

FINAL REPORT

A Cooperative Agreement for Developing Sustainable Funding Strategies to Protect Coral Reefs in Hawai'i

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Prepared by:

Conservation International

Hawai'i Program | Center for Oceans

3555 Harding Avenue, Suite 200

Honolulu, Hawai'i 96816

INTRODUCTION

Recognized internationally (by the International Union for the Conservation of Nature (IUCN)),¹ nationally by the National Oceanic Atmospheric Administration (NOAA),² and locally by the State of Hawai'i Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR),³ coral reef ecosystems provide significant environmental services and benefits to local communities and people. Unfortunately, the threats and stresses to coral reef ecosystems are complex, and effective interventions can be expensive and require long-term commitments of limited resources.

The specific threats and corresponding management interventions for coral reef ecosystems vary across the globe. One common challenge is the difficulty of securing sustainable funding to support the long-term management needed to protect, restore, and maintain the health of coral reef ecosystems. There is no one-size-fits-all solution for sustainable funding strategies or for the application of public and private financial tools to benefit coral reefs. Each opportunity to pursue sustainable funding needs to match not only the regulatory and legal environment, but also the values of the local context and the resource user groups that must support the funding approach and management needs for the long-term.

¹ Miththapala, S (2008). Coral Reefs. Coastal Ecosystems Series (Vol 1) pp 1-36 + iii. Colombo, Sri Lanka: Ecosystems and Livelihoods Group Asia, IUCN.; Wilkinson, C (2004). Status of Coral Reefs of the World, 2004 (Vol 1) Townsville, Australia: Australian Institute of Marine Science. xiv + 301 pp.

² U.S. Department of Commerce, National Oceanic and Atmospheric Administration. n.d. "Importance of Coral Reefs." *NOAA Ocean Service Education*. Accessed October 26, 2022:

https://oceanservice.noaa.gov/education/tutorial_corals/coral07_importance.html; Johns et al., 2001.

Socioeconomic study of reefs in southeast Florida. Report by Hazen and Sawyer under contract to Broward County, Florida. 225 pp.; Jameson, S.C, J.W. McManus, and M.D. Spalding. 1995. State of the Reefs: Regional and Global Perspectives. Washington, D.C., ICRI., U.S. Department of State.

³ State of Hawai'i Division of Aquatic Resources. n.d. "Coral Reefs." *Habitat*. Accessed February 10, 2020: <https://dlnr.hawaii.gov/dar/habitat/coral-reefs/>.

Sustainable funding strategies require coral reef managers to take into consideration the opportunities and challenges presented by a complex regulatory and legal landscape, where many of the threats and stresses to coral reef ecosystems originate. It can be difficult, however, to access necessary expertise and support when new programs or initiatives are being designed or developed. This capacity gap can create missed opportunities for new sustainable funding approaches.

NOAA's Coral Reef Conservation Program (CRCP) Strategic Plan 2018 states that CRCP recognizes the threats to corals are often cumulative with synergistic effects and that consideration of interactions between the different pillars is necessary for successful conservation results. The Strategic Plan contains four main pillars of work:

1. Climate Pillar: Increase Resilience to Climate Change
2. Fisheries Pillar: Improve Fisheries Sustainability
3. Pollution Pillar: Reduce Land-Based Sources
4. Restoration Pillar: Restore Viable Coral Populations

This project contributes to the Fisheries Pillar and Pollution Pillar to help build capacity for coral reef fisheries management by helping Hawai'i's coral reef managers develop sustainable funding strategies and tools that recognize and account for the cumulative and synergistic effects of the threats to coral reef ecosystems.

Conservation International (CI) is pleased to present its final report on the project, *A Cooperative Agreement for Developing Sustainable Funding Strategies to Protect Coral Reefs in Hawai'i*, under the above referenced Federal Award.

ABOUT CONSERVATION INTERNATIONAL HAWAII'

Founded in 1987, Conservation International (CI) works in more than 30 countries with over 900 employees and over 1,000 partners – to help move societies toward a healthier, more sustainable development path that values nature's role in human wellbeing. In 2011, CI created its Hawai'i program with a focus of ensuring that a healthy and abundant environment will continue to benefit Hawai'i and its people, now and into the future. The Hawai'i program team is currently comprised of six members, many of whom have grown up in Hawai'i and who have developed strong working relationships with state and federal resource managers, other non-profit organizations, research scientists, technical experts, and community groups. The Hawai'i program team is committed to engaging with diverse stakeholders in our community to protect the state's critical natural capital, foster effective governance, and promote sustainable enterprise. Four of the Hawai'i team members are based in Honolulu on the island of Oahu. Two team members are based in Hilo on the Big Island of Hawai'i.

ALIGNMENT WITH NOAA CRCP'S PROGRAM PRIORITIES AND THEMES

As recognized in CRCP's Strategic Plan 2018, consideration of interactions between the plan's four pillars is necessary for successful conservation results. This project aligned

with two of the 2018 Strategic Plan’s pillars and related strategies, objectives, and targets that mutually benefitted from work developed under this project:

2. Fisheries Pillar: Improve Fisheries Sustainability

Strategy F2 – Build capacity for coral reef fisheries management

- *Objective:* Assist domestic and foreign partner agencies in prioritizing needs for fisheries and Marine Protected Area managers, such as ecosystem-based fisheries management, planning, monitoring, evaluation, and sustainable financing, and leverage tools and strategies to help meet those prioritized needs.
 - *Target F2.1:* By 2024, 50 percent of jurisdictions and/or foreign management partners are using management capacity-building tools developed cooperatively.

3. Pollution Pillar: Reduce Land-Based Sources

Strategy L2 – Build and sustain watershed management capacity at the local level

- *Objective:* Strengthen management partners’ technical and financial capacities to achieve financial independence to implement priority watershed management activities to improve water quality and enhance coral reef ecosystem resilience.
 - *Target L2.3:* By 2024, the ratio of funding (external partner funds to Coral Program funds) is greater than 1:1 for implementing priority watershed management activities that improve water quality and enhance coral reef ecosystem resilience within key watersheds in at least one key watershed per jurisdiction.

BENEFIT TO CORAL REEF MANAGEMENT PRIORITIES OF STATE AND TERRITORIAL CORAL REEF MANAGEMENT AGENCIES

This project directly benefitted and expanded on the following priority identified by the State of Hawai‘i’s Division of Aquatic Resources (DAR):

Priority 4. Develop a feasibility study for a commercial ocean user fee, administered by DAR, which would contribute sustainable finance and support for coral reef and nearshore fisheries management in Hawaii.

PROJECT: OCEAN CONSERVATION INCENTIVES LEGAL FELLOW

Beneficial management activities for coral reef ecosystems, in the water and on land, often involve multiple agency jurisdictions and intersect with many important economic, social, and cultural activities of local communities. To ensure long-term benefits for coral reef ecosystems, management activities need to be supported by sustainable funding strategies that incorporate public and private financial tools that are appropriate for the long-term conservation goals of these ecosystems and make sense for the local communities that rely on the benefits that these ecosystems provide.

Efforts to develop sustainable funding strategies in a specific location can benefit from legal research and analysis of issues related to local policies or laws. Through this project, CI Hawai'i has created an Ocean Conservation Incentives Legal Fellow position that can assist Hawai'i coral reef managers with legal research and analysis related to sustainable funding strategies and the development and application of public and private financial tools.

In relation to this FY 2020-2021 CRCP Non-Governmental Organization Partnership Cooperative Agreement opportunity, DAR identified as one of its priorities the development of a feasibility study for a commercial ocean user fee. The commercial ocean user fee, administered by DAR, was expected to contribute sustainable finance and support for coral reef and nearshore fisheries management in Hawai'i.

In support of that priority, DAR issued a request for quotations (RFQ) in late 2019 for a "Commercial Ocean User Fee Feasibility Study" that would determine the feasibility of creating a commercial ocean user fee that could provide funding necessary for the State of Hawai'i DLNR, DAR to maintain the ocean resources and services enjoyed by commercial ocean users. CI Hawai'i applied for, and was successfully awarded, the contract with DAR to provide this feasibility study. Focusing primarily within the bounds of DAR's jurisdictional authority, this feasibility study used legal research and analysis, interviews with agency staff, and a financial impact analysis to identify 2-3 design options for a Commercial Ocean User Fee program that could be administered by DAR.

Through this Non-Governmental Organization Partnership Cooperative Agreement, CI Hawai'i created an Ocean Conservation Incentives Legal Fellow position to support the results of the Commercial Ocean User Fee Feasibility Study and to support additional efforts to develop sustainable funding strategies for the long-term conservation goals of Hawai'i's coral reef ecosystems.

The unique value of an Ocean Conservation Incentives Legal Fellow is the adaptive potential to help Hawai'i's coral reef managers explore funding solutions that address the complex drivers of coral reef stresses without limiting those solutions to the budget, authority, mandate, or jurisdiction of a single agency.

1. Project Goals and Objectives

Overarching Goal

The overall goal of this project was to help coral reef managers identify, consider, and develop sustainable funding opportunities for coral reef and nearshore marine fisheries management in Hawai'i. The primary objective of the project was to provide legal research and analyses that are dedicated to sustainable funding and financial tool issues and guided by the long-term conservation goals for Hawai'i's coral reef ecosystems. The lessons learned from these analyses were compiled into broad guidance to inform the

efforts of other coral reef and nearshore marine fisheries managers pursuing sustainable funding strategies.

The activities of this project were informed by the near-term priorities of Hawai'i's coral reef managers. The project included alternative work scenarios for CI Hawai'i to provide support to DAR's management priorities. Alternative A contemplated DAR pursuing the establishment of a commercial ocean user fee program during the award term of the CRCP cooperative agreement. In that scenario, the legal research and analyses of this project would have focused on supporting that effort. Under Alternative B, however, if DAR postponed the establishment of a commercial ocean user fee program, the legal research and analyses of this project would have focused on other sustainable funding efforts that could benefit coral reef and nearshore marine fisheries management in Hawai'i, including those that might benefit the Marine 30x30 Initiative and/or the U.S. Coral Reef Task Force (USCRTF) Watershed Partnership Initiative's priority watershed in West Maui. Ultimately, DAR pursued the establishment of a commercial ocean user fee program during the project period, so this project followed the Alternative A scenario.

Objectives

The Ocean Conservation Incentives Legal Fellow (Legal Fellow) provided legal research and analysis on issues of consequence to sustainable funding strategies prioritized by DAR. These analyses were intended to inform Hawai'i's coral reef managers as they developed sustainable funding strategies and pursued the use of public and private financial tools for long-term support of their management activities. They also helped Hawai'i's coral reef managers and collaborators make the best use of limited resources by providing information at critical decision points to improve the design and development of sustainable funding strategies for their work. These analyses also sought to identify opportunities to engage new collaborators to address challenges or issues that could not be addressed in isolation.

2. Progress During Award Period: October 1, 2020 – March 31, 2023

a. Ocean Conservation Incentives Legal Fellow Recruitment and Hiring

The job advertisement was posted publicly by December 14, 2020. By January 14, 2021, twenty-seven applications had been received and reviewed. Ultimately, nine candidates were selected for phone interviews, which were held from January 15-21, 2021. Following the phone interviews, a panel of interviewers was identified with representatives from CI Hawai'i, DAR, and the Environmental Law Program of the University of Hawai'i's William S. Richardson School of Law. Full panel interviews were conducted with five candidates from January 27 to February 3, 2021. The interviewers met to discuss their assessment of the candidates and to agree on the approach for making an offer.

After negotiations, an offer for the position was made to Tyler Hee and accepted on March 15, 2021. Mr. Hee is a 2014 graduate of the University of Hawai'i at Mānoa's William S. Richardson School of Law.

