

**HAWAII ADMINISTRATIVE RULES
TITLE 19
DEPARTMENT OF TRANSPORTATION
CHAPTER 41
RULES RELATING TO GENERAL PROVISION
SUBTITLE 3**

HARBORS DIVISION

PART 1

COMMERCIAL HARBORS AND TARIFF

§19-41-3 *Definitions; small craft and smaller commercial vessels.* In addition to the general definitions set forth in section 19-41-2, the following definitions pertain particularly to small craft and smaller commercial vessels operating within or between the state harbors governed under this part. When used in this part, unless the context clearly indicates otherwise:

"Agreement" means the written agreement by a boat owner to abide by specified state-imposed conditions prior to being issued a permit to moor a particular boat owned by the owner in a designated berth within a state harbor.

"Application" means a request for a berth assignment at a specific state harbor facility for a particular small craft or smaller commercial vessel.

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

"Boat dealer" means any individual, partnership, corporation, association, or other group however organized, engaged wholly or partly in the business of selling or offering for sale, buying or taking in small craft or smaller commercial vessels, such as small vessels, boats, yachts, or sail boats, for the purpose of resale or exchange for gain or compensation.

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

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered.

"Certificate" means the certificate of number which is required of vessels registered by the department and which is displayed in accordance with state boating laws and rules.

"Certificated vessel" means a vessel inspected by the U.S. Coast Guard and certified safe to carry seven or more passengers.

"Charter boat" or "livery boat" means a small craft or smaller commercial vessel held out for renting, leasing, or chartering including demise or bare-boat charter.

"Commercial fishing boat" or "commercial fishing vessel" means a vessel outfitted and utilized for fishing or for the taking of fish for purposes of sale

which is verified by the department as described in subsection 19-42-40(d) of these rules as a commercial fishing boat, provided that the vessel is operated in such a manner that revenues from fishing or taking of fish for purpose of sale shall be the principal source of income (55 per cent or greater) for the vessel, the minimum level of gross receipts required of such a vessel is generated, and the captain and crew of such vessel have valid commercial marine licenses issued by the department of land and natural resources. The department shall also be presented satisfactory proof of the vessel's certification by the U. S. Coast Guard that the vessel meets the federal requirements for commercial fishing industry vessels as mandated by the Commercial Fishing Industry Vessel Safety Act (CFIVSA) of 1988. The Commercial Fishing Industry Vessel Safety Act includes the following:

46 USC 5101, 46 USC 8103, 46 USC 8104, 46 USC 8304, 46 USC 8701, 46 USC 10601, 46 USC 11101, 33 CFR 26, 33 CFR 26.03, 33 CFR 81, 33 CFR 88.05, 33 CFR Part 95, 33 CFR 130, 33 CFR 151, 33 CFR 155, 33 CFR 156, 33 CFR Part 159, 33 CFR 173, 46 CFR Part 4, 46 CFR Part 16, 46 CFR 25, 46 CFR 25.26, 46 CFR 25.30, 46 CFR 26, 46 CFR Part 28 Subpart D, 46 CFR Part 28 Subpart E, 46 CFR 28.080, 46 CFR 28.090, 46 CFR 28.105, 46 CFR 28.110, 46 CFR 28.115, 46 CFR 28.120, 46 CFR 28.125, 46 CFR 28.130, 46 CFR 28.135, 46 CFR 28.140, 46 CFR 28.145, 46 CFR 28.150, 46 CFR 28.155, 46 CFR 28.160, 46 CFR 28.165, 46 CFR 28.205, 46 CFR 28.210, 46 CFR 28.215, 46 CFR 28.225, 46 CFR 28.230, 46 CFR 28.235, 46 CFR 28.240, 46 CFR 28.245, 46 CFR 28.250, 46 CFR 28.255, 46 CFR 28.260, 46 CFR 28.265, 46 CFR 28.270, 46 CFR 28.375, 46 CFR 67-69, 46 CFR 105, and 47 CFR 80.

"Cruise boat" means any vessel not designed for open ocean transit engaged in the business of carrying passengers on tours for gain or compensation.

"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard or other authorized federal agency, pursuant to appropriate federal laws and requirements.

"Fees and charges" means those dues which are assessed by the department for the use of its facilities within commercial harbors, such as moorings and the furnishing of services, such as electricity, water, parking, and other related services.

"Houseboat" means a small craft or floating structure used primarily for living aboard rather than for recreation or the landing of fish.

"Kewalo Basin Annex" means those several specifically designated piers in Honolulu Harbor at which commercial fishing boats, local cruise boats and other craft are berthed. Kewalo Basin Annex shall be considered a part of Kewalo Basin for the purpose of these rules, except that where there are no applicable provisions for services or permitted activities at Kewalo Basin that the provisions for such activity at Honolulu Harbor shall apply.

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

"Living aboard" means the substantial use of a small craft as a dwelling, abode, place of habitation, living quarters, or residence.

"Mooring fee" means the charge assessed against the owner of a small craft or

smaller commercial vessel for the use of an assigned mooring at a state-owned or controlled commercial harbor facility.

"Nesting" means the mooring of a vessel or vessels alongside another vessel.

"Owner" means a boat owner.

"Passenger" means every person other than the master and members of the crew or other persons employed on board a vessel in the business of that vessel.

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

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

"Seaworthy vessel" means a vessel that is in good material and operating condition and is capable of sustained operations at sea.

"Small craft" includes any small vessel under sixty-five feet in length, such as, yachts, boats, or any watercraft propelled by any means but used for recreation, pleasure, charter, cruises, or any other commercial venture, including the landing of fish and commercial fishing vessels engaged in fishing in waters of the State. It does not include tugs, tow boats, or work boats, nor does it include watercraft whose sole or principal use is for purposes of habitation.

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

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

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

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

"Use permit" means the document issued and approved by the department and executed by the boat owner in which the owner agrees to use a particular vessel in a particular manner within a state harbor and agrees to abide by established rules and laws.

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

"Vessel loading zone" means a portion of a harbor facility reserved for the exclusive use of small craft or smaller commercial vessels during fueling, loading, or unloading.

"Work boat" means a self-propelled vessel used to provide harbor services. [Eff 5/20/82; am 12/5/83; am 12/20/85; am 11/7/91; am and comp 2/26/96] (Auth: HRS §§266-2, 266-3) (Imp: HRS §§266-2, 266-3)