Inhibit the policymaking process by limiting policies to those which are adopted through administrative rulemaking or enacted legislatively.

The proverbial "bottom line" is not whether ALL policies should be law so much as WHAT policies.

B. Not All Law Should Be Statutory

Policies need not be enacted legislatively in order to have the force and effect of law. Administrative agencies generally have the authority to adopt rules pursuant to the Hawaii Administrative Procedure Act, chapter 91, Hawaii Revised Statutes. Rules adopted pursuant to the requirements of chapter 91 (public notice, public hearing, approval by the governor, filing with the office of the lieutenant governor) have the force and effect of law.

Legislation is, of necessity, often drafted broadly. The legislature cannot reasonably expect to foresee all possible situations to which the law may apply. Administrative rulemaking allows agencies which implement the law to "fill in the gaps" by indicating how they will interpret the statutory provisions. As long as the adopted rules do not conflict with laws which are enacted legislatively, agencies have a great deal of flexibility in using this form of lawmaking because:

- (1) They have substantial if not total control over the proposals; and
- (2) They are not restricted by any of the time limits applicable to the legislative process, and therefore can change the rule at any time, as the need for change becomes necessary.

The previous chapters contain a number of examples of instances where agencies have effectively and appropriately used administrative rulemaking to supplement existing laws, such as:

- (1) The rules adopted by the department of land and natural resources designating specific areas as marine life conservation areas; and

- (2) The rules adopted by the department of transportation establishing requirements to control the operations of commercial and small boat harbors.

In other respects, for a variety of reasons agencies have not adopted rules where they have been authorized, and, in some cases, even required to do so by the legislature. For example, in 1975, the legislature ordered the department of land and natural resources to adopt rules controlling the issuance of permits to repair and maintain fishponds. To date, no rules have been adopted on the subject (although fishponds in conservation districts are covered by rules requiring permits for activity within conservation districts).

In any case, administrative rulemaking offers a practical and flexible alternative to legislation as a means of transforming policy into law. It is an appropriate setting for the establishing of detailed, technical requirements of limited applicability which would otherwise clutter up the statutes.

In some cases, it may even be appropriate to remove certain provisions from the Hawaii Revised Statutes and relegate them to administrative rulemaking. An example of this might be chapter 188, HRS, which, among other things:

- (1) Prohibits or restricts the use of certain specified fishing devices (such as chemicals, bullpen traps, spears, gill nets, and firearms);
- (2) Prohibits or restricts fishing in certain specified areas (such as Waialua Bay and the Northwestern Hawaiian Islands); and
- (3) Prohibits, or imposes size restrictions on taking a number of specific species of fish and crustaceans (e.g., hinahina, oopu, nehu, iao, mullet, opelu, and Kona crabs, among others).

The statutory provisions in this chapter tend to be very detailed and specific. Similarly, any legislation needed to amend these laws would also be very specific, and, in any case, discussions on the merits of any proposed legislation will in all likelihood involve input from the professional staff of the department of land and natural resources. For these reasons, statutes such as chapter 188, HRS, might be more appropriately changed to broad grants of statutory authority to allow appropriate administrative agencies to handle the problems through administrative rulemaking. Once the rules replacing the present statutory provisions are in place, future amendments to specific provisions will not have to be made by legislative enactment. By the same token, if the legislature decides that the administration is not giving adequate attention to a matter of particular concern, the legislature can always rectify the situation by enacting remedial legislation.

C. Arrangement of Statutes

Within the collection of state statutes known as the "Hawaii Revised Statutes", laws are most efficiently arranged in large topical groups on the basis of how certain laws or groups of laws relate to each other, as opposed to all other laws. Some of these topical areas, referred to as "titles", include

"conservation and resources", "transportation and utilities", "health", and "social services". Titles are similarly broken down into large subgroups called "subtitles". Examples of subtitles within the title of "conservation and resources" include "aquatic resources and wildlife", and "water and land development; flood control".

Organizing statutes on the basis of how they happen to relate to a specific subject area such as the ocean would result in the arrangement being more arbitrary, less logical, and thereby make it more difficult for the average user to find things. Furthermore, because the range of statutes affecting the ocean is so broad, any reorganization would cut across many titles at many different levels. Some examples may explain the problem more clearly:

- (1) Fishing laws would be placed with the laws concerning the ocean, while hunting laws would be placed elsewhere--this despite the fact that both types of laws involve the taking of wildlife, and are administered by the same department. Even the fishing laws themselves would have to be split, as laws involving freshwater fishing would not be included in the laws relating to the ocean;
- (2) Water pollution laws would be included with the ocean group, while air pollution laws would be elsewhere;
- (3) The environmental impact statement law would be in the ocean group because it clearly affects the ocean (even though the law never refers to the ocean)--which means that a person undertaking a project on the top of a mountain or in the center of an island would have to find it by looking not under the "environmental" laws, but the "ocean" laws;
- (4) Laws allowing the use of Hawaiian home lands for aquaculture would have to be separated from the Hawaiian Homes Commission Act;
- (5) Laws authorizing the Hawaii community development authority to develop Kaka'ako would be included in the ocean group (part of the Kaka'ako community development district borders the ocean). Future laws authorizing the authority to develop areas which do not border the ocean would presumably be placed elsewhere--unless the district boundaries are modified to include ocean front areas, in which case those laws would have to be rearranged; and
- (6) Laws authorizing business loan programs such as the capital loan program could be arranged together in the ocean group with the fishing vessel program laws, but persons seeking to start businesses having nothing to do with the ocean would be forced to search the ocean group rather than "planning and economic development".

Finally, as a practical matter, under the current statutory classification scheme, the bulk of the statutory references contained in the compendium are located in the six titles contained in volumes 3 and 4 of the Hawaii Revised Statutes.