Mr. Hee's experience working in Hawai'i's natural resource regulatory landscape, as well as his experience with marine policy, environmental law litigation, coastal stakeholder engagement, and collaborative technical projects helped him bring a holistic view to the opportunities and challenges facing collaborative efforts in Hawai'i to develop sustainable funding opportunities for coral reef and nearshore marine fisheries management.

b. Alternative Scenario Activities Prior to Legal Fellow Start

Although there was a delay in the legal fellow's original anticipated start date, CI Hawai'i provided support to DAR's near-term priorities, while the legal fellow hiring process was underway. In early January 2021, DAR received and approved CI Hawai'i's completed report, "[Addressing the Disconnect: A Feasibility Study For An Ocean Stewardship Fee Program in Hawai'i](#)" (December 2020). Soon after the legislative session began in late January 2021, two companion bills ([House Bill \(H.B.\) 1019](#) and [Senate Bill \(S.B.\) 1173](#)) were introduced as part of the Governor's package proposing to establish an Ocean Stewardship Special Fund and ocean stewardship user fee for the collection and use of moneys for the conservation, restoration, and enhancement of the State's marine resources. While waiting for the legal fellow to be selected and hired, CI Hawai'i tracked both pieces of legislation and attended committee hearings to stay informed of any legal issues raised by legislators or testifiers that were not addressed in CI Hawai'i's 2020 feasibility study.

c. Alternative A Activities

On April 1, 2021, Mr. Hee started his position as the Legal Fellow with CI Hawai'i. Throughout the remainder of the project award period, the Legal Fellow and representatives from DAR held a coordinating meeting every other week to ensure that CI Hawaii's work under this project aligned and supported DAR's priorities.

As DAR decided to pursue commercial ocean user fee legislation, the Legal Fellow's activities followed the Alternative A work scenario for the award period for this cooperative agreement. Upon starting the position, the Legal Fellow began tracking the two companion bills, H.B. 1019 and S.B. 1173.

S.B. 1173 failed to survive amendments and reference through the State House Committee on Finance. H.B. 1019, however, continued to progress through the several State Senate Committees to which it was referred. At the direction of DAR staff, the Legal Fellow conducted legal research on several issues that were not included in CI Hawai'i's 2020 feasibility study to assist DAR in understanding complex issues related to

questions from and comments to legislators. The legal research also analyzed issues that arose because of proposed amendments to H.B. 1019 as the bill was considered by the State Legislature.

The Legal Fellow continued to track H.B. 1019 as it was adopted by the State Legislature and signed into law by Governor Ige on June 8, 2021, as Act 46 (attached here as “Annex A”). Additionally, the Legal Fellow tracked several bills that intersected with resources and management activities within DAR’s jurisdiction relevant to the ocean stewardship user fee to coordinate the developing priorities and potential needs of an Ocean Stewardship Special Fund and User Fee program. Among these were [H.B. 1016](#), which sought to amend the Commercial Marine License administered by DAR and establish a Commercial Marine Vessel License, and [H.B. 1023](#), which sought to establish a nonresident recreational marine fishing license. On June 8, 2021, Governor Ige also signed into law H.B. 1016 (as Act 43) and H.B. 1023 (as Act 48).

i. *Temporary Reduction of Cooperative Agreement Activity to Support Related Priority for Division of Aquatic Resources*

In June 2021, following the enactment of H.B. 1019 as Act 46 into law establishing the Ocean Stewardship Special Fund and User Fee, CI Hawai‘i met with DAR staff to set priorities for the next steps under the Alternative A work scenario for this project. During the discussion, DAR notified CI Hawai‘i that its immediate priorities had shifted from the Ocean Stewardship Special Fund and User Fee to development of an implementation plan for the new nonresident recreational marine fishing license authorized by the adoption and enactment of H.B. 1023 as Act 48.

DAR’s change in priorities resulted from the different effective dates of the two laws. H.B. 1023 (the fishing license bill) was effective upon approval; whereas, H.B. 1019 (the Ocean Stewardship bill) delayed DAR’s authority to collect the Ocean Stewardship User Fee until January 1, 2024. As a result, DAR sought to temporarily reduce the effort related to the Ocean Stewardship Special Fund User Fee as it focused on implementing its new nonresident recreational marine fishing license.

Subsequently, DAR published a request for proposals to develop an implementation plan for the nonresident recreational marine fishing license. CI Hawai‘i submitted a proposal that would require significant time from the Legal Fellow through February 2022. DAR awarded the project to CI Hawai‘i.

Following discussions with DAR and NOAA CRCP staff, it was determined that CI Hawai‘i would submit a request for a no cost extension (NCE) for this cooperative agreement to enable the Legal Fellow to accommodate DAR’s developing priorities. CI Hawai‘i submitted the NCE request to NOAA CRCP on October 28, 2021. While CI Hawai‘i’s work under this NOAA CRCP award would not stop completely, efforts related to the Ocean Stewardship Special Fund User Fee were reduced significantly through February 2022 to

allow work related to the nonresident recreational marine fishing license to be completed.

While the Legal Fellow's reduced efforts to accommodate DAR's prioritization of other programs, he continued to pursue priority issues for DAR when requested. Among the priority issues identified by DAR was the establishment of a mechanism to use funding from the Ocean Stewardship Special Fund to fund the installation, maintenance, and replacement of day use mooring buoys (DMB) as required, in part, by Act 46.

The Legal Fellow conducted multiple outreach discussions and listening sessions with DAR-designated collaborators to identify and understand existing issues and potential opportunities and challenges for collaboration to fulfill the DMB requirement under Act 46. These efforts were coordinated with DAR staff. The DAR-designated collaborators for this effort included DLNR's Division of Boating and Ocean Recreation (DOBOR), Malama Kai Foundation, and staff from the Hawai'i Coral Reef Initiative (HCRI) at the University of Hawai'i at Mānoa's Social Science and Research Institute.

In addition, pursuant to DAR's direction, the Legal Fellow conducted legal research and analysis of issues to inform DAR's development of programs and projects to conserve coral ecosystems and benefit recreational ocean users and commercial tour operators. The topics researched included, among others, potential relationship documents, licensing requirements, and contract and procurement issues.

The Legal Fellow provided legal research and document drafting for DAR to identify opportunities for DAR to increase efficient expenditure and maximize impact of collected Ocean Stewardship User Fees to benefit coral ecosystems, recreational ocean users, and commercial tour operators. The Legal Fellow also worked with DAR to identify key legal issues related to potential relationship structures with non-agency collaborators for DAR to pursue further with their necessary state government partners to better understand relevant risks. Additionally, the Legal Fellow participated in discussions with DAR and DAR-designated collaborators concerning an opportunity that would allow DAR to pilot activities necessary for implementation of the Ocean Stewardship Special Fund, including monitoring of underwater infrastructure (such as DMBs), development of criteria to allocate resources of maintenance and repair of infrastructure that would benefit recreational ocean users and commercial tour operators, and installation of permitted DMBs.

The Legal Fellow provided DAR with these findings, as well as analysis of additional issues and legal questions identified during his research. Also, at the request of DAR, the Legal Fellow supported DAR and its designated collaborators in developing a draft memorandum of understanding to further the discussion of potential mechanisms to implement the DMB funding provision of Act 46.

ii. *Resumption of Full-Level of Effort Under This Cooperative Agreement*

At the end of February 2022, following completion of the implementation plan for DAR's nonresident recreational marine fishing license, the Legal Fellow resumed a full level of work under this cooperative agreement.

At DAR's direction, the Legal Fellow developed a user fee program roadmap to aid DAR's planning and identification of establishment priority issues. (See attached as "Annex B".) The roadmap provided DAR with an overview of the workflow/activity flow required for the program based on the language of Act 46. The roadmap identified the necessary parties and stakeholders for the program and each party's relevant responsibilities, or activities associated with their participation in the program. DAR staff identified three priority issues, development, and adoption of administrative rules to implement DAR's authority to collect the user fee, development of a feasible and efficient collection mechanism, and demonstration of the potential benefit of the program to stakeholders. Additionally, the Legal Fellow met with DAR staff and DAR-designated collaborators, including DOBOR, HCRI, and local non-governmental organizations to gather information on program establishment issues prioritized by DAR.

The Legal Fellow also conducted legal research and analysis of prioritized program establishment issues, as requested by DAR, including, among others, issues regarding development of administrative rules and their potential scope, and requirements for passenger lists or manifests that may be used to verify compliance with user fee requirements.

The Legal Fellow also collaborated with DAR staff to develop a design idea for a user fee collection mechanism. In coordination with DAR, the Legal Fellow met with DOBOR to propose the initial idea for a user fee collection mechanism, which would require collaboration from DOBOR to operate. Following the meeting, the Legal Fellow continued to correspond with DOBOR to gather feedback on the initial collection mechanism proposal.

iii. *Scope Change from Pilot Study to Statewide Implementation Issues*

Toward the end of June 2022, following continued discussions with DAR, it became apparent that it was no longer a priority for DAR to pursue a pilot study location for program operations issues for the remainder of the project as included in the workplan for the cooperative agreement. CI Hawai'i confirmed this with DAR. DAR's revised priority was, instead of a pilot study location, to refine DAR's understanding of program implementation issues statewide. DAR's shift in priorities from analysis of a pilot study location to analysis of issues statewide resulted from a provision in the legislation that created the Ocean Stewardship Special Fund and User Fee. The provision will abolish the Special Fund five years after DAR's authority to collect User Fees becomes effective.

The Legal Fellow and DAR subsequently coordinated on next steps to enable the Legal Fellow to continue to support DAR's updated priority. During the next quarterly check-in with DAR and CI Hawaii's NOAA CRCP contact, it was determined that CI Hawai'i would submit a change of scope request for the cooperative agreement to reflect the anticipated changes in the Legal Fellow's workplan in response to DAR's revised priority. The submitted the change of scope request was approved.

iv. Research and Analysis of Statewide Implementation Issues

Following the change of scope and for the remainder of the award period, CI Hawai'i and the Legal Fellow supported DAR's efforts to further its understanding of program implementation issues statewide. The Legal Fellow continued to support DAR's priorities related to development of a collection mechanism, and scoping and outreach to program stakeholders to gather feedback on both proposed administrative rules and operational aspects of the program.

1. Program scoping timeline

The Legal Fellow coordinated with DAR to revise several iterations of a program scoping timeline for engagement with impacted stakeholders. (See attached as "Annex C".) The Legal Fellow also developed an overall program establishment and implementation timeline for DAR that provided detailed information about the necessary steps and relevant time required for DAR's identified priorities. This program establishment and implementation included the necessary tasks and steps for the main components of the program, including adoption of regulations, development of a collection mechanism and communication platform, and scoping and outreach prior with stakeholders.

2. Collection mechanism development

In addition, the Legal Fellow conducted legal research and analysis to support DAR's development of its user fee collection mechanism. The Legal Fellow completed programmatic research into similar mechanisms and platforms to identify best practices for DAR's consideration. The Legal Fellow's research and analysis for this priority assisted DAR with development of required procurement, scoping, and collection mechanisms management and planning documents that may be utilized as DAR continues its work to establish the program after the award period.

3. Program establishment and administrative rules

The Legal Fellow provided support for DAR in its coordination of program establishment efforts with DAR-designated collaborator, DOBOR.

Additional legal research and analysis to support DAR's program establishment priority regarding development of administrative rules needed to implement the user fee

requirement was conducted by the Legal Fellow. The Legal Fellow's research and analysis assisted DAR in identifying and clarifying issues and questions that had not been previously considered.

Following the close of the project period, DAR has already conducted successful public scoping and initial submittal of the proposed administrative rules to its executive board, the Board of Land and Natural Resources (BLNR). DAR utilized the efforts of the Legal Fellow to inform its drafting of the proposed administrative rules. Later this summer, DAR plans to take the proposed administrative rules to BLNR for final approval and adoption.

