

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

February 12, 2021

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

**SUBJECT:** Request for Authorization to Enter into a Memorandum of Agreement (MOA) Between the United States Coast Guard Sector Honolulu (USCG) and the State Hawai`i, Department of Land and Natural Resources (DLNR) outlining each agency's role in enforcing rules and regulations of vessel operation, marine search and rescue and other areas of joint jurisdiction. Delegate authority to the Chairperson to enter into future MOA's with the USCG regarding the Federal/State Recreational Boating Safety Cooperative Agreement.

REMARKS:

The task of managing Hawaii State waters surrounding the islands is diverse and intricate. It requires a partnership between many agencies, but there are two primary agencies with mandates to enforce rules of vessel operation and make the ocean waters safer, the USCG and DLNR. These are just some of the diverse but related duties they perform and where their operations overlap:

- The USCG and DLNR share the responsibility of inspecting recreational vessels for appropriate safety gear and other carriage requirements;
- The USCG investigates accidents involving commercial vessel while DLNR investigates accidents involving recreational vessels. In rare instances, the reverse is true;
- Both agencies review marine event permit applications and are responsible for allocating assets to ensure safety of marine events attracting a large number of vessels, like regattas and canoe races;
- Both agencies may be tasked with responding to MAYDAY calls from ships in distress and may be called upon to conduct search and rescue operations;
- DLNR, through its Division of Boating and Ocean Recreation, allows the USCG to occupy space in recreational harbors to improve compliance with safety regulations among boaters and to make our waters safer for recreational and commercial vessels;
- Both the USCG and DLNR maintain Aids to Navigation (channel markers in the approach to harbors and landings).

Item J-1

It stands to reason that there should exist a Memorandum of Agreement between the two agencies that outlines the obligations and duties of each agency, especially in areas of overlapping jurisdiction. A clear and concise MOA provides the guidance needed so both agencies may operate jointly and independently in harmony. This MOA is also a requirement of the Federal Recreational Boating Safety Grant that is used to pay for positions, a vessel registration program, aides to navigation, boating education outreach and training, boating accident reporting, and permitting marine events.

RECOMMENDATION:

That the Board of Land and Natural Resources approve the following:

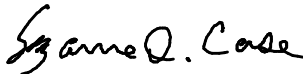
1. Authorize the Chairperson to enter into a MOA between the United States Coast Guard and DLNR outlining each agency's role in enforcing rules and regulations of vessel operation, marine search and rescue and other areas of joint jurisdiction.
2. Authorize the Chairperson to enter into future MOA's with the United States Coast Guard regarding the Federal/State Recreational Boating Safety Cooperative Agreement.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator  
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachments:

