

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife

July 12, 2024

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO TEMPORARILY CLOSE MOKU NUI, AN ISLAND IN THE MOKULUA ISLET WILDLIFE SANCTUARY FOR UP TO THREE MONTHS UNDER SECTION 13-126-6, HAWAII ADMINISTRATIVE RULES, FOR PURPOSES OF PROTECTING BIOLOGICAL RESOURCES OF THE AREA

AND

REQUEST FOR DELEGATION OF AUTHORITY TO THE CHAIRPERSON TO TEMPORARILY CLOSE OR RESTRICT THE PUBLIC USE OF ANY WILDLIFE SANCTUARY UNDER SECTION 13-126-6, HAWAII ADMINISTRATIVE RULES, FOR PURPOSES OF PROTECTING BIOLOGICAL, GEOLOGICAL, CULTURAL RESOURCES OF THE AREA OR THE SAFETY AND WELFARE OF PERSONS OR PROPERTY, UNTIL SUCH TIME AS THE BOARD OF LAND AND NATURAL RESOURCES APPROVES OR DISAPPROVES THE CLOSURE OR RESTRICTION

SUMMARY

On June 20, 2024, a Hawaiian monk seal, or 'Īlio holo i ka uaua (*Monachus schauinslandi*) and her newborn pup were observed on Moku Nui, an islet in the Mokulua Islet Wildlife Sanctuary located in the Kailua ahupua'a of the island of O'ahu. The Division of Forestry and Wildlife (Division) recommends temporarily closing the Mokulua Islet Wildlife Sanctuary for up to three months to protect biological resources in the area. This closure would allow for department personnel to establish a perimeter around the monk seal mother and pup for the protection of the seal pup and to protect public safety by minimizing the chance of interaction between the public and the mother seal.

In addition, the Division recommends the Board of Land and Natural Resources (Board) delegate authority to temporarily close or restrict the public use of any wildlife sanctuary to the Chairperson to protect (1) biological, geological, or cultural resources of the area and/or (2) the safety and welfare of persons or property, until such time as the closure can be brought to the Board for approval or disapproval of the closure or restriction, under Hawaii Administrative Rules (HAR) §13-126-6. By delegating the authority to temporarily close or restrict the use of any wildlife sanctuary to the Chairperson, the Department of Land and Natural Resources (Department) can protect resources and/or address public safety issues quickly rather than waiting weeks for a regularly scheduled Board meeting. This delegation would require the Department seek approval from the Board to keep the temporary closure or access restriction to any wildlife sanctuary in place.

BACKGROUND

The state wildlife sanctuary system is comprised of 42 wildlife sanctuaries each of which support sensitive habitats that are home to many indigenous, endemic, rare, and listed species, including montane forests, coastal wetlands, and offshore island ecosystems. Protection and management of wildlife sanctuaries is a key component of the Department's strategy for the management of native ecosystems and the recovery of listed species. Activities within wildlife sanctuaries are regulated under Chapter 13-126, HAR.

On September 9, 2011, the Board approved a request from the Department to delegate authority to issue various permits under Chapter 13-126, HAR, to authorized representatives including the Chairperson, the Division of Forestry and Wildlife Administrator, and the Division Branch Offices (Exhibit A). The Division's request for delegation of authority to temporarily close or restrict the use of wildlife sanctuaries to the Chairperson was removed from this submittal by the Board. Therefore, the Division must get approval from the Board before closing any wildlife sanctuary.

Given the current situation, the Division recommends the Board approve the delegation of authority to temporarily close or restrict the use of wildlife sanctuaries to the Chairperson where the urgency to close the area is needed to safeguard sensitive biological resources and/or to protect public safety. By delegating the authority to temporarily close or restrict the use of any wildlife sanctuary to the Chairperson, the Department can protect resources or address public safety issues quickly rather than waiting weeks for a Board meeting. This delegation would require that the Department follow up to seek approval from the Board to keep the temporary closure or access restriction to any wildlife sanctuary in place.

On June 20, 2024, a Hawaiian monk seal, or 'Īlio holo i ka uaua (*Monachus schauinslandi*), and her pup were observed on Moku Nui, an islet in the Mokulua

Islet Wildlife Sanctuary. Within the last few years, we have observed 'Īlio holo i ka uaua pupping more frequently on beaches popular with residents and visitors. 'Īlio holo i ka uaua are sensitive to people approaching, especially when there is a pup present. 'Īlio holo i ka uaua are protected from take as listed species under state and federal law.¹ The limited space in the landing area on Moku Nui cannot support both public access and seal pupping activities. This closure would allow for department personnel to establish a perimeter around the monk seal mother and pup for the protection of the seal pup and to protect public safety by minimizing the chance of interaction between the public and the mother seal.