4. Expenditure decision-making framework

In coordination with DAR, the Legal Fellow conducted research and analysis to support DAR's development of a potential framework to support DAR's decision-making process in the expenditure of collected Ocean Stewardship User Fees. The Legal Fellow's efforts included both legal research and analysis, and programmatic research concerning the use of user fees in a multi-stakeholder context.

5. Outreach materials

The Legal Fellow, with support from CI co-PIs, developed a variety of communications and outreach templates for DAR's use in program establishment and implementation directed toward impacted commercial ocean recreation operators and their customers templates. The drafted material included scoping presentation materials, a visual asset bank, and communication templates that DAR may provide to commercial operators to support their interactions with commercial recreation customers who will be user fee payors. The Legal Fellow also developed a summary presentation slide deck about the Ocean Stewardship Program and the CRCP-supported fellowship that DAR may use for external audiences including other coral reef managers, decision-makers, public audiences, as well as with other DLNR divisions and staff.

Shortly after the close of the project period, DAR conducted public scoping for the Ocean Stewardship Program. DAR's public scoping presentation and meeting utilized the materials developed through the efforts of the Legal Fellow and the CI co-PIs.

6. Web portal and financial impact model

Lastly, the Legal Fellow, in coordination with DAR and with support from CI co-PIs and other CI staff, developed final memoranda on tools for program establishment priorities identified by DAR. First, the Legal Fellow developed a memorandum on critical issues and considerations for DAR's development of a web portal and mobile app solution for user fee collection that was informed by programmatic and legal research and analysis. Next, the Legal Fellow, with support from CI co-PIs and other CI staff, provided DAR with a memorandum about the potential financial impact of the Ocean Stewardship User Fee.

The memorandum was accompanied by a financial impact modelling tool developed by CI staff, which was developed utilizing key information from DAR and up-to-date data about external factors that may impact the user fee program. The tool is a modifiable platform that DAR can update as new and more accurate data points are collected and is intended to support DAR's management of the program after the award period. Finally, the Legal Fellow developed a memorandum detailing key considerations and a potential framework to support DAR's decision-making in determining use or expenditure of collected User Fees to meet its management mandates and to engage effectively with program stakeholders. This memorandum was informed by stakeholder information gathering, and programmatic and legal research and analysis conducted by the Legal Fellow.

Shortly after the end of the project period, DAR utilized the programmatic and legal research and analysis conducted by the Legal Fellow to develop a request, solicit, and select a qualified web developer that will build the web portal and mobile app solution for user fee collection.

d. Alternative B Activities

Although the Legal Fellow's workstream focused on Alternative A activities because of DAR's success in pursuing commercial ocean user fee legislation, he was able to pursue some activities under the Alternative B scenario for this cooperative agreement to develop an understanding of the potential use of sustainable funding strategies and financial tools to support coral reef management efforts in Hawai'i. The understanding developed through Alternative B activities may assist DAR in the potential leveraging of other sources of funding and innovative financing mechanisms to maximize the conservation potential of the Ocean Stewardship User Fee.

1. Review of sustainable funding strategies and mechanisms

The Legal Fellow conducted research on existing and emerging sustainable funding strategies and finance mechanisms for ocean conservation, including an extensive literature review concerning threats and stressors to Hawai'i's coral reefs that can be addressed through state-level actions, sources of impacts and drivers of changes to coral reefs in Hawai'i, including individual parties and entities to identify potential opportunities to incentivize changes in behavior. The Legal Fellow reviewed conservation finance literature and materials for established, terrestrial conservation finance mechanisms, as well as innovative and developing finance mechanisms in the ocean conservation sector. The literature review illustrated a need for a contextually appropriate resource or resources that provide a roadmap for the use of different sustainable funding strategies and financial tools to support coral reef management efforts in Hawai'i.

2. Collaboration support

The Legal Fellow also sought to strengthen networks and coalitions for DAR, CI Hawai'i and others involved in coral reef conservation in Hawai'i. Throughout the award period, he conducted fact-finding interviews and attended meetings with the West Maui Ridge 2 Reef Initiative's Watershed Coordinator and staff at DAR's Ānuenuē Fisheries Research Center and Coral Restoration Nursery. The Legal Fellow also met with other Hawai'i-based non-profits, to understand current priorities for coral reef management and to identify potential opportunities for pilot projects and locations to implement sustainable funding strategies. Potential opportunities include leveraging current efforts to develop regenerative tourism to demonstrate positive coral reef conservation outcomes and utilization of native wetland plants to improve water quality and decrease eutrophication of coral reefs.

3. Reef insurance and voluntary donation mechanisms

The Legal Fellow participated in other efforts to improve DAR's understanding of different sustainable finance mechanisms for ocean conservation issues, including discussions with DAR and its NOAA Coral Reef Management Fellow concerning coral reef insurance feasibility and voluntary donation mechanisms. Further, a memorandum was prepared for DAR and its NOAA Coral Reef Management Fellow that summarized existing understanding and information concerning coral reef insurance schemes as a finance mechanism and relevant considerations, including legal issues specific to Hawai'i. This memorandum was prepared to support DAR's preparation of a coral reef insurance feasibility report, which was requested by the State Legislature during the 2021 session.

4. Networking support

The Legal Fellow continued to attend meetings with DAR and its NOAA Coral Reef Management Fellow to identify potential areas of overlap or collaboration to amplify each other's efforts related to sustainable finance opportunities. These meetings allowed the Legal Fellow to identify potential opportunities to share relevant resources with the Coral Reef Management Fellow and connect her with additional expertise available to CI, such as CI experts with experience concerning nature-based solutions and green-gray infrastructure that benefit DAR's other sustainable funding priorities, including coral reef insurance and mitigation banking.

3. Products and Deliverables

As mentioned in the objectives, CI Hawai'i was tasked with providing legal research and analysis on issues of consequence to sustainable financing strategies prioritized by DAR, which was intended to inform Hawai'i's coral reef managers as they develop sustainable funding strategies for long-term support of their management activities. DAR prioritized

the pursuit, authority for, and establishment of a commercial ocean recreation user fee. Thus, the Legal Fellow's efforts focused on Alternative A under this cooperative agreement.

Throughout the project, the Legal Fellow provided legal research and analysis on a variety of issues prioritized by DAR. The Legal Fellow provided DAR support via research and analysis in a variety of formats through the project, including memoranda, draft documents, strategic planning, and outreach materials.

The Legal Fellow provided legal research and analysis support to DAR for the following program establishment issues:

- Contracting, contractor licensing, permitting, & liability issues
- State procurement process issues
- Opportunities to increase efficient expenditure and maximize impact of Ocean Stewardship User Fees
- Opportunities to leverage Ocean Stewardship Special Fund for additional finance mechanisms for DAR
- Relationship structures with non-agency collaborators
- Ownership of seafloor or submerged lands
- Requirements for passenger lists or manifests
- Collection mechanism, transfer of fees, auditing or verification of compliance, and expenditures
- Ocean Stewardship User Fee web portal development and RFP issues, including procurement, IT solutions, and information collection
- Authority to create limited exemption or exception from Ocean Stewardship User Fee requirements
- Legal requirements from other state and federal agencies for Ocean Stewardship User Fee-impacted operators

In addition, the Legal Fellow provided legal research and analysis support for program implementation issues including:

- Reversion of the Ocean Stewardship Special Fund into the State General Fund
- Requirement to transfer a pro rata portion of certain monies to the Office of Hawaiian Affairs
- Authority to create exemption(s) from the requirements of the Ocean Stewardship User Fee

Lastly, the Legal Fellow, with DAR and the CI Hawai'i co-PIs, co-developed a high-level summary slide deck of the Ocean Stewardship User Fee program for use by DAR with different external audiences (e.g., decision makers, public information, other agencies, coral reef managers, etc.). The summary slide deck is attached to this report as "Annex D."

The Legal Fellow and CI Hawai'i's work products and deliverables, developed in close coordination with DAR, have already informed important steps by DAR to establish and implement the new Ocean Stewardship Program. Shortly after the close of the project period, DAR has utilized the work by the Legal Fellow and CI Hawai'i to conduct public scoping and outreach, draft and submit necessary administrative rules for adoption, and begin development of program infrastructure needed for collection of user fees.

4. Metrics of Success

- *By the end of 2020, CI Hawai'i (in collaboration with DAR) has successfully launched the recruitment and is in the process of hiring for the Ocean Conservation Incentives Legal Fellow position.*
 - CI Hawai'i (in collaboration with DAR) successfully launched the recruitment for the Ocean Conservation Incentives Legal Fellow position by December 14, 2020, and successfully hired Tyler Hee for the fellowship with a start date of April 1, 2021.
- By the end of January 2021, DAR has determined and communicated its priorities to CI Hawai'i for the Ocean Conservation Incentives Legal Fellow position research and analysis efforts for Year 1. A clear plan of research priorities is endorsed by DAR and guiding the legal fellow's work.
 - The priority setting meeting with DAR occurred during June 2021. Due to the legislative session, DAR explained that its priorities had temporarily shifted from the Ocean Stewardship Special Fund and ocean stewardship user fee to the implementation of DAR's new nonresident recreational marine fishing license. DAR's priority shift resulted in it temporarily delaying efforts related to the ocean stewardship user fee and focusing on and prioritizing work to implement the new fishing license program. DAR delayed working in earnest on the Ocean Stewardship Special Fund and ocean stewardship user fee until February/March 2022. Following resumption of work in earnest on Ocean Stewardship Special Fund and ocean stewardship user fee, CI Hawai'i, in coordination with DAR, developed a plan of research priorities for the Legal Fellow.
- *Assuming no major priority changes by DAR, by June 2021, the Ocean Conservation Incentives Legal Fellow has initiated fact-finding interviews with DAR staff and DAR-designated collaborators and has initiated legal research and analysis on identified priority issues based on interview results. Interview results align with DAR's endorsed research priorities, provide necessary context to the relevant issues, and refine the legal questions being researched and analyzed by the legal fellow.*
 - DAR's priorities underwent a significant but temporary change until February/March 2022 because it received authority for the Ocean Stewardship Special Fund and User Fee and the nonresident recreational marine fishing license. Upon resuming work in earnest on Ocean Stewardship Special Fund and ocean stewardship user fee, the Legal

Fellow initiated fact-finding meetings with collaborators designated by DAR. Additionally, the Legal Fellow provided DAR with legal research and analysis of priority legal questions to support DAR's efforts.

- *Assuming no major priority changes by DAR, by February 2022, the Ocean Conservation Incentives Legal Fellow has initiated fact-finding interviews and legal research and analysis related to a pilot location supported by DAR. Interview results provide necessary context for the pilot location implementation process, identify critical operational issues, and refine the legal questions being researched and analyzed by the legal fellow.*
 - As discussed above, DAR's priorities underwent a significant, but temporary change until February/March 2022 because it received authority for both the Ocean Stewardship Special Fund and User Fee as well as the nonresident recreational marine fishing license. Additionally, DAR's priorities related to a pilot location for the Ocean Stewardship Special Fund and User Fee underwent a change because of the delayed authority to collect the user fee and a provision in the legislation that will abolish the special fund five years after DAR begins collecting user fees. With endorsement from DAR, CI Hawai'i submitted a change of scope request for this cooperative agreement to reflect that DAR was prioritizing analysis of implementation issues statewide and was no longer pursuing a pilot study location. As a result, the Legal Fellow, at the direction of DAR, focused fact-finding and legal research and analysis efforts on program establishment and implementation issues prioritized by DAR in response to the provisions and constraints of the legislation.
- *Assuming no major priority changes by DAR, by the end of the award period, the Ocean Conservation Incentives Legal Fellow (under the supervision and guidance of CI Hawai'i) has provided DAR with analysis and memoranda of priority issues that informed DAR's design and operations decisions for a new sustainable funding strategy, approach, or financial tool and of its application to at least one pilot location. DAR is using the legal analyses to inform its decisions on the design and implementation of current and future sustainable funding programs and broadly sharing the overview report of guiding principles for sustainable funding approaches with other coral reef managers and local decision makers.*
 - In October 2022, with endorsement from DAR, CI Hawai'i submitted a change of scope request for this cooperative agreement to reflect that DAR was prioritizing analysis of implementation issues statewide and was no longer pursuing a pilot study location. As a result, the Legal Fellow, at the direction of DAR, focused fact-finding and legal research and analysis efforts on program establishment and implementation issues prioritized by DAR in response to the provisions and constraints of the legislation. The Legal Fellow provided DAR with analyses and memoranda of the priority issues DAR identified concerning establishment and implementation of the program statewide. DAR is using these analyses and memoranda to inform

its design, implementation, and future operations decisions for the Ocean Stewardship Special Fund and User Fee Program.