- A. USCG Cooperative Agreement

# EXHIBIT A

## FEDERAL/STATE RECREATIONAL BOATING SAFETY COOPERATIVE AGREEMENT

### MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, AND THE UNITED STATES COAST GUARD

1. **PARTIES.** The parties to the Memorandum of Agreement (MOA) are the State of Hawaii, Department of Land and Natural Resources, and the United States Coast Guard.
2. **AUTHORITY.** This MOA is entered into pursuant to 14 U.S.C. §§ 102, 522, 701, 46 U.S.C. § 13109, and 33 C.F.R. § 100.10 and is intended to satisfy the requirements of 46 U.S.C. § 13103 (c) (2)
3. **PURPOSE.** To define the relationship between the State of Hawaii, hereinafter referred to as Hawaii, and the United States Coast Guard in the conduct of recreational boating safety programs, including the mutual enforcement of laws relating to recreational boating safety on waters within the concurrent jurisdiction of Hawaii and the United States.
4. **BASIC GUIDELINES.**
  - a. Hawaii and the United States exercise concurrent jurisdiction over those waters within the jurisdiction of Hawaii that are also waters subject to the jurisdiction of the United States, except as to matters preempted by Federal law.
  - b. Hawaii has exclusive jurisdiction over those waters within Hawaii that are not waters subject to the jurisdiction of the United States or waters of the United States.
  - c. This understanding does not abrogate or limit the jurisdiction of Hawaii or the United States.
  - d. All vessels equipped with propulsion machinery, except vessels exempt under the provisions of 33 CFR Part 173.11 or vessels documented or required to be documented by the Coast Guard, that are principally operated on waters subject to the jurisdiction of Hawaii are subject to the numbering laws of Hawaii.
  - e. Hawaii shall, to the fullest extent practicable, endeavor to conform its laws, rules, and regulations to Federal law, subject to the Federal preemption provisions contained in 46 U.S.C. 4306. Office of Auxiliary and Boating Safety, Boating Safety Division, Program Operations Branch (CG-BSX-22) and Hawaii will promptly furnish to each other the text of any proposed or enacted law, rule, or regulation having to do with numbering, titling, equipping, or operating vessels that are the subject of this Agreement and any published interpretations thereof.
  - f. The Coast Guard and Hawaii will promptly provide each other a copy of statistical and other data pertinent to the matters agreed to herein.

## 5. **RESPONSIBILITIES.**

### a. **Law Enforcement.**

- (1) Hawaii, Department of Land and Natural Resources, Division of Conservation and Resources Enforcement, hereinafter referred to as DOCARE, has primary recreational boating safety law enforcement responsibility within concurrent jurisdiction areas. In these waters the United States has exclusive responsibility for the enforcement of vessel inspection and related Federal statutes applicable to non-recreational vessels. The primary DOCARE contact within Hawaii is:

DOCARE Administrator  
Department of Land and Natural Resources  
Division of Conservation and Resources Enforcement  
1151 Punchbowl St.  
Room 311  
Honolulu, HI 96813

Main office telephone: (808) 587-0066

Fax Number: (808) 587-0080

Monday-Friday, 0800-1630, officer dispatch contact: (808) 453-6780.

- (2) In order to provide the most effective law enforcement possible with the vessels and personnel available, and to avoid duplication of efforts in a specific area at a particular or specific time, the DOCARE Administrator, and Coast Guard, under Commander, Sector Honolulu, shall coordinate or arrange for coordination of law enforcement patrols on waters subject to concurrent jurisdiction.
- (3) Numbering violations observed by Coast Guard boarding officers will be referred to DOCARE for processing. In addition, other recreational boating violations may be referred to DOCARE at the discretion of Commander, Sector Honolulu.
- (4) Violations of Federal safety standards, including those applicable to manufacturers of boats and associated equipment, detected by DOCARE officers will be reported to the Coast Guard for disposition.
- (5) Violations of vessel inspection or related Federal laws by non-recreational vessels that are observed by DOCARE marine law enforcement officers will be reported to the Coast Guard for disposition.
- (6) When a complaint is made to the Coast Guard alleging an offense that is a violation of Hawaii recreational boating laws or regulations, the Coast Guard will normally refer the complaint to DOCARE. Similarly, when a complaint is made to DOCARE of a violation of any vessel laws or regulations within the exclusive jurisdiction of the United States, DOCARE will refer the complaint to the Coast Guard.
- (7) Encourage Coast Guard and Hawaii law enforcement entities to recognize Vessel Safety Check (VSC) decals issued by the U. S. Coast Guard Auxiliary and consider a vessel's display of a current VSC decal as a factor in determining whether to board that vessel for the purpose of enforcing Federal/Hawaii boating laws.
- (8) A Coast Guard boarding officer who has observed a violation of Hawaii boating law or regulation, or a DOCARE marine law enforcement officer who has observed a violation of vessel inspection law or other regulations of the United States, will normally be made available to testify for Hawaii or Federal prosecution for the

observed offense or to testify in any other proceeding relating to the violation. Any travel costs, other than local travel, related to witness testimony shall be paid for by the party requesting the officer to appear.

