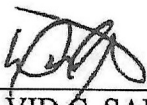


COMMENTS: Interested parties may submit written comments on the proposed amendments to Teresita A. Santos, Department of Public Lands Secretary, to the following address, fax, or email address, with the subject line "Proposed Amendments to the Commercial Use of Managaha Island Rules and Regulations":

DEPARTMENT OF PUBLIC LANDS
PO Box 500380, Saipan, MP 96950
Fax: (670) 234-3755
Email: dpl@dpl.gov.mp

Comments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104(a)(2).

Submitted by: 
DAVID C. SABLAN
Special Advisor, DPL

7/10/2024
Date

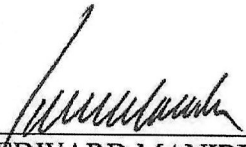
Received by: 
OSCAR M. BABAUTA
Special Assistant for Administration

7/10/24
Date

Filed and
Recorded by: 
ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

7.12.24
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), the proposed Amendments to the Administrative Hearing Procedure Rules and Regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, pursuant to 1 CMC § 2153(f).


EDWARD MANIBUSAN
Attorney General

7/10/2024
Date



Commonwealth of the Northern Mariana Islands
Office of the Governor
DEPARTMENT OF PUBLIC LANDS



**PUBLIC NOTICE OF PROPOSED AMENDMENTS
TO THE COMMERCIAL USE OF MANAGAHA ISLAND RULES AND REGULATIONS**

NOTICE OF INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Department of Public Lands (DPL) intends to amend the Commercial Use of Managaha Island Rules and Regulations pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9104(a) to restrict the consumption of outside food and beverages in the Exclusive Concession Area; restrict certain personal floatation devices in the Designated Swimming Zone; and further define the type of "commercial activity" that may only be provided by the main Concessionaire and a limited number of subconcessionaires mutually agreed upon by DPL and the Concessionaire.

AUTHORITY: These amendments are promulgated under the authority of the Department of Public Lands pursuant to 1 CMC § 2806 to develop administrative policies, procedures, and controls related to public land.

TERMS AND SUBSTANCE: DPL's Commercial Use of Managaha Island Rules and Regulations currently provide that all commercial activity, including conveniences such as food, beverages, recreational equipment, and the like, shall only be provided by the main Concessionaire and a limited number of subconcessionaires, and allow outside food and beverages brought in by visitors for personal consumption. In addition, the regulations do not currently address the use of personal floatation devices. However, Section 16.A of DPL's standard Managaha Island Master Concession Operator Agreement requires the Concessionaire to indemnify and hold harmless DPL for any injuries or losses which occur in the Exclusive Concession Area ("ECA") or which arise out of or in connection with any activities under the Agreement, including the provision of lifeguard services. Revising the regulations to restrict outside food and beverages in the ECA and to restrict personal floatation devices used in the Designated Swimming Zone to those provided by the Concessionaire will allow the Concessionaire to exercise greater control over activities occurring in the ECA and for which the Concessionaire is liable.

In addition, the regulations provide that commercial competition on Managaha Island will be eliminated and provide that the Concessionaire has the exclusive right to operate all commercial concessions, but do not clearly define the scope of commercial activity and concessions included in this right. Revising the regulations will clarify that this exclusive right includes the right to conduct or operate any tour or activity on the Island or departing from the Island, including but not limited to underwater and surface water activities.

CITATION OF AFFECTED REGULATIONS: The proposed amendments will revise existing regulatory language in the following regulations:

NMIAC § 145-30-015	Definitions
NMIAC § 145-30-101	Uses and Privileges

DIRECTIONS FOR FILING AND PUBLICATION: The proposed amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9201(a)(1)) and posted in convenient places in the civic center and in local governmental offices in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

Part 100 – Commercial Use of the Island

§ 145-30-015 Definitions

(a) “Boat and Tour Operators”: Any person(s) who transports tourist(s) to the island for any type of fee or other compensation. (b) “Commercial Activity”: Any activity conducted on the Island for profit (or resulting in profit) by an enterprise or person required to have a business license to conduct the activity.