Because of the many problems created by attempting to arrange statutes on the basis of how they relate to the ocean, we strongly recommend that the present system of arrangement according to broad topical areas be maintained.

D. Maintenance of Compendium

As mentioned earlier, the primary problem with the proposed modifications suggested in House Resolution No. 246 is that they all in some way affect the nature of a significant portion of the state policies concerning the ocean for the purpose of trying to develop a good document which contains all of those policies. While developing a good document is an important and worthwhile goal, the problems created by converting laws into plans or documents with no legal force, or turning those plans and documents into laws, far outweigh any of the benefits which may be created.

The best way to get a comprehensive document without changing the nature of the policies themselves is, quite simply, to maintain this compendium. Chapters 1 to 6 contain all or substantially all of the state policies concerning the ocean as of the latter part of 1986. Failure to update this compendium will result in its progressive obsolescence as new statutes are enacted, existing statutes are amended or repealed, rules are adopted, and plans and other documents produced.

Using this compendium as a base, the Bureau recommends that the legislature have an agency keep it up to date by making appropriate additions and deletions. Ideally, this agency should be one which has an interest in and whose own work is related to or would be furthered by the existence of such a compendium.

Based on the foregoing criteria, we believe that the ocean resources branch of the department of planning and economic development is the agency which is best suited to assume the responsibility of maintaining the compendium. According to section 201-13, Hawaii Revised Statutes, the responsibilities of the department include:

- (1) Assisting departments having interests in marine affairs and coordinating activities which involve more than one agency;
- (2) Developing and analyzing plans for future economic development projects, and other programs for the optimum development of the State's marine resources;
- (3) Disseminating information concerning Hawaii's leadership potential as the center for marine affairs; and
- (4) Developing programs to encourage marine exploration and research projects.

No other agency in the state government has as broad a mission with regard to the ocean.

State policies relating to the ocean are both numerous and varied. They will undoubtedly grow in scope and complexity as the potential of the ocean is recognized, and the competition for its resources increases. As the stakes get higher, knowledge of those policies, and knowing how to find out what they are, will become more critical to policymakers, business people, educators, and interested members of the general public. It will be in the best interests of all concerned that this information be available in a comprehensive, comprehensible, and current form.

HOUSE RESOLUTION

REQUESTING A COMPENDIUM OF OCEAN AND MARINE-RELATED POLICIES.

WHEREAS, the history, culture, lifestyle, and economic well-being of Hawaii and its people have traditionally been closely linked to the ocean; and

WHEREAS, as a result of new technological advances and improved knowledge, we are becoming more and more aware of the ocean's virtually limitless opportunities in a wide range of activities including food production, energy, mineral mining, waterborne transportation, and recreation; and

WHEREAS, as we progress towards the 21st Century, it is only fitting that we rely, once again, on the ocean to provide us with the opportunities to create our own unique niche in this increasingly competitive world; and

WHEREAS, however, this desired future can only be fully realized if we have a clear understanding as to what direction the State should be headed with regard to ocean-related matters; and

WHEREAS, a major problem in finding this direction is that decisionmakers are oftentimes faced with an array of policies regarding the management of our ocean resources that are contained in different documents and that are oftentimes not explicitly stated thereby making it difficult to reference and to understand; and

WHEREAS, for example, many of our ocean policies are widely dispersed throughout the Hawaii Revised Statutes, including Chapter 226, the Hawaii State Planning Act; Chapter 205A, Coastal Zone Management; Chapter 188, Fishing Rights and Regulations; Chapter 189, Commercial Fishing; Chapter 344, the State Environmental Policy; and so forth; and

WHEREAS, in addition to the statutes, other ocean-related policies are also found in formalized documents developed by the

executive branch such as the State of Hawaii Ocean Management Plan (DPED) as well as in various departmental rules and regulations; and

WHEREAS, in order for decisionmakers to be fully aware of all existing state policies regarding the management of our ocean resources, it is important that they have a guide to these widely scattered and sometimes difficult to understand ocean policies; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, that the Legislative Reference Bureau is hereby requested to develop a comprehensive compendium of ocean and marine-related policies that are contained in various sources including but not limited to the Hawaii Revised Statutes, the Session Laws of Hawaii, departmental rules and regulations, and formal departmental documents; and

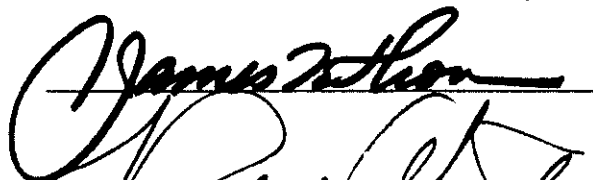
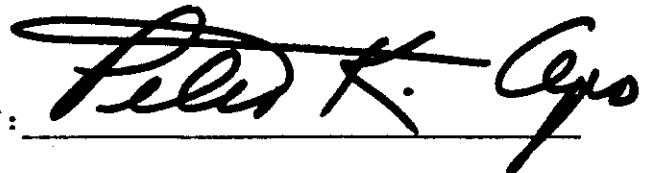

BE IT FURTHER RESOLVED that this compendium consist of at least a brief statement of the ocean and marine-related policy organized by topical areas with reference to their source; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is also requested to study the feasibility of centralizing ocean policies on a formal basis by considering its incorporation into a single new chapter of the Hawaii Revised Statutes, the Hawaii State Planning Act, a new state functional plan, or in some other format; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau submit the compendium and its findings and recommendations to the Legislature no later than August 1, 1986; and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be transmitted to the Director of the Legislative Reference Bureau.

OFFERED BY:

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