b. **Boating Under the Influence.**

- (1) A common goal of the Coast Guard and Hawaii is to rid the waterways of boaters operating under the influence of alcohol or dangerous/illegal drugs in violation of a law of the United States. To this end, Hawaii and the Coast Guard agree to coordinate their Boating Under the Influence (BUI) enforcement efforts so that the most effective enforcement option is utilized in each case, and each will encourage the establishment of mutual assistance and cooperative agreements between Coast Guard and Hawaii law enforcement officials operating in the same area.
- (2) In the course of normal operations, the Coast Guard may detect a boat operator suspected of BUI within Hawaii waters where concurrent jurisdiction exists. When this occurs, the Coast Guard may administer field sobriety tests to the operator, including a chemical analysis of the operator's breath if this is within Hawaii guidelines for prosecution.
- (3) If the operator is believed to be under the influence of alcohol or drugs, the Coast Guard will:
  - (a) Terminate the voyage in accordance with applicable Federal statutes and regulations, and bring the vessel and the operator to the nearest safe mooring. Ensure an operator under the influence does not operate a vessel or vehicle, in order to resolve the threat of harm to self and others. Attempt to notify DOCARE enforcement officials to take charge of the vessel and the operator.
  - (b) Document the case completely for future adjudication in the appropriate jurisdiction, examples of which include DOCARE arrests, Federal arrests, or civil penalties.
  - (c) Discuss with DOCARE enforcement officials the enforcement options available with respect to a particular case, determine which option(s) are most appropriate, and proceed accordingly.
  - (d) In accordance with 49 CFR Part 9 and Coast Guard policy, provide Hawaii with case documentation and normally make available necessary witnesses to provide testimony in Hawaii proceedings. Any travel costs, other than local travel, related to witness testimony shall be paid for by the party requesting the officer to appear.
  - (e) If during the course of a Coast Guard boarding, illegal drugs are discovered in violation of Federal statutes and regulations, the Coast Guard may take enforcement action and will coordinate with DOCARE, or other Hawaii State law enforcement officials.
- (4) The Coast Guard will, as operations permit, respond to calls for assistance from DOCARE with respect to BUI enforcement.
- (5) In working towards a common goal of removing a boat operator suspected of BUI from the waterways, DOCARE enforcement agents will, as operations permit:

- (a) Respond to calls for assistance from the Coast Guard with respect to BUI enforcement.
- (b) Determine the extent of assistance DOCARE can offer and advise the Coast Guard.
- (c) Provide appropriate assistance within the agency's operational, logistical, and legal constraints.
- (d) Provide local Coast Guard commands with a point of contact to facilitate and enhance mutual enforcement efforts and concerns.

c. **Public Education and Training.**

- (1) The parties will cooperate in public education and safety information programs. Hawaii will distribute any Federal boating publications as agreed upon through its DOBOR offices. The Coast Guard will distribute any of Hawaii applications and forms for vessel numbering, Hawaii casualty report forms, and Hawaii boating pamphlets, which are made available for that purpose by Hawaii.
- (2) The Coast Guard will furnish to Hawaii, information concerning the time and place of public education courses within Hawaii that are sponsored by the U. S. Coast Guard Auxiliary. Hawaii will advise the Coast Guard of public education courses offered to the boating public. The parties will cooperate in developing public boating safety education program(s) to be used within Hawaii.
- (3) The Coast Guard Auxiliary will provide boating safety instructor training for Hawaii law enforcement personnel through the Marine Patrol Officer Course at the Maritime Law Enforcement Academy on an "as available" basis. This training is hosted by the State of Hawaii, and is taught by the Coast Guard Auxiliary. Similarly, Hawaii will provide to the Coast Guard, on an "as available" basis, instructors and facilities for the training of Coast Guard personnel. In addition, safe boating and/or boat handling programs may be arranged with Coast Guard Auxiliary resources.