DISCUSSION

A. Authority

Pursuant to section 183D-4, Hawaii Revised Statutes (HRS), “*the [D]epartment shall establish, maintain, manage, and operate ... wildlife sanctuaries*” for the “*purposes of preserving, protecting, conserving, and propagating wildlife.*”² Section 183D-2, HRS, provides that the Department shall have the power to manage and regulate all lands set apart as wildlife sanctuaries.³ Section 183D-3, HRS, authorizes the Department to adopt, amend, and repeal administrative rules “*concerning the preservation, protection, regulation, extension, and utilization of, and conditions of entry into wildlife sanctuaries.*”⁴

HAR §13-126-6 provides:

Closing of areas. The board or its authorized representative may close or restrict the public use of all or any portion of a wildlife sanctuary for up to two years, when deemed necessary by the board for the protection of the biological, geological, or cultural resources of the area or the safety and welfare of persons or property, by the posting of appropriate signs indicating the duration, extent, and scope of closure. Closures may be renewed with the approval of the board or its authorized representative.

¹ “A person commits the offense of taking a monk seal if the person intentionally or knowingly takes a Hawaiian monk seal (*Monachus schauinslandi*). Any person convicted of taking a monk seal shall be guilty of a class C felony; provided that in addition to any other sentence, the environmental court may impose a fine up to \$50,000.” HRS §195D-4.5 (2014). “Take” means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wildlife, or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of aquatic life or land plants, or to attempt to engage in any such conduct.” HRS §195D-2 (2011).

² HRS §183D-4(a) (2001).

³ HRS §183D-2(10) (2022).

⁴ HRS §183D-3(a)(1) (2021).

B. Analysis

The Rules Regulating Wildlife Sanctuaries, Chapter 13-126, protect wildlife sanctuary resources by regulating access to sanctuaries, and non-commercial and commercial activities within sanctuaries. Section 13-126-6 authorizes the board or its authorized representative to close or restrict access to wildlife sanctuaries for up to two years under two conditions determined by the board, (1) for the protection of the biological, geological, or cultural resources of the area or (2) for the safety and welfare of persons or property.

Of the 42 designated wildlife sanctuaries, 15 wildlife sanctuaries allow restricted access to certain areas during certain times (Chapter 13-126, HAR, Exhibit 2 "List of RESTRICTED wildlife sanctuaries"). Of the 15 Restricted wildlife sanctuaries, seven wildlife sanctuaries allow commercial activities for a limited number of people (Chapter 13-126, HAR, Exhibit 3 "List of wildlife sanctuaries in which commercial activities may be permitted"). The 15 Restricted wildlife sanctuaries are home to listed species. Mokulua Islets Wildlife Sanctuary allows limited commercial activity and restricted public access to below the highwater mark.

Where the Division expects human and listed species interactions to be unavoidable and time sensitive, the Division sees a need to be able to temporarily close or restrict access to the additional areas. The Division recommends the authority to temporarily close any wildlife sanctuary be delegated to the Chairperson for the purposes of protecting biological resources of the area and/or for the safety and welfare of persons or property. The Division recommends that, because the Board is required to determine the condition of the closure based on (1) the protection of the biological, geological, or cultural resources of the area or (2) the safety and welfare of persons or property, that the Chairperson be authorized to temporarily close or restrict access to any wildlife sanctuary until such time as the Department receives approval or disapproval from the Board.

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RECOMMENDATIONS

That the Board:

1. Approve the temporarily closure of Moku Nui, an island in the Mokulua Islet Wildlife Sanctuary, for up to three months under section 13-126-6, Hawaii Administrative Rules, for purposes of protecting biological resources of the area.
2. Delegate authority to the Chairperson to temporarily close or restrict the public use of any wildlife sanctuary under section 13-126-6, Hawaii Administrative Rules, for purposes of protecting biological, geological, or cultural resources of the area or the safety and welfare of persons or property, until such time as the Board approves or disapproves the closure or restriction.

Respectfully submitted,

Robert Hauff

DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

Exhibit A: Board submittal from September 9, 2011 – Request for delegation of authority to issue permits under Chapter 13-126, Hawaii Administrative Rules, Rules Regulating Wildlife Sanctuaries, to the Chairperson, and the Administrator, and Branch Managers of the Division of Forestry and Wildlife

Exhibit B: Map of Mokulua Islet Wildlife Sanctuary

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

September 9, 2011

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

Land Board Members:

SUBJECT: REQUEST FOR DELEGATION OF AUTHORITY TO ISSUE PERMITS UNDER CHAPTER 13-126, HAWAII ADMINISTRATIVE RULES, RULES REGULATING WILDLIFE SANCTUARIES, TO THE CHAIRPERSON, AND THE ADMINISTRATOR AND BRANCH MANAGERS OF THE DIVISION OF FORESTRY AND WILDLIFE

