

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 12, 2019

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

PSF No.: 18SD-129

OAHU & MOLOKAI

Issuance of Right-of-Entry Permit to Hawaii Marine Mammal Alliance Inc., dba Hawaii Marine Animal Response, for Activities Relating to the Preservation and Recovery of Hawaii's Endangered and Threatened Marine Animal Species on Unencumbered State-Owned Lands Located Seaward of the Shorelines of the Islands of Oahu and Molokai, Including Their Unencumbered Offshore Islets.

APPLICANT:

Hawaii Marine Mammal Alliance Inc., dba Hawaii Marine Animal Response  
("HMMA/HMAR"), a 501(c)(3) non-profit organization.

LEGAL REFERENCES:

Section 171-55, Hawaii Revised Statutes ("HRS"), as amended  
Chapter 195D, HRS, as amended  
Section 205A-1, HRS, as amended  
Endangered Species Act ("ESA"), 16 U.S.C. §1531 et seq. (1973), as amended  
Marine Mammal Protection Act ("MMPA"), 16 U.S.C. §1361 et seq. (1972), as amended

LOCATION:

Unencumbered State-owned lands located seaward of the shoreline, pursuant to §205A-1, HRS, as amended, of the islands of Oahu and Molokai, including any offshore islets that also are classified by the Department as unencumbered.

AREA:

Total land area not available.

ZONING:

State Land Use District: Conservation  
County of Maui CZO: NA  
City & County of Honolulu CZO: NA

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_ NO x

CURRENT USE STATUS:

Unencumbered.

CHARACTER OF USE:

Natural resource protection.

TERM OF RIGHT-OF-ENTRY:

Up to one year, dates to be determined, with possibility of continuation for additional one-year periods, with Chairperson approval, for good cause shown.

CONSIDERATION:

*Gratis.*

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Chapter 343, HRS, Exemption List for the Department of Land and Natural Resources, reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from preparation of an environmental assessment pursuant to:

**Exemption Class 1**, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

**Item No. 51**: "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." (Refer to Exhibit A, Exemption Notification form)

DCCA VERIFICATION:

Applicant is registered as an active, domestic non-profit corporation whose mission is to aid in the preservation and recovery of Hawaii's endangered and threatened marine animal species.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Comply with the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force,
- 2) Carry a current policy of general liability insurance meeting State minimum coverage standards.

BACKGROUND:

Hawaii is home to a variety of endemic marine species existing in delicate balance with the environment. Those whose declining populations have been threatened by extinction are protected by federal law under the Endangered Species Act ("ESA") and/or the Marine Mammal Protection Act ("MMPA"). The United States Fish and Wildlife Service of the Department of the Interior ("USFWS") and the National Marine Fisheries Service ("NMFS") of the National Oceanic and Atmospheric Agency ("NOAA") under the Department of Commerce both share regulatory functions for these laws. Since their staff are limited in numbers, federal funding opportunities ("FFO") are periodically made available to recruit assistance in conservation efforts.

According to its President Jon Gelman, HMMA/HMAR is currently the largest Hawaii-based non-profit organization specializing in marine species conservation and response, with a staff of seven and over 100 volunteers. HMMA/HMAR has been operating since 2016 and is focused on the protected marine species of Oahu and Molokai that are most likely to be encountered and affected by humans due to their natural behaviors and habitats. These include the Hawaiian monk seal, green sea turtle, hawksbill turtle, spinner dolphin, humpback whale and several marine seabird species.

The non-profit is classified by the Internal Revenue Service as a 501(c)(3) public charity, and, through several grant awards, works closely with and in support of the two regulatory agencies USFWS and NMFS which oversee enforcement of the MMPA and ESA. According to NMFS staff, HMMA/HMAR fills the role of volunteer coordinator for conservation support of the targeted marine animals on Oahu and Molokai, enabling the regulatory agency to broaden the reach of its programmatic support system through

the services of the many HMMA/HMAR volunteers.

Through these grant awards and their accompanying cooperative agreements, HMMA/HMAR volunteers have been appropriately trained to provide support services for protected marine species. These services include public outreach and education, reporting of sightings of healthy animals as well as any assessed to be sick or injured, and also the monitoring of NOAA's Hawaii Statewide Marine Animal Stranding, Entanglement, and Reporting Hotline (888-256-9840) which addresses stranded/injured sea turtles, monk seals, dolphins, and whales. Current grant awards include the following:

#### 1. NOAA-NMFS: MONK SEALS

In 2016, HMMA/HMAR was awarded a three-year (06/01/2016 – 05/31/2019) grant and cooperative agreement for their proposal, "Hawaiian Monk Seal Recovery and Marine Mammal Response," submitted through a Federal Funding Opportunity ("FFO") issued by NOAA-NMFS for its fiscal year 2016 Partnerships for Hawaiian Monk Seal Recovery and Marine Mammal Response. In 2019, a three (3) year extension was also granted.