d. **Information Sharing.**

- (1) The Coast Guard and Hawaii recognize the essential need for timely and effective means of sharing of law enforcement, boating safety, and search and rescue information in order to meet the spirit of this agreement and the responsibility of each party to carry out its missions under this agreement. The Coast Guard and Hawaii agree to mutually exchange relevant information to the other party upon request.
- (2) The Coast Guard has determined that the information required by Hawaii investigators to meet Boating Accident Report Database (BARD) requirements should be classified "For Official Use Only" and, therefore, not subject to the provisions of the Privacy Act.
- (3) Upon receiving a request from Hawaii reporting authority for information from a Coast Guard maritime casualty investigation or search and rescue operation, the Coast Guard will provide information and data to Hawaii reporting authority from the Marine Information for Safety and Law Enforcement (MISLE) System, as well as investigation materials and documentation available at the time of the request. Pages

containing material that is not releasable to the public will be marked "FOR OFFICIAL USE ONLY". Pages from activities that are open or incomplete will be marked "DRAFT". Hawaii reporting authority will not release to the public, or to any other agency, any information or data provided by the USCG that is marked "DRAFT" or "FOR OFFICIAL USE ONLY" without prior approval from the USCG, except as required by State or federal law. Requests for Incident Investigation Reports must be sent to Commandant (CG-INV-3).

(4) Release of Information:

- a) On joint investigations, the release of information shall be in accordance with Federal and Hawaii law, policies and procedures. Both parties to this agreement will inform the other in advance of any planned release of information on investigations.
- b) At no time will any information be released by the Coast Guard or Hawaii that will interfere, impede or hinder an ongoing investigation.

e. **Boating Casualty/Accident Reports and Investigative Reports.**

- (1) DOCARE will investigate all recreational boating deaths on waters of joint jurisdiction. The Coast Guard may investigate accidents involving deaths on vessels used on waters of joint or Federal jurisdiction, including the high seas, if in the sole discretion of the Coast Guard, the case warrants further investigation.
- (2) The Coast Guard agrees to notify DOCARE of any accident that occurs on joint territory and Federal jurisdictional waters involving a Coast Guard maritime casualty investigation or search and rescue operation. Further, the Coast Guard agrees to provide notification to DOCARE as soon as practical following the accident's occurrence when local DOCARE law enforcement entities were not also involved in the response.
- (3) As operations permit and as DOCARE officers are available, and at the request of the Coast Guard, DOCARE will investigate all non-recreational boating accidents on joint jurisdictional waters, or to the extent that DOCARE may take necessary action to secure the scene, preserve perishable evidence or provide for the safety of the public or property until the Coast Guard can physically take charge of the scene.
- (4) For the purposes of this agreement, a boating casualty or accident is defined by as an occurrence involving any of the following: a death, or a disappearance under circumstances that indicate death or injury; or an injury requiring medical treatment beyond first aid; or damage to vessel and other property exceeding the Federal threshold level or threshold level of Hawaii; or there is a complete loss of any vessel. A boating casualty or accident includes but is not limited to the following:
  - a) A person dies or is injured while swimming because the vessel is not anchored, moored, or docked, and the vessel drifts away from the swimmer and the swimmer is unable to get back to the vessel.
  - b) A person dies, is injured, or property damage occurs involving a vessel that is required to be numbered and is being used for commercial service (i.e. vessels not subject to inspection that are engaged in commercial fishing or carrying passengers for hire.)

- (5) DOCARE shall review all accident reports for accuracy and completeness and shall determine the cause and circumstances surrounding each accident, including whether or not alcohol or drugs were a factor contributing to the casualty.
- (6) DOCARE shall submit the accident report data prescribed by 33 CFR 173.57 to Commandant (CG-BSX-21) within 30 days of its receipt of the casualty or accident report submitted by the vessel operator; regardless of the status of the DOCARE investigation. Upon receipt of the accident report submitted by the vessel operator, Hawaii shall abstract available data from the vessel operator report and enter such data into the web-enabled BARD system. Hawaii agrees to ensure any data entered is accurate and complete. Doing so will provide for a successful data transfer that will be available for U. S. Coast Guard review within thirty (30) days. Hawaii will ensure vessel operator reports are updated in the BARD System and completed using data provided by DOCARE investigation.