5. Planned Activities Not Completed

All planned activities were completed during this project.

6. Lessons Learned and Remedial Actions

Two significant lessons were learned during this project.

The first lesson learned is that close coordination between the project delivery team and necessary collaborators ensures that project partner needs may be met and appropriately supported. The regular coordination between DAR and CI Hawai'i provided opportunities for DAR to update priorities as needed and enabled quick response and adaptation, when necessary, of project activities by CI Hawai'i. This close coordination ensured the Legal Fellow was able to support DAR's management needs for the Ocean Stewardship Special Fund and User Fee program and other related programs.

The second lesson learned is that, this close coordination is most effective when project partners can remain nimble and adapt to changing context and needs throughout the award period. For example, after the 2021 legislative session, the Legal Fellow adapted to DAR's shifting priorities and timelines due to the different but related bills that passed through the legislature. The Legal Fellow's ability to remain nimble enabled CI Hawai'i and DAR to leverage the already completed legal research and analysis for the Ocean Stewardship Special Fund User Fee and incorporate it into development of an implementation plan for the nonresident recreational marine fishing license program.

This ability to shift efforts in response to DAR's evolving management priorities enabled CI Hawai'i to redirect focus to issues that would most directly address DAR's needs for a separate, but related program. Doing so allowed CI Hawai'i to strengthen its work with DAR and to build a more robust understanding of DAR's needs that were then leveraged once the Legal Fellow resumed efforts under this cooperative agreement to help DAR understand issues relevant to establishment and implementation of the Ocean Stewardship Special Fund and User Fee.

The ability to adapt to evolving priorities also enabled CI Hawai'i to adjust after DAR's priority concerning understand issues for establishment and implementation of the Ocean Stewardship Special Fund and User Fee expanded in scope from a pilot location to issues concerning a statewide rollout. The Legal Fellow's ability to shift efforts in response to DAR's management priorities enabled CI Hawai'i to redirect focus to issues that would most directly address DAR's needs. Doing so allowed CI Hawai'i to better serve the actual management needs of DAR as the agency marches toward implementation of the program at the beginning of 2024.



GOV. MSG. NO. 1146

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 8, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 8, 2021, the following bill was signed into law:

HB1019 HD2 SD2 CD1

RELATING TO OCEAN STEWARDSHIP.
ACT 046 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO OCEAN STEWARDSHIP.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii's ocean
 2 waters and the marine resources contained within are some of the
 3 State's most ecologically, economically, and culturally valuable
 4 environmental assets.

5 The legislature further finds that the increasing
 6 popularity of marine ecotourism requires greater measures to
 7 ensure the continued health of marine ecosystems. The broad
 8 range of recently documented anthropogenic impacts on coral reef
 9 health, including coral bleaching, vessel groundings, anchoring
 10 and mooring, diving activities, poaching, land-based and
 11 water-based pollutant discharges, and other direct and indirect
 12 uses of the State's coral reefs, indicate that the department of
 13 land and natural resources may need a more consistent and
 14 reliable source of funding to manage, protect, and restore
 15 marine resources throughout the State. A sustainable funding
 16 source is especially critical for successful implementation of
 17 the State's 30x30 marine management process, which aims to



1 create a cohesive network of nearshore marine managed areas that
2 benefits fisheries and ecosystem resilience.

3 The purpose of this Act is to establish the ocean
4 stewardship special fund for the collection and use of moneys
5 for the conservation, restoration, and enhancement of the
6 State's marine resources, and to authorize the department of
7 land and natural resources to collect fees for the use and
8 enjoyment of the State's ocean resources.

9 SECTION 2. Chapter 187A, Hawaii Revised Statutes, is
10 amended by adding a new part to be appropriately designated and
11 to read as follows:

12 "PART . OCEAN STEWARDSHIP

13 §187A-A Ocean stewardship special fund. (a) There is
14 established in the treasury of the State the ocean stewardship
15 special fund to be administered by the department.

16 (b) The following shall be deposited into the ocean
17 stewardship special fund:

18 (1) Moneys collected as user fees pursuant to
19 section 187A-B;

20 (2) Revenues due to the State from leases of any lands,
21 facilities, equipment, and other property owned by the



1 department and used for or dedicated to the
2 management, research, restoration, and enhancement of
3 aquatic resources;

4 (3) Moneys collected as fines, bail forfeitures,
5 attorney's fees, and administrative costs for
6 violations of subtitle 5 of title 12 or any rule
7 adopted thereunder, except:

8 (A) Informer's fees authorized under section 187A-14;

9 (B) Fines or bail forfeitures for sport fishing
10 violations of this chapter and chapters 188, 189,
11 and 190 pursuant to section 187A-9.5(b) (3); and

12 (C) Fines, bail forfeitures, or administrative fines
13 for violations of chapter 189 pursuant to
14 section 189-2.4(b) (3);

15 (4) Moneys collected for the purposes of compensatory
16 mitigation from federal or state permitted impacts to
17 the marine environment;

18 (5) Grants, awards, donations, gifts, transfers, or moneys
19 derived from private or public services for the
20 purposes of subtitle 5 of title 12, except:



1 (A) Monetary contributions or moneys collected from
2 the sale of non-monetary gifts to benefit sport
3 fish or sport fishing pursuant to
4 section 187A-9.5(b) (5); and

5 (B) Monetary contributions or moneys collected from
6 the sale of non-monetary gifts to benefit aquatic
7 life used for commercial purposes or fishing for
8 commercial purposes pursuant to
9 section 189-2.4(b) (5); and

10 (6) Moneys derived from interest, dividend, or other
11 income from the above sources.

12 (c) Subject to subsection (d), the ocean stewardship
13 special fund shall be used to:

14 (1) Develop and carry out marine resource conservation,
15 restoration, enhancement, research, regulatory
16 measures, enforcement actions, educational activities,
17 or any other management measure intended to conserve,
18 restore, and enhance marine resources under the
19 jurisdiction of the State;

20 (2) Develop and carry out restoration and compensatory
21 mitigation measures for impacts to the marine



1 environment, including impacts to the marine
2 environment from federal or state permitted actions,
3 or violations of subtitle 5 of title 12 or any rule
4 adopted thereunder; and

5 (3) Install, maintain, and replace day use mooring buoys
6 and other infrastructure to reduce impacts to the
7 marine ecosystem.

8 (d) The ocean stewardship special fund shall be held
9 separate and apart from all other moneys, funds, and accounts in
10 the department; provided that any moneys received from the
11 federal government, through federal programs, or from private
12 contributions, shall be deposited and accounted for in
13 accordance with conditions established by the agency or private
14 entity from whom the moneys are received; provided further that
15 twenty per cent of all gross revenues collected under
16 paragraphs (b) (1) and (2) shall be payable to the office of
17 Hawaiian affairs as ceded lands revenues. Any balance remaining
18 in the fund at the end of any fiscal year shall be carried
19 forward in the fund for the next fiscal year.

20 (e) The proceeds of the ocean stewardship special fund
21 shall not be used as security for, or pledged to the payment of



1 principal or interest on, any bonds or instruments of
2 indebtedness.

3 (f) Nothing in this section shall be construed to prohibit
4 the use of general funds or the funds of other programs and
5 activities to implement or enforce subtitle 5 of title 12 or any
6 rule adopted thereunder, concerning management and conservation
7 of the State's ocean waters and the resources therein.

8 **§187A-B Ocean stewardship user fee.** (a) All operators of
9 commercial vessels, water craft, or water sports equipment that
10 are required to have a commercial operator permit pursuant to
11 section 13-256-3(a), Hawaii Administrative Rules, shall collect
12 an ocean stewardship user fee from each passenger carried or
13 customer served.

14 (b) The ocean stewardship user fee shall be \$1 per
15 passenger or customer and shall be adjusted every five years to
16 match changes in the Consumer Price Index in the Honolulu area
17 as reported by the United States Bureau of Labor Statistics;
18 provided that the fee shall not be adjusted more than ten per
19 cent every five years. Fees collected pursuant to this section
20 shall not be counted toward gross revenues for purposes of
21 section 200-10(c) (5).



1 (c) All fees collected pursuant to this section shall be
2 transferred to the department on a monthly basis and shall be
3 deposited into the ocean stewardship special fund; provided that
4 any fees collected on or after January 1, 2029, shall be
5 deposited into the general fund.

6 (d) The department shall adopt rules pursuant to
7 chapter 91 to implement this part."

8 SECTION 3. Section 187A-A, Hawaii Revised Statutes,
9 established in section 2 of this Act to create the ocean
10 stewardship special fund, shall be repealed and the ocean
11 stewardship special fund shall be abolished on January 1, 2029,
12 and any remaining balance shall lapse to the general fund.

13 SECTION 4. In codifying the new sections added by
14 section 2 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 5. This Act shall take effect upon its approval;
18 provided that the collection of the ocean stewardship user fee
19 established in section 2 of this Act shall begin on January 1,
20 2024.



H.B. NO.

1019
H.D. 2
S.D. 2
C.D. 1

APPROVED this 08 day of JUN, 2021

A handwritten signature in black ink, appearing to read "David I. Ige". The signature is written in a cursive style with a large, sweeping flourish at the end.

GOVERNOR OF THE STATE OF HAWAII

HB No. 1019, HD 2, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate

Program Establishment Priority Issues for the Ocean Stewardship Special Fund and User Fee

Document Purpose

This document outlines the priority issues identified by the State of Hawai'i Department of Land and Natural Resources Division of Aquatic Resources (DAR) for legal research and analysis related to establishment of a new Ocean Stewardship Special Fund and User Fee program. The issues and questions identified below are an outline for legal research and analysis by Conservation International (CI) Hawai'i to support DAR's development and establishment of key program components. The listing below is not exhaustive, but a starting point for inquiry and further consideration and discussion by CI Hawai'i and DAR.

I. Issue One: Administrative Rules to Implement User Fee Requirement

Consideration for program establishment: The following are priority issues for legal research and analysis to inform scope and specific provisions to include in draft administrative rules package that DAR will need to develop and submit to BLNR for approval to implement the user fee requirement.

- For key terms that may be defined in the proposed Hawai'i Administrative Rules chapter for the Ocean Stewardship User Fee, which terms are currently defined in other, relevant state and federal statutes or regulatory provisions?
 - What are those definitions?
 - Do any of those definitions control here?
- For the commercial use permit-holders subject to Act 46, what are the existing, relevant enforcement and/or penalty provisions pursuant to DOBOR statutes and administrative rules?
 - What relevant enforcement and/or penalty provisions exist under other DLNR/DAR administered statutes and administrative rules?
- If appropriate, what authority might exist to create a limited exemption or exception from the requirements of Act 46?
- What, if any, are the current federal or state mandates that require vessel-based commercial use permit holders to collect, maintain, and transfer passengers lists or manifests?
- What is the universe of relevant legal requirements from other state and federal agencies with which Ocean Stewardship User Fee-impact commercial operators must comply?