The intention of this FFO was to support specific NMFS programmatic activities related to a) promoting the recovery of endangered Hawaiian monk seals (*Neomonachus schauinslandi*), and b) supporting responses to marine mammal strandings in the Hawaiian Islands. Projects with an educational or outreach component geared to elevate public awareness and build capacity from the community level for Hawaiian monk seal recovery and marine mammal response were also highly sought.

Under the terms of the current grant/cooperative agreement, HMAA/HMAR works closely with NMFS which serves as the federal point-of-contact, provides training, information and literature, allows temporary use of NMFS-owned and authorized marine mammal response and seal protection zone supplies and equipment (used to set up the awareness perimeters), and other support services. NMFS also assumes responsibility for any/all monk seal response involving directed take for animals that have been determined to be stranded under the MMPA and ESA.

#### 2. NOAA-NMFS: SEA TURTLES

In 2017, NOAA-NMFS sought applications for another FFO, the 2017 Pacific Islands Region Marine Turtle Management and Conservation Program. HMM/HMAR again was a successful applicant, receiving a three-year (07/01/2017 – 06/30/2020) grant and cooperative agreement for their proposal entitled "Marine Turtle Management and Outreach." Priority species under this FFO include: Western Pacific leatherback turtle (*Dermochelys coriacea*), hawksbill turtle (*Eretmochelys imbricata*), and green turtle (*Chelonia mydas*). The grant award documentation summarizes their activities thusly:



*HMMA/HMAR provides a volunteer-based stranding response program on the Island of Oahu for dead, injured, or otherwise compromised sea turtles. They also develop, maintain and implement a comprehensive volunteer network that is focused on improving turtle and human interactions through educational outreach. The program receives, processes and manages reports from the public and others concerning sea turtle strandings, and provides fully-trained and vetted volunteers to respond to these strandings in cooperation with existing local NOAA programs.*

### 3. USFWS: SEA TURTLE IN-FIELD OUTREACH AND EDUCATION

In 2018, HMMA/HMAR received a grant award from the USFWS Coastal Program, CFDA Program 15.630, for the Performance Period from 10/01/2018 through 09/30/2020.

The focus of this grant award and Cooperative Agreement, according to USFWS, is as follows. Italicized text is taken *verbatim* from the grant award documentation.

*Background: The Green Turtle, and to a lesser degree, other turtle species are increasingly seen on Oahu's shorelines and in its near shore waters. Much of the public is either unaware of, or is ambivalent to, the endangered status of these animals. As a result, significant human interactions are occurring at an increasing rate. Some of these interactions may be characterized as actual or potential "take" actions as defined by the Endangered Species Act (ESA). Targeted in-field public outreach and education, at specific locations where turtles are often present, is needed to address this gap in public awareness and understanding of these species, their needs, and their conservation status.*

In evaluating HMMA/HMAR's proposal for the USFWS Priority 2: Strengthening Endangered Species Act Implementation, the USFWS characterized the main intention of the grant, aptly summarizing the value of public outreach and education in this context.

*Project Impact: Outreach and education are proven means of engaging the public in support for and participation in conservation efforts on behalf of ESA-listed species. In addition, a unique aspect of HMAR's project is the incorporation of native Hawaiian host culture staff and volunteers in the development of outreach content and the delivery of educational activity in the field. Therefore, this project supports this Service priority.*

### REMARKS:

HMMA/HMAR is dynamic, an active non-profit with a conservation mission. As such, the organization may continue to seek other grants and funding sources in addition to those described above. Although concurrent grants are not prerequisites to right-of-entry on State lands, the ability to maintain formal relationships with the regulatory agencies charged with management of threatened and endangered species is evidence of HMMA/HMAR's dedication to legitimate conservation efforts.

**SHORELINE ACTIVITIES.** The normal behavior of monk seals and sea turtles includes hauling out and resting on shoreline areas near the sea. When such an area is also a popular public beach, it is not uncommon for a crowd of humans to gather. To address potential human-animal interactions that add to the mix of environmental pressures faced by these animals, HMMA/HMAR volunteers may set up “awareness perimeters” between the observers and the observed, as needed, and stand by to answer questions and provide appropriate information. Engaging the concerned or curious public and transferring valuable information can result in more informed human behavior and, hopefully, decrease or eliminate negative human-animal interactions. Additionally, in situations where an animal is discovered to be in poor health due to illness or injury, volunteers can report observations directly to regulatory authorities so that timely medical support can be provided. In these ways, volunteers play very important roles in the overall management of these protected animal species.