(b) “Commercial Activity”:

(1) Commercial activity is aAny activity conducted on ~~Managaha~~~~the Island~~ for profit (or resulting in profit) by an enterprise or person required to have a business license to conduct the activity, including but not limited to:

(i) the preparation, delivery, sale, or provision of food and/or beverages on the Island;

(ii) the rental or sale of water sports equipment, recreational equipment, or beach equipment and related supplies;

(iii) the conduct or operation of any tour on Managaha or departing from Managaha, regardless of how or by whom the persons engaging in the activity were first transported to the Island, including any and all underwater activities (e.g., SCUBA diving, SNUBA diving, snorkeling, BOB and sea walker-type tours) and any and all surface water activities (e.g., parasailing, banana boat rides, pedal bikes, power boat lagoon cruises, windsurfing, canoe rentals, canoe tours, kayak rentals, and kayak tours), but not including the provision of mere transportation from Saipan to Managaha and/or from Managaha to Saipan;

(iv) the sale of any goods or services on the Island; and

(v) the provision of entertainment on the Island.

(2) The following examples are offered to illustrate, but not limit, the effect of this section: while they use the activity of parasailing, they are intended to be analogous for other commercial activities as well:

(i) Managaha to Managaha commercial activity: A person on Managaha is picked up from Managaha for parasailing and then is returned to Managaha when the activity is completed. Regardless of how the person was brought to Managaha, how the person was transported to Managaha, where the person was solicited into an agreement to go parasailing, or whether the person is on a package tour that began in Saipan, the activity constitutes a tour departing from Managaha and may only be conducted by the Concessionaire or a subconcessionaire mutually agreed upon by DPL and the Concessionaire.

(ii) Managaha to Saipan commercial activity: The activity is the same as example (i) above, except the person does not return to Managaha and parasails on the return trip to Saipan. The activity still constitutes a tour departing from Managaha and may only be conducted by the Concessionaire or a subconcessionaire mutually agreed upon by DPL and the Concessionaire.

(c) “Commercial photography”: The taking of photographs, films or videos from any type of camera device of any article of commerce or models for the purpose of commercial advertising and shall include all photography to be used for advertisements or for public entertainment and all photography for which a fee is paid, either to the model or actor, or to the photographer. It shall not include any photography by government agencies done on behalf of the Marianas Visitors Authority for the promotion of tourism in the Northern Marianas Islands.

(d) “Commercial Concession”: Any ~~person or facility which prepares, delivers, sells or provides food or beverages on the Island; any facility which rents or sells water sports equipment, recreational equipment, or beach equipment and related supplies; any operation which conducts tours on the Island or from the Island; and, any merchant which sells goods or services~~ conducts commercial activity of any nature on the island.

- (e) "Concessionaire": Whoever DPL awards the Special Recreational Concession to with a formal Agreement who has the exclusive right to operate all commercial concessions on the Island, provide island maintenance, and provide other provision of public services under the Agreement terms.
- (f) "Department": Department of Public Lands ("DPL").
- (g) "Designated Concession Area": That portion of the main pavilion and other areas delineated in exhibit # 1 of the Special Recreational Concession Agreement.
- (h) "Island" or "Managaha": Managaha Island.
- (i) "Regulation": Commercial use of Managaha Island Rules and Regulations.
- (j) "Resident": A person who is domiciled in the CNMI.
- (k) "Subconcessionaire": A subcontracted company with a permit from DPL, approved by both DPL and the Concessionaire, to provide commercial activities such as food service, human powered watercraft or wind powered watercraft on Managaha Island, etc., under the Special Recreational Concession Agreement.
- (l) "Tourist": A person who is not a resident of the CNMI.

§ 145-30-101 Uses and Privileges

- (a) All commercial activity including conveniences such as food, beverages, recreational activity and the like shall only be provided by the main Concessionaire and a limited number of subconcessionaires mutually agreed upon by DPL and the Concessionaire. Outside food and beverages brought in by visitors shall only be allowed for personal consumption and shall not be consumed within the exclusive concession area. Personal floatation devices brought in by visitors shall not be used in the Designated Swimming Area.
- (b) Any commercial activity shall take place only in the designated concession area.
- (c) The exclusive right to operate all commercial concessions does not include the exclusive right to provide transportation to and from the Island; provided, however, that if the Department, in consultation with any other agency determines that the number of tourists visiting the Island must at any present or future time be limited, then the Concessionaire shall carry the number of passengers permitted under the restriction. This, however, is subject to the Concessionaire's privilege of providing transportation to that number of passengers it is entitled to serve meals to, so long as the number of passengers permitted to be carried to Managaha Island is no fewer than the number permitted under any current permit for the Island. In order to ensure that public safety can be maintained and that the Island will not suffer from environmental impacts, the combined number of passengers on the Island shall not exceed 1,000 at any one time, whether they arrived by the Concessionaire's vessel or other boat and tour operators.