II. Issue Two: Ocean Stewardship User Program Infrastructure Needs

Consideration for program establishment: The following are priority issues for legal research and analysis to inform next steps for DAR to develop and establish the necessary infrastructure it will need to implement the user fee requirement/program.

- What are the relevant procurement and contract issues for DAR to consider in soliciting, selecting, and negotiating with a vendor to develop and maintain the necessary website and/or mobile app for collection and transfer of Ocean Stewardship User Fees?
- What are the options to incorporate auditing or verification of compliance capabilities into the program infrastructure/portal?
 - What are the legal issues that must be considered in the collecting and handling of any such information?

III. Issue Three: Ocean Stewardship Special Fund and User Fee Impact

Consideration for program establishment: The following are priority issues for legal research and analysis to inform DAR's decision-making regarding approaches and strategy for use of collected Ocean Stewardship User Fees and other monies in the Ocean Stewardship Special Fund to ensure effective program impact for the conservation and management of aquatic resources, and compliance with legal obligations for expenditures of special fund monies.

- Who holds legal title to, or other relevant legal right and/or authority over, the seafloor and other submerged lands that may contain or be potential sites for future infrastructural improvements to protect Hawaii's coral reef ecosystems from damage?
- What are the potential relationship structures that DAR may consider with non-DAR or non-DLNR collaborators to improve the effectiveness and efficiency of use of Ocean Stewardship Special Fund monies, including collected User Fees, to accomplish DAR's coral reef and aquatic resources conservation and management goals?
 - What are the potential risks associated with the different types of relationship structures?
 - What are the impacts to the mandatory state procurement process of such relationship structures?
- What are the contractor licensing and permitting requirements, and liability issues for different approaches to installation and/or maintenance of in-water infrastructure to protect coral reef ecosystems in Hawai'i?
- Given the language of Act 46, what opportunities exist to ensure efficient expenditure and maximize impact of Ocean Stewardship User Fees?
 - What, if any, policies exist for Hawai'i state agencies that may enable or prohibit the utilization of the different opportunities?
- What opportunities exist to leverage the Ocean Stewardship Special Fund to catalyze the flow of financing or funding from additional sources for DAR-led coral reef conservation and management work?
 - What are the legal hurdles for the different opportunities?

Ocean Stewardship Program and Legal Fellow Project Slide Deck for DAR Use

IMPORTANT INFORMATION ABOUT THIS RESOURCE

- Intended audiences :
 - Section 1: Coral Reef Managers
 - Section 2: Public Info & Decision Makers
 - Section 3: Other Hawai'i Agencies
 - Section 4: Internal DAR Audience

This slide deck is intended to be a toolkit/template for use by DAR and DAR staff for presentations related to the Ocean Stewardship Program and the Ocean Conservation Incentives Legal Fellow project. The slide deck provides editable template slides for DAR to modify and update as appropriate. The information included in this slide deck is tentative information known as of the “Last Updated” date below.

**The slide deck is loosely organized by relevant content for intended audience. This organization is only intended to serve as a guide. DAR users must make the final determination concerning which slides to use for the relevant audience and what the final content of those slides should be.*

Last Updated: March 29, 2023



Section 1: Coral Reef Managers

FOCUS: Overview of the Ocean Stewardship User Fee as a new finance mechanism

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Last Updated: *March 30, 2023*

Section 1: Topics Covered

- Gap or Need Addressed
- Necessary Policy Change
- Overview of Mechanism
- Opportunities Created
- Impacts of New Mechanism
- Lessons Learned



The Funding Gap

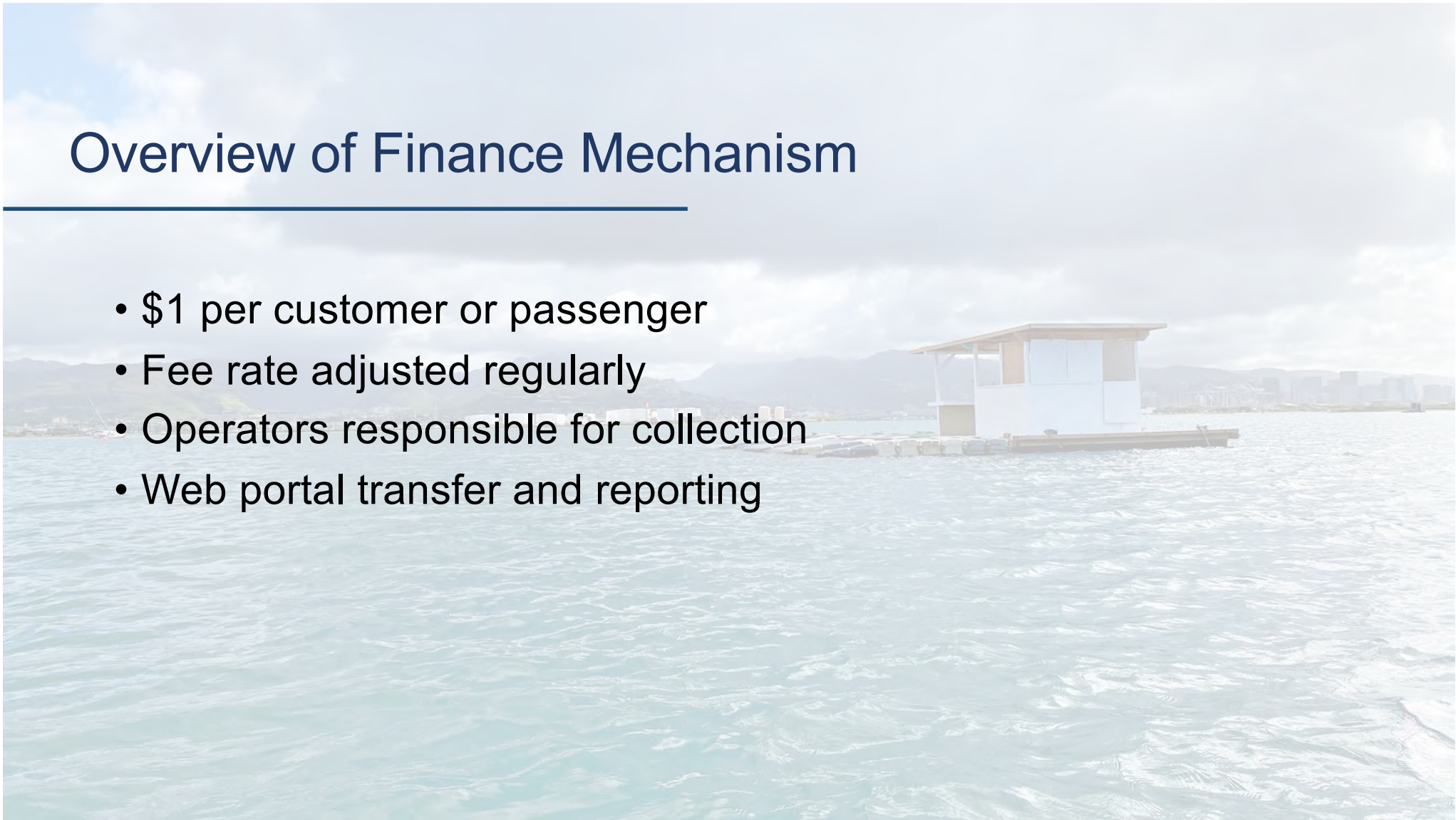
- Hawaii's ocean and marine resources are ecologically, economically, and culturally important
- Ocean tourism and commercial recreation businesses are significant economic contributors
- Disconnect between benefit businesses derive from marine ecosystems and investment made for maintenance and support of ecosystems

Enabling Policy Change Required

- Policy change required
- Act 46 adopted and signed in 2021
- Codified as Hawai'i Revised Statutes section 187A-51 & 187A-52
- Will adopt administrative rules to implement 187A-52

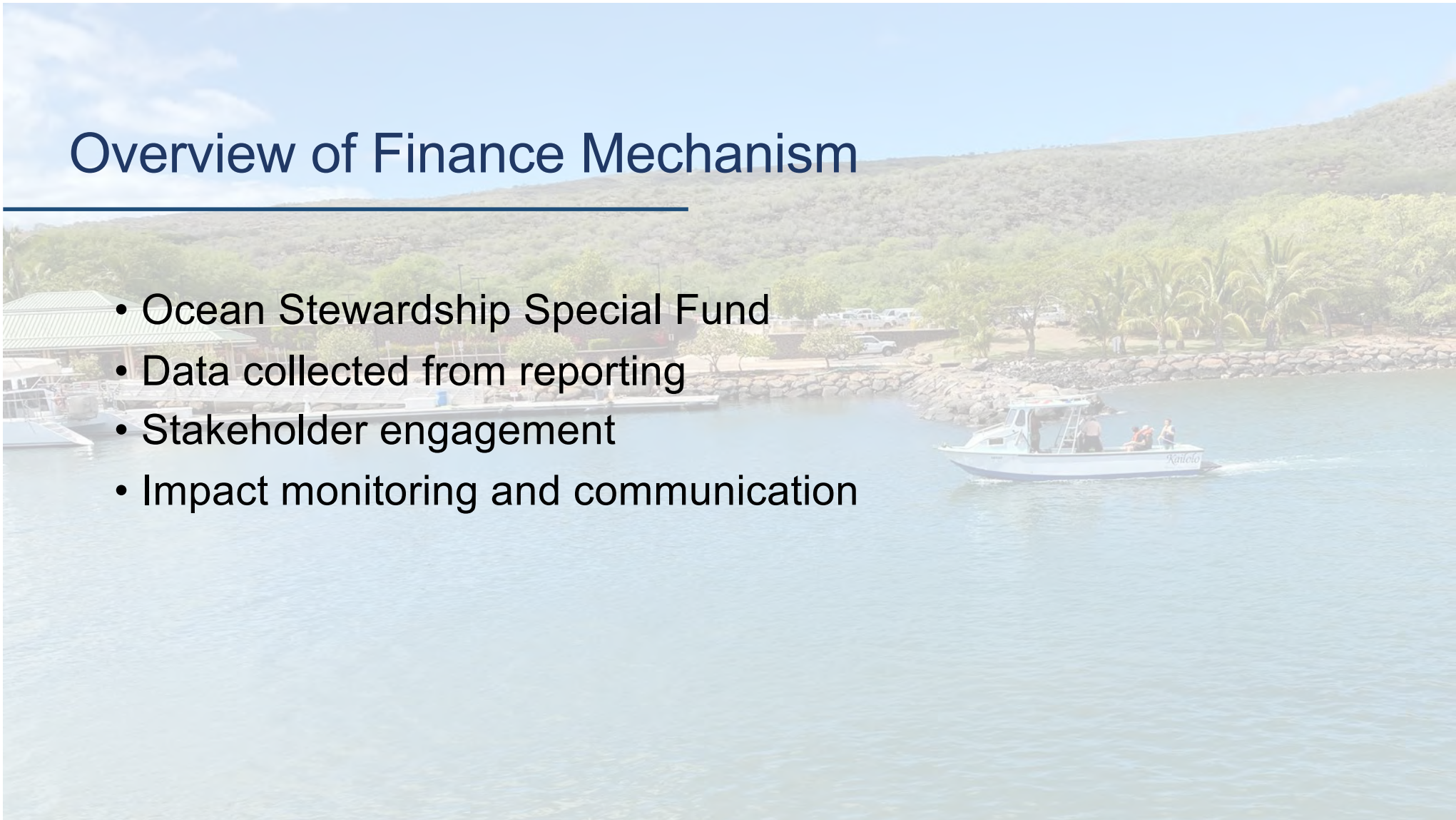
Overview of Finance Mechanism

- \$1 per customer or passenger
- Fee rate adjusted regularly
- Operators responsible for collection
- Web portal transfer and reporting