(7) The Coast Guard strongly encourages Hawaii reporting authorities to obtain and forward accident and casualty reports involving vessels not subject to inspection or numbering that are engaged in commercial service on waters within Hawaii's jurisdiction to the Coast Guard via the BARD System. This should include: a person dies; is injured; or property damage occurs involving a vessel that is being used for commercial service that is not equipped with propulsion machinery (i.e. vessels that are not required to be numbered and are not subject to inspection that are being used for commercial lease, rent, or charter to another for the latter's pleasure.)

f. **Coast Guard Auxiliary.**

- (1) Under Section 701 of Title 14 United States Code, the services of members of the Coast Guard Auxiliary may be used to assist Hawaii in the promotion of boating safety and other activities for which Auxiliarists are especially qualified, when requested by proper authority of Hawaii. Hawaii fully supports the Coast Guard Auxiliary's programs, in particular, those to do with Vessel Safety Checks, safety patrols and public education. Hawaii welcomes and requests the presence of the Auxiliary on all waters for these purposes. The primary Hawaii contacts by county within Hawaii are:

For the County of Hawaii

Department of Land and Natural Resources  
Division of Boating and Ocean Recreation (DOBOR)  
Hawaii District Manager  
Honokohau Small Boat Harbor  
74-380 Kealakehe Parkway  
Kailua-Kona, HI 96740-2704

Telephone: (808) 329-4997  
Fax: (808) 326-7896

For the County of Honolulu

Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
Oahu District Manager  
4 Sand Island Access Road  
Honolulu, HI 96819

Telephone: (808) 832-3520

Fax: (808) 832-3524

For the County of Kauai

Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
Kauai District Manager  
Kauai Grove Executive Center  
4370 Kukui Grove St., Suite 109  
Lihue, HI 96766

Telephone: (808) 245-8028

Fax: (808) 246-6678

For the County of Maui

Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
Maui District Manager  
210 Imi Kala Dr., Suite 205  
Wailuku, HI 96793

Telephone: (808) 243-5824

Fax: (808) 243-5829

- (2) On those occasions when assistance by the Coast Guard Auxiliary is expressly desired by Hawaii for a specific purpose, such requests for assistance will be initiated by competent authority in Hawaii and will be directed to:

Commander (dpa)  
Fourteenth Coast Guard District  
PJKK Federal Bldg 9<sup>th</sup> Floor  
300 Ala Moana Blvd., Room 9-207  
Honolulu, HI 96850-4982

Telephone: (808) 535-3431

Fax: (808) 535-3439

Sector Commanders will notify the Director of Auxiliary when requests for Auxiliary assistance are received. Such requests should be submitted not less than 14 days in advance to facilitate process and coordination.