**RIGHT-OF-ENTRY.** The activities described above take place on shores of the islands of Oahu and Molokai, where HMMA/HMAR manages its corps of volunteers. Since these areas are primarily unencumbered State-owned lands, a formal right-of-entry (ROE) to unencumbered State-owned lands located seaward of the shoreline, including the unencumbered offshore islets, is requested.

ROE permit conditions should also include an option to allow the right-of-entry permit to be continued on a month-to-month basis for additional one-year periods, pursuant to §171-55, HRS, at the discretion of the Chairperson.

**PERMIT FEES.** Staff recommends that standard fees be waived for the subject right-of-entry permit, as the non-profit is providing community services on a volunteer basis.

**AGENCY COMMENTS.** Requests for comment were sent to the following agencies. Italicized text was taken *verbatim* from agency feedback. Regular text denotes additional notes.

AGENCY	COMMENTS
DLNR-Division of Aquatic Resources	<i>DAR works closely with Hawaii Marine Animal Response, also known as Hawaii Marine Mammal Alliance, Inc. and they are a good organization that fill [sic] a key role in protecting monk seals and turtles in Hawaii. DAR has no concerns with this proposal.</i>
DLNR-Division of Forestry & Wildlife	No comments received.
DLNR-Division of State Parks	No comments received.
DLNR-Office of Conservation & Coastal Lands	<i>If needed, alternate lateral access should be determined (near awareness perimeters).</i>
NOAA-National Marine Fisheries Service	No comments received.

RECOMMENDATION: That the Board

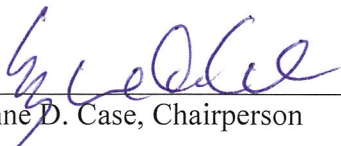
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment; and
2. Authorize the issuance of a right-of-entry permit to Hawaii Marine Mammal Alliance Inc., dba Hawaii Marine Animal Response, for the subject land areas under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
  - B. The Chairperson is authorized to continue the right-of-entry permit for additional one-year periods for good cause shown; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barbara Lee  
Project Development Specialist

APPROVED FOR SUBMITTAL:



N Suzanne D. Case, Chairperson



## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

**Project Title:** Issuance of Right-of-Entry Permit to Hawaii Marine Mammal Alliance Inc., dba Hawaii Marine Animal Response, for Activities Relating to the Preservation and Recovery of Hawaii's Endangered and Threatened Marine Animal Species on Unencumbered State-Owned Lands Located Seaward of the Shorelines of the Islands of Oahu and Molokai, Including Their Unencumbered Offshore Islets.

**Project/Reference No.:** PSF 18SD-129

**Project Location:** Unencumbered State-owned lands located seaward of the shoreline, as defined by §205A-1, HRS, of the islands of Oahu and Molokai, including their unencumbered offshore islets.

**Project Description:** Non-profit organization providing support services to federal and state agencies for marine animal species protected under the Endangered Species Act and the Marine Mammal Protection Act.

**Ch. 343 Trigger(s):** Use of State Land

**Exemption Class and Item Numbers and Descriptions:** In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to

**Item No. 51,** *Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing,* under **Exemption Class 1:** Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Therefore, staff believes that the proposed project would involve negligible or no expansion or change in use beyond that previously existing.

**EXHIBIT A**



<b>Will the Cumulative Impact of Planned Successive Actions in the Same Place Significant?</b>	No. There will be no planned successive actions in the same place. Additionally, the likelihood of occurrence of the same activities in the same location over time is low, so cumulative impacts to any one location are not anticipated to be significant.
<b>Action May Have Significant Impact on Particularly Sensitive Environment?</b>	No. There are no particularly sensitive environmental issues involved with the proposed activities.
<b>Analysis:</b>	The proposed activities will occur only when threatened or endangered marine animal species haul out on shorelines where human presence also occurs. All materials placed to mark "awareness perimeters" will be removed once they are not needed and the animal(s) has departed. As such, the cumulative impacts to the physical environment over time are not anticipated to be significant.
<b>Consulted Parties:</b>	Various government agencies which support conservation of threatened and endangered marine species and/or which share management jurisdiction over coastal areas of Oahu or Molokai. Responses are included in the submittal to the Board of Land and Natural Resources ("Board").
<b>Recommendation:</b>	That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.