Overview of Finance Mechanism

- Ocean Stewardship Special Fund
- Data collected from reporting
- Stakeholder engagement
- Impact monitoring and communication



Opportunities Created

- Estimated amount of User Fees collected \$[_to be filled in by DAR _]
- Anticipated User Fees collected by Year 5 \$[_to be filled in by DAR _]
- Increased awareness and engagement
- New data sets and sources

Impact of New Finance Mechanism

- Projects [programs/activities] funded:
 - A [TBD by DAR]
 - B [TBD by DAR]
 - C [TBD by DAR]
- Improved marine ecosystem outcomes:
 - A [TBD by DAR]
 - B [TBD by DAR]
 - C [TBD by DAR]



Lessons Learned So Far

- Early engagement is critical
- Unexpected changes during policy/lawmaking
- Implementation support post-authorization





Section 2: Public Information & Decision Makers

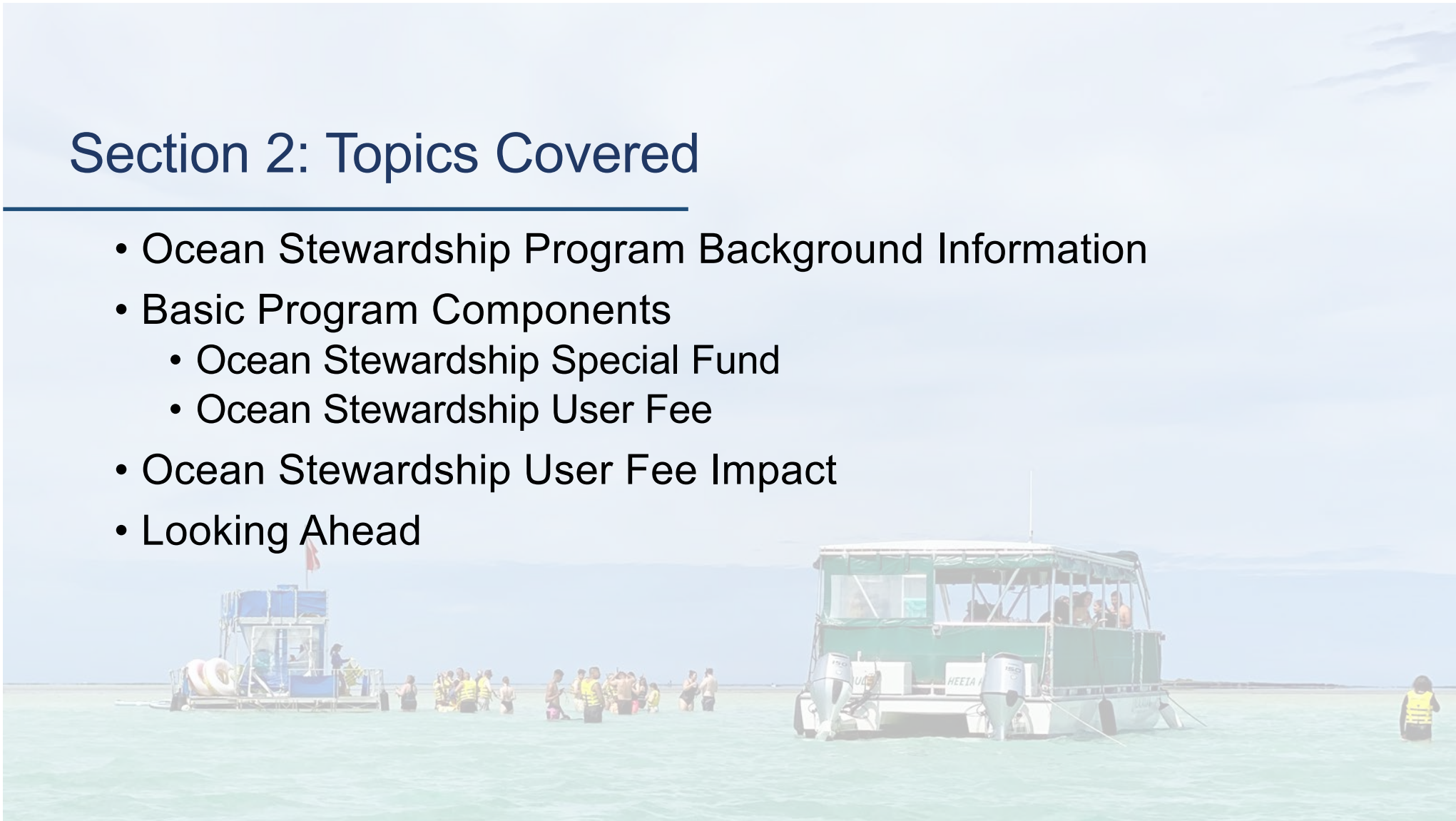
FOCUS: Post-Launch Update and Overview of Ocean Stewardship Program and User Fee

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Last Updated: March 30, 2023

Section 2: Topics Covered

- Ocean Stewardship Program Background Information
- Basic Program Components
 - Ocean Stewardship Special Fund
 - Ocean Stewardship User Fee
- Ocean Stewardship User Fee Impact
- Looking Ahead



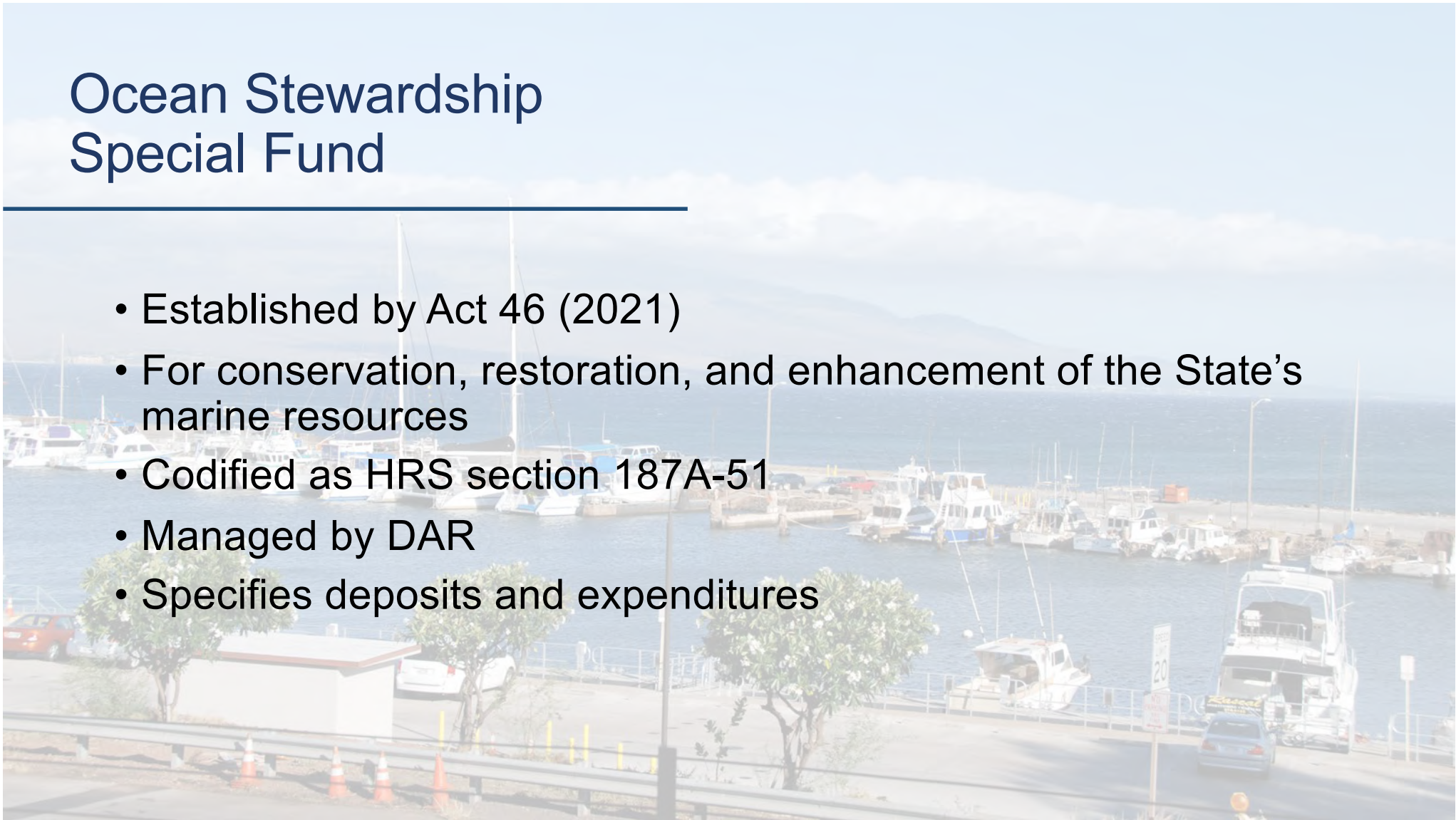
Ocean Stewardship Program Background Information

❖ Act 46

- Signed into law June 8, 2021
- Established Ocean Stewardship Special Fund
- Recognized the ecological, economic, and cultural value of Hawaii's ocean waters and marine resources to the State
- Recognized DLNR may need more consistent and reliable funding source to manage, protect, and restore marine resources throughout the state
- Authorized collection of Ocean Stewardship User Fees (\$1 per passenger or customer) (HRS section 187A-52)
- Collection of fees will begin on January 1, 2024

Ocean Stewardship Special Fund

- Established by Act 46 (2021)
- For conservation, restoration, and enhancement of the State's marine resources
- Codified as HRS section 187A-51
- Managed by DAR
- Specifies deposits and expenditures



Ocean Stewardship Special Fund Deposits

- Ocean Stewardship User Fees
- Lease revenues
- Certain enforcement-related moneys
- Compensatory mitigation moneys
- Various additional sources for HRS subtitle 5 of title 12
- Interest, dividend, or other income

Ocean Stewardship Special Fund Uses

- Marine resource conservation, restoration, and enhancement
- Compensatory mitigation measures
- Day-use mooring buoys and marine ecosystem-benefitting infrastructure

Ocean Stewardship User Fee Background

- Established by Act 46 (2021)
- For the use and enjoyment of the State's ocean resources
- Codified as HRS section 187A-52
- Administered by DAR