g. **Regattas, Marine Parades, and other Marine Events.**

- (1) The authorization and regulation of regattas and marine parades upon navigable waters of the United States that are subject to the concurrent jurisdiction of Hawaii shall be within the province of Hawaii when, in the opinion of the District Commander, Hawaii is able to regulate, under Hawaii law, in such a manner as to ensure safety of life.
- (2) For the purposes of this agreement, the terms “regatta”, “marine parade”, both mean an organized water event of limited duration that is conducted according to a prearranged schedule.
- (3) Regattas and marine parades shall be administered in accordance with 33 CFR Part 100. The Coast Guard will provide a copy of the notice of event to Hawaii for all events occurring on waters of concurrent jurisdiction which meet the criteria of 33 CFR Part 100. In turn, Hawaii will provide such information that it has as necessary to enable the Coast Guard to accurately assess the expected effects of these marine events upon critical habitats of threatened or endangered species or other designated environmentally sensitive areas or known areas of historic, cultural, or archeological significance, including areas of significance to Native Hawaiians. In the event Hawaii independently becomes aware of possible environmental impacts of a proposed or previously approved event, Hawaii will notify and provide the Coast Guard with copies of the application for the event.
- (4) As a courtesy to regatta planners and organizers, the Coast Guard will refer to the Hawaii office of the appropriate County any notice of regatta event or permit application that it receives and permits.
- (5) Hawaii shall have primary responsibility for regulating all regatta and marine parade events occurring on waters of concurrent jurisdiction. Hawaii will provide the Coast Guard a copy of any approved notice of events and accompanying event details.
- (6) The District Commander maintains primary responsibility for any regatta or marine parade on navigable waters of the United States when such action is in the public interest. Events of the type may include, but are not limited to:
  - a) Regattas or marine parades of such size as to require patrols that the District Commander knows to be in excess of the resources available to Hawaii,
  - b) Is likely to cause a high concentration of craft or otherwise interfere with normal navigation,
  - c) Is likely to introduce extra or unusual hazard to the safety of human life,
  - d) Cannot be protected against by the existing navigation rules.
- (7) The competent authority for regatta safety and security for the U. S. Coast Guard is:

Commander  
U. S. Coast Guard Sector Honolulu  
Waterways Management Division  
400 Sand Island Pkwy  
Honolulu, HI 96819  
Telephone (808) 522-8264, ext. 246  
Fax: (808) 522-3271

6. **LIAISON.** Liaison shall be as follows:

a. **For Hawaii:**

Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
333 Queen St., Suite 300  
Honolulu, HI 96813

Telephone: (808) 587-1966  
Fax: (808) 587-1977

b. **For the United States:**

Commander (dpa)  
Fourteenth Coast Guard District  
300 Ala Moana Blvd. Room 9-207  
Honolulu, HI 96850-4982

Telephone: (808) 535-3424 or 1-800-818-8724 Options 5, 4, 3  
Fax: (808) 535-3439

7. **DURATION OF AGREEMENT.** This agreement will be reviewed two years from the date signed and every two years thereafter. If the terms of the agreements remain acceptable to all parties, an endorsement, signed by all parties, will be attached. Failure by either party to endorse this agreement shall not be construed as cancellation. Parties may amend the document anytime by mutual written agreement. Every amendment is to be attached to the document, as well as a copy provided to the Office of Auxiliary and Boating Safety, Boating Safety Division, Program Operations Branch (CG-BSX-22).

8. **CANCELLATION.** This agreement may be canceled by either party for any reason. This agreement remains in effect until canceled by either party. The canceling party will provide the other party with at least 30 days written notice.

9. **OTHER PROVISIONS.** Nothing in this agreement is intended to conflict with current law or regulation or the directives of the United States Coast Guard, Department of Homeland Security, or Hawaii. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

Nothing in this agreement is intended to create a right, benefit, substantive or procedural, enforceable at law against the Coast Guard or Hawaii, their agencies, their officers, or any person.

This agreement is neither a fiscal nor a funds obligation document. Nothing in this agreement authorizes or is intended to obligate the Parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value. Subject to the availability of funding, each Party intends to assume responsibility for its respective costs arising from any activity related to this agreement.

10. **EFFECTIVE DATE**. The terms of the agreement will become effective when signed by all parties.

**STATE OF HAWAII**

**Approved as to Form**

BY \_\_\_\_\_

DATE \_\_\_\_\_

**DEPARTMENT OF LAND AND NATURAL RESOURCES**

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

**UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD**

BY \_\_\_\_\_

Rear Admiral, U. S. Coast Guard  
Commander, Fourteenth Coast Guard District

DATE \_\_\_\_\_