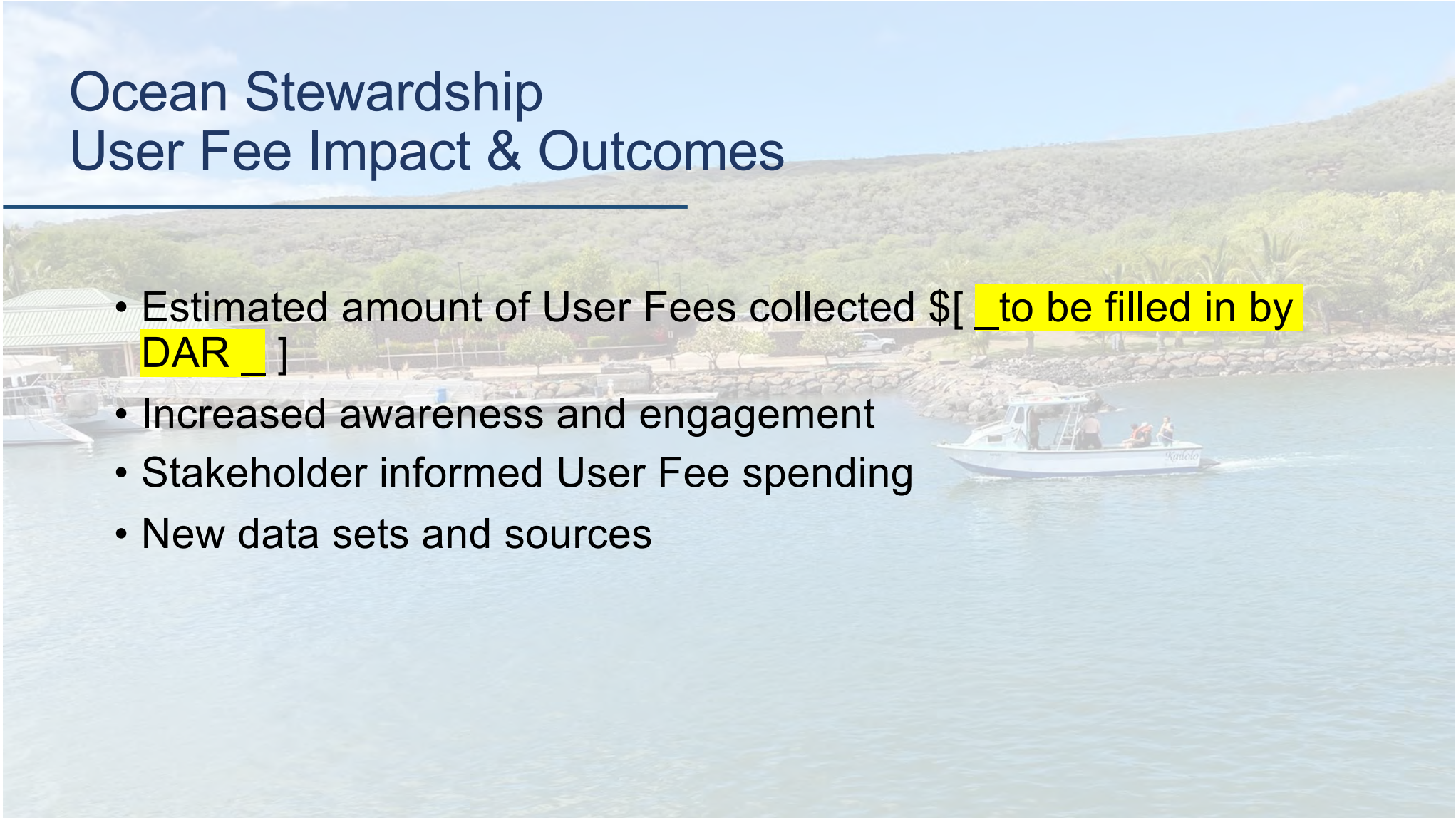
Ocean Stewardship User Fee Basics

- Applies to recreational ocean users
- \$1 user fee per customer or passenger
- Operators collect fee and transfer to DAR
- Does not impact fees due to DOBOR
- Monthly reporting required



Ocean Stewardship User Fee Impact & Outcomes

- Estimated amount of User Fees collected \$[**to be filled in by DAR**]
- Increased awareness and engagement
- Stakeholder informed User Fee spending
- New data sets and sources



Ocean Stewardship User Fee Impact & Outcomes

- Projects [programs/activities] funded:
 - A [TBD by DAR]
 - B [TBD by DAR]
 - C [TBD by DAR]
- Improved marine ecosystem outcomes:
 - A [TBD by DAR]
 - B [TBD by DAR]
 - C [TBD by DAR]

Looking Ahead

- Anticipated User Fees collected by Year 5 \$[_to be filled in by DAR _]
- Ocean Stewardship Special Fund sunset provision

Section 3: Other Hawai'i Agencies

FOCUS: Overview of Legal Fellowship

This slide deck is intended to be a toolkit/template for use by DAR and DAR staff for presentations related to the Ocean Stewardship Program and the Ocean Conservation Incentives Legal Fellow project. The slide deck provides editable template slides for DAR to modify and update as appropriate. The information included in this slide deck is tentative information known as of the "Last Updated" date below.

Last Updated: March 30, 2023

Section 3: Topics Covered

- What is a legal fellowship?
- What does a legal fellow do for a government agency?
- How is a fellowship funded?
- Why have a legal fellow?
- What are the lessons learned?



What is a legal fellowship?

- Term-limited
- Recent law school graduate
- Practical experience for law fellow

What does a legal fellow do for DAR?

- Provide quick access to legal research and analysis
- Draft memos, documents, and BLNR submittals
- Provide support to DAR program staff
- Legal fellows **DO NOT** provide legal advice or services

How is a legal fellowship funded?

- Grant funding
- Partner institution or organization
- Funding source may inform legal fellow's focus

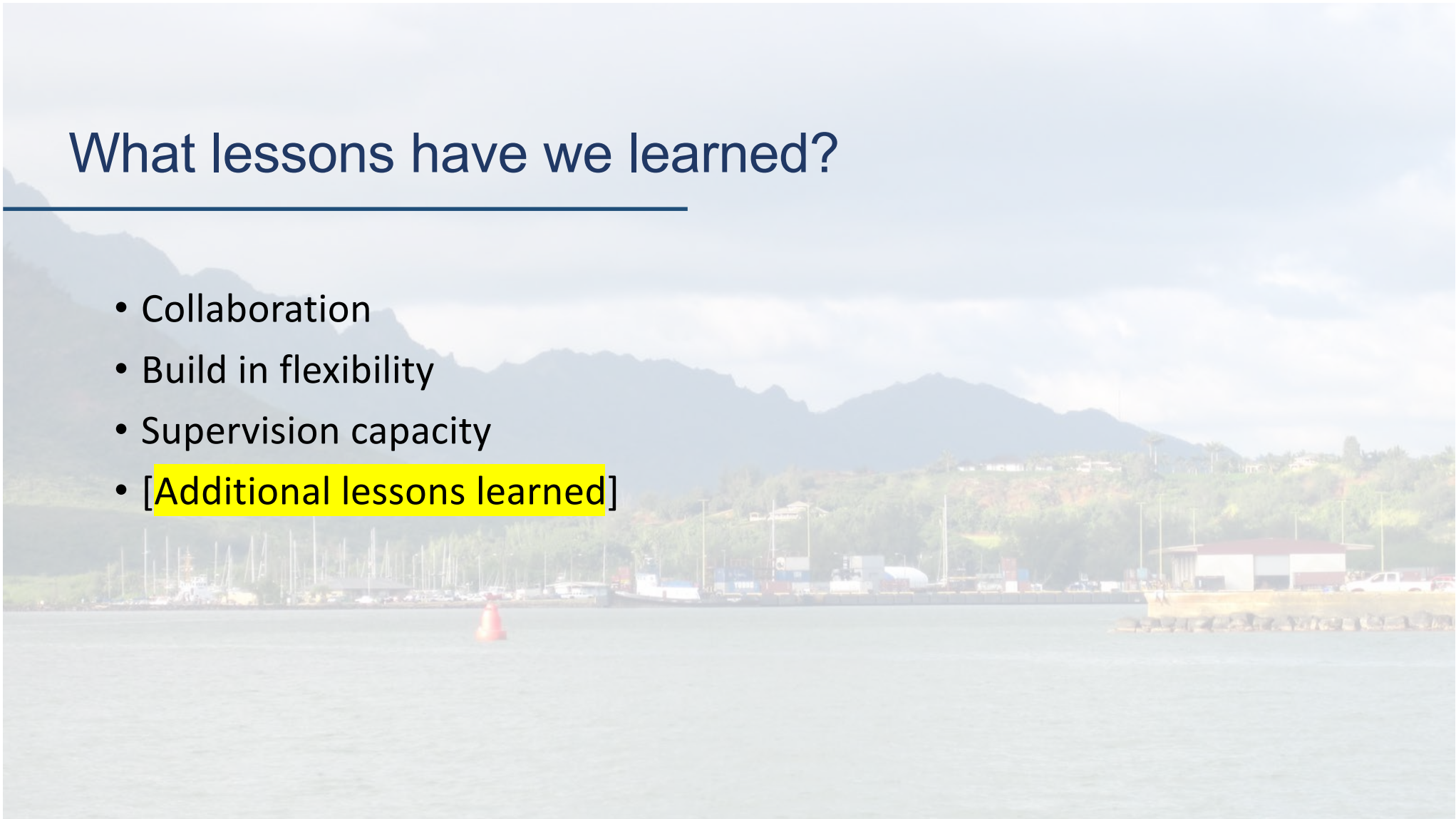


Why host a legal fellow?

- Flexible support for agency
- Increased internal capacity
- Provide experience to early-career professionals
- Identify potential talent
- Improve overall agency effectiveness

What lessons have we learned?

- Collaboration
- Build in flexibility
- Supervision capacity
- [Additional lessons learned]



An underwater photograph of a coral reef. The water is clear and blue. In the foreground, there is a large, textured coral structure. Numerous fish of various species are swimming around the coral. The lighting is bright, suggesting a shallow depth.

Section 4: Internal DAR Audience

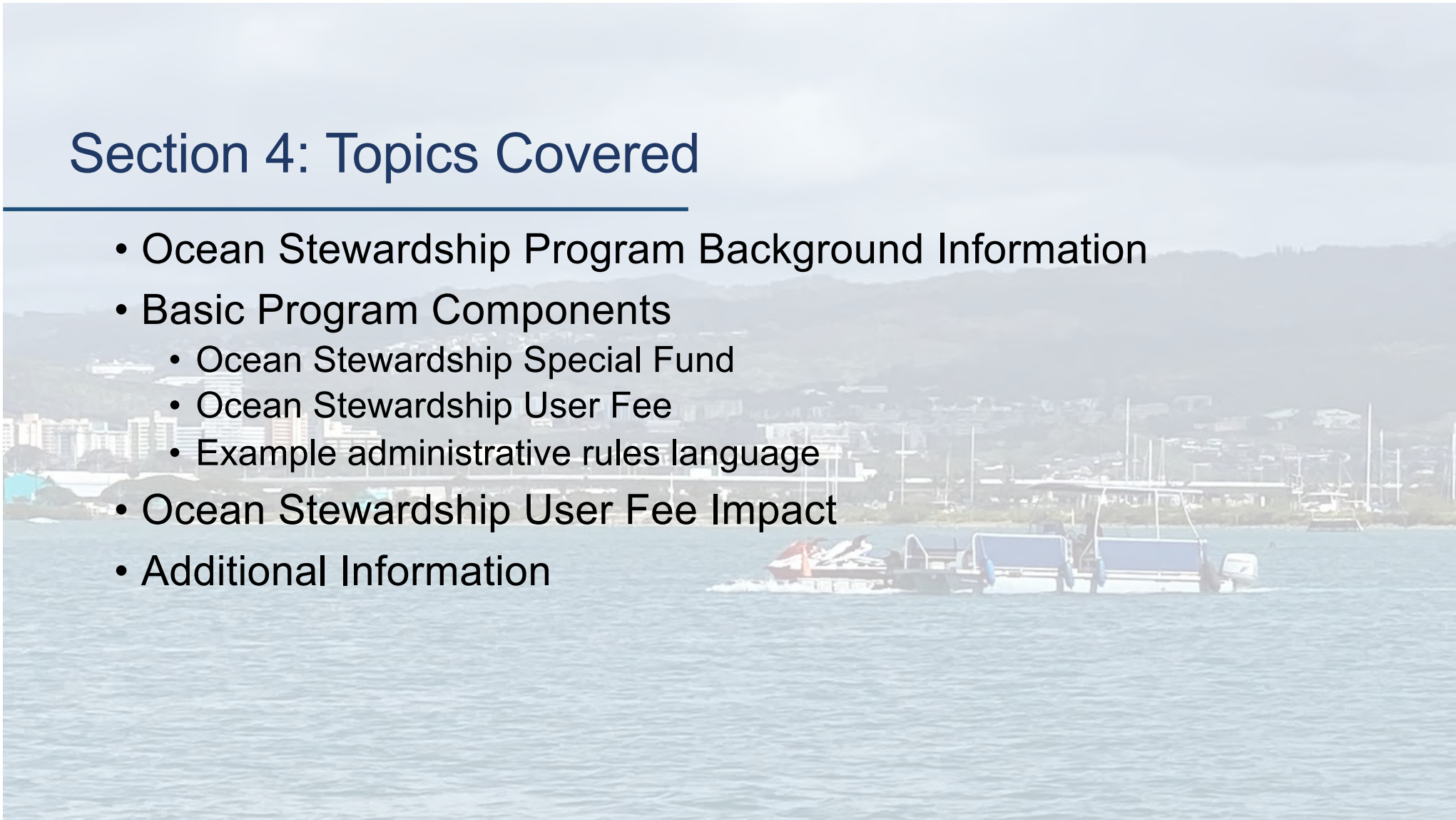
FOCUS: Deep-Dive Information & Overview of Ocean Stewardship Program

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Last Updated: *March 30, 2023*

Section 4: Topics Covered

- Ocean Stewardship Program Background Information
- Basic Program Components
 - Ocean Stewardship Special Fund
 - Ocean Stewardship User Fee
 - Example administrative rules language
- Ocean Stewardship User Fee Impact
- Additional Information



Ocean Stewardship Program Background Information

❖ Act 46

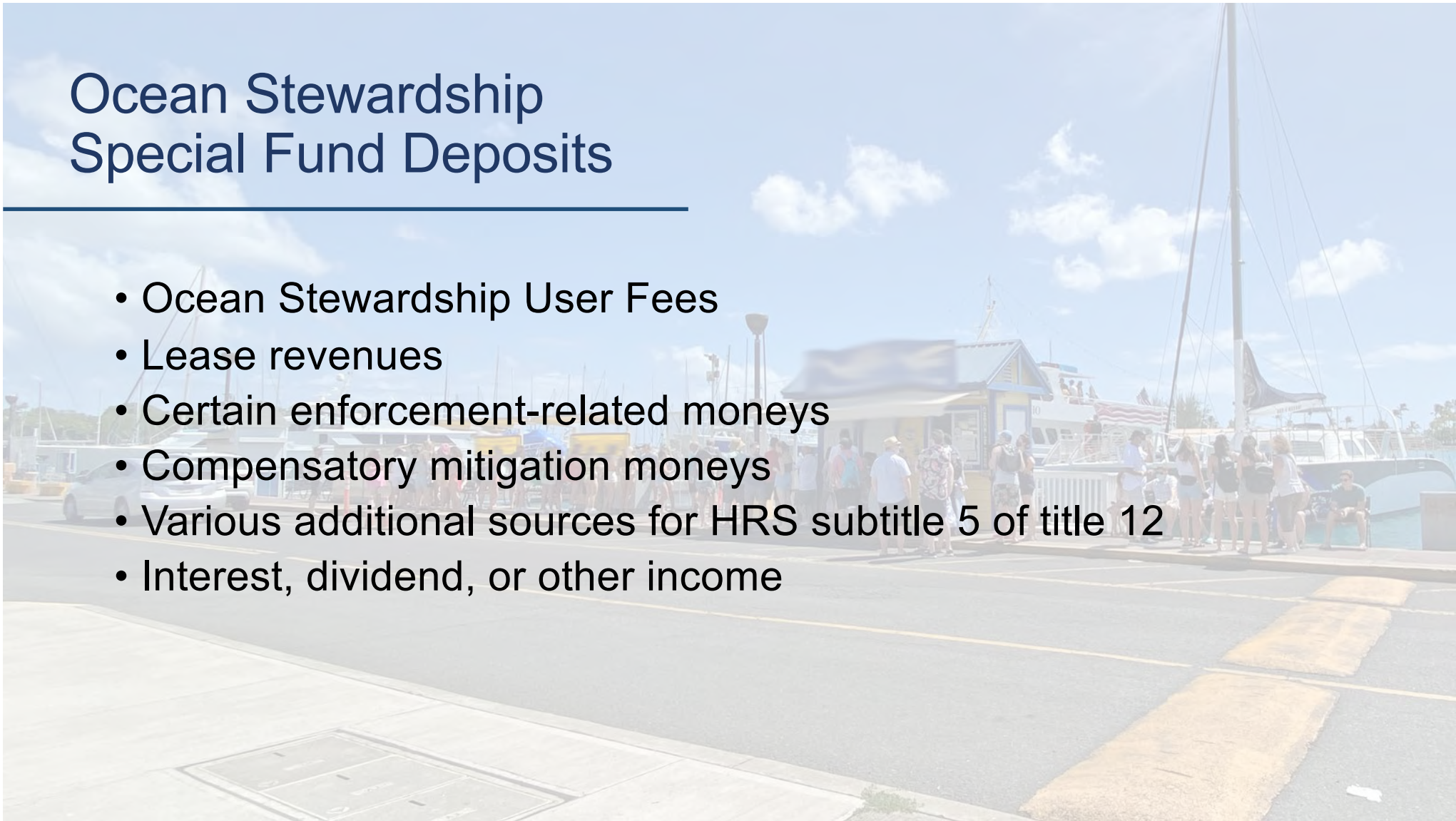
- Signed into law June 8, 2021
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- Recognized DLNR may need more consistent and reliable funding source to manage, protect, and restore marine resources throughout the state
- Authorized collection of Ocean Stewardship User Fees (\$1 per passenger or customer) (HRS section 187A-52)
- Collection of fees will begin on January 1, 2024

Ocean Stewardship Special Fund

- Established by Act 46 (2021)
- For conservation, restoration, and enhancement of the State's marine resources
- Codified as HRS section 187A-51
- Managed by DAR
- Specifies deposits and expenditures
- Per Act 46: Special Fund will be abolished Jan. 1, 2029

Ocean Stewardship Special Fund Deposits

- Ocean Stewardship User Fees
- Lease revenues
- Certain enforcement-related moneys
- Compensatory mitigation moneys
- Various additional sources for HRS subtitle 5 of title 12
- Interest, dividend, or other income



Ocean Stewardship Special Fund Uses

- Marine resource conservation, restoration, and enhancement
- Compensatory mitigation measures
- Day-use mooring buoys and marine ecosystem-benefitting infrastructure



Ocean Stewardship User Fee Background

- Established by Act 46 (2021)
- For the use and enjoyment of the State's ocean resources
- Codified as HRS section 187A-52
- Administered by DAR



Ocean Stewardship User Fee Basics

- Applies to recreational ocean users
- \$1 user fee per customer or passenger
- Fee rate adjusted every five years
- Operators collect fee and transfer to DAR
- Does not impact fees due to DOBOR
- Monthly reporting required

Ocean Stewardship User Fee

Example HAR Chapter 13-78-1 Definitions

Definitions:

- “Commercial operator” means a person that has, or is required to have, a commercial operator permit or commercial use permit pursuant to section 13-256-3.
- “Commercial operator permit” means a permit described in section 13-256-3, which may also be referred to as a “commercial use permit”.
- “Customer” means an individual using the services of a commercial operator.
- “Department” means the department of land and natural resources.

**Example language to be replaced with final language adopted by BLNR.*

Ocean Stewardship User Fee

Example HAR Chapter 13-78-1 Definitions

Definitions (continued):

- “Passenger” means an individual onboard a vessel other than the master, members of the crew, or other persons employed in the business of the vessel.
- “Person” means an individual, partnership, firm, company, corporation, association, or other entity.
- “State” means the State of Hawaii.
- “Vessel” means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

**Example language to be replaced with final language adopted by BLNR.*

Ocean Stewardship User Fee

Example HAR Chapter 13-78-2 User Fee

New Rule:

- (a) All operators of commercial vessels, watercraft, or water sports equipment that are required to have a commercial operator permit or commercial use permit pursuant to section 13-256-3 shall collect an ocean stewardship user fee from each passenger carried or customer served.
- (b) The ocean stewardship user fee shall be \$1 per passenger or customer.

**Example language to be replaced with final language adopted by BLNR.*



Ocean Stewardship User Fee

Example HAR Chapter 13-78-2 User Fee

New Rule:

(c) Fees collected pursuant to this section shall not be counted toward gross revenues for purposes of section 200-10(c)(5), HRS.

**Example language to be replaced with final language adopted by BLNR.*

Ocean Stewardship User Fee

Example HAR Chapter 13-78-2 User Fee

New Rule:

- (d) All fees collected pursuant to this section shall be transferred to the department on or before the tenth day of the following month in which the fees were collected.

**Example language to be replaced with final language adopted by BLNR.*

Ocean Stewardship User Fee

Example HAR Chapter 13-78-2 User Fee

New Rule:

- (e) Commercial operators shall submit a monthly report to the department with information about commercial operations during the month covered by the report including total number of passengers carried or customers served, location of commercial activity, and nature or type of commercial activity. The report shall be rendered to the department as a true and correct statement of the information contained therein. Reports shall be submitted on or before the tenth day of the month following the month covered by the report.

**Example language to be replaced with final language adopted by BLNR.*

Ocean Stewardship User Fee

Example HAR Chapter 13-78-2 User Fee

New Rule:

- (f) Commercial operators shall maintain records of the daily number of passengers carried or customers served for at least twenty-four months after the carriage or service date. Records shall be made available for inspection by the department upon request.

**Example language to be replaced with final language adopted by BLNR.*



Ocean Stewardship User Fee

Example HAR Chapter 13-78-3 Penalties

New Rule:

- (a) Any person violating any provision of this chapter shall be subject to:
- 1) Administrative penalties as provided by section 187A-12.5, HRS;
 - 2) Criminal penalties as provided by sections 187A-12.4 and 187A-13, HRS;
 - 3) Revocation of a commercial operator permit as provided by section 13-256-10;
 - 4) Denied reissuance of commercial use permit as provided by section 13-231-61; and
 - 5) Any other penalty as provided by law.
- (b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the State.

**Example language to be replaced with final language adopted by BLNR.*

Ocean Stewardship User Fee

Example HAR Chapter 13-78-4 Severability

New Rule:

If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

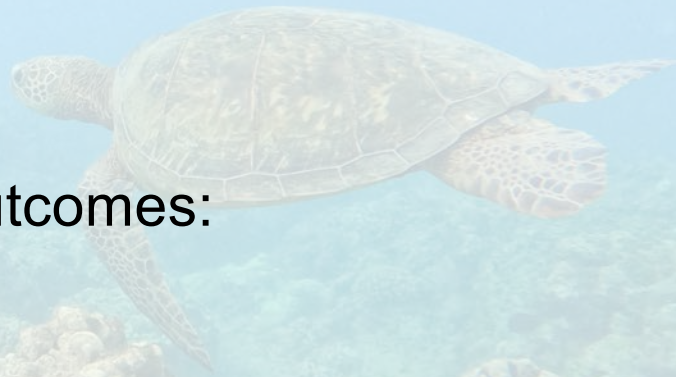
**Example language to be replaced with final language adopted by BLNR.*

Ocean Stewardship User Fee Impact & Outcomes

- Estimated amount of User Fees collected \$[**to be filled in by DAR**]
- Increased awareness and engagement
- Stakeholder informed User Fee spending
- New data sets and sources

Ocean Stewardship User Fee Impact & Outcomes

- Projects [programs/activities] funded:
 - A [TBD by DAR]
 - B [TBD by DAR]
 - C [TBD by DAR]
- Improved marine ecosystem outcomes:
 - A [TBD by DAR]
 - B [TBD by DAR]
 - C [TBD by DAR]



Looking Ahead

- Anticipated User Fees collected by Year 5 \$[_to be filled in by DAR _]
- Ocean Stewardship Special Fund sunset provision