AND

AUTHORIZE THE CHAIRPERSON, AND THE ADMINISTRATOR AND BRANCH MANAGERS OF THE DIVISION OF FORESTRY AND WILDLIFE TO DETERMINE AND APPROVE CHAPTER 343, HAWAII REVISED STATUTES (HRS) ENVIRONMENTAL COMPLIANCE REQUIREMENTS, INCLUDING APPROVAL OF DECLARATIONS OF EXEMPTIONS, AS APPLICABLE, FOR PERMITS ISSUED UNDER THE RULES REGULATING WILDLIFE SANCTUARIES.

BACKGROUND

The state wildlife sanctuary system is comprised of 42 wildlife sanctuaries that support many of the most sensitive native habitats in the state, including montane forests, coastal wetlands, and offshore island ecosystems. Wildlife sanctuaries provide managed and protected habitat for Hawaii's unique plant and wildlife species and are a key component of the department's strategy for the recovery of endangered species.

Prior to December 2009, activities within wildlife sanctuaries were regulated under Chapter 13-125, Hawaii Administrative Rules (HAR), Rules Regulating Wildlife Sanctuaries. Under those rules, prohibited activities and entry into closed sanctuaries may be allowed by permit issued by the board or its authorized representative. Authorization to issue permits for entry into prohibited sanctuaries was delegated to the Division of Forestry and Wildlife branch biologists.

On December 11, 2009 the Board of Land and Natural Resources unanimously approved the adoption of Chapter 13-126, HAR (Attachment 1), updating the Rules Regulating Wildlife Sanctuaries, and repealing the outdated wildlife sanctuary rules, Chapter 13-125, HAR. The new rules provide a much higher level of protection for wildlife sanctuaries by imposing stricter regulation of entry into and activities within wildlife sanctuaries. Notable changes include:

- A holistic approach for the protection of wildlife *and their habitats*, including plants, geological features, caves, and cultural and historic resources.
- Clarification and addition of rules to enhance enforcement capability.
- Creation of a new regulatory framework for restricted access to certain sanctuaries, for which some level of human use may be allowed without risk to the resources. For the sanctuaries for which this is applicable, the rules specify the restrictions under which human access is allowed, including for example, restricted access to sensitive areas of the sanctuary, during sensitive times, or restrictions on the number of users.
- Addition of many prohibited activities to enhance protection of biological, cultural, and geological resources. Clarification of the permitting process to authorize certain activities that are otherwise prohibited.
- Establishment of a permit and fee process for commercial use of sanctuaries in which commercial use is allowed, with fees to be deposited into the Endangered Species Trust Fund where they can be tracked and used by the Division.
- Authorization to establish visiting hours to protect natural resources.
- Authorization to temporarily close any sanctuary for up to two years to protect resources or public safety.
- Establishes that all sanctuaries are closed from sunset to sunrise (except Kipuka Ainahou).

The purpose of this submittal is to obtain board approval to delegate certain authorities under the new rules, Chapter 13-126, HAR, from the board to the Chairperson and the Division of Forestry and Wildlife.

AUTHORITY

Pursuant to §183D-4, Hawaii Revised Statutes (HRS), the department shall establish, maintain, manage, and operate wildlife sanctuaries for the purposes of preserving, protecting, conserving, and propagating wildlife. Section 183D-2, HRS, provides that the department shall manage and administer the wildlife and wildlife resources of the State, and have the power to manage and regulate all lands which may be set apart as wildlife sanctuaries. Pursuant to §183D-3, subject to Chapter 91, HRS, the department shall adopt, amend, and repeal rules concerning the preservation, protection, regulation, extension, utilization of, and conditions for entry into

wildlife sanctuaries, protecting and conserving wildlife, and setting fees for activities permitted under Chapter 183D.

~~Section 13-126-6, HAR, authorizes the board or its authorized representative to close or restrict the public use of all or any portion of a wildlife sanctuary for up to two years, when deemed necessary by the board for the protection of the biological, geological, or cultural resources of the area or the safety and welfare of persons or property. This section also authorizes the board or its authorized representative to renew any such closure.~~

Section 13-126-7, HAR, authorizes the board or its authorized representative to establish a reasonable schedule of visiting hours for all or portions of any wildlife sanctuary by the posting of appropriate signs indicating the extent and scope of closure.

Section 13-126-9, HAR, authorizes the board or its authorized representative to issue permits to conduct activities otherwise prohibited by chapter 13-126, HAR, for the following purposes:

1. Scientific, research, or education purposes.
2. Conservation and management.
3. Subsistence, traditional, and customary practices by native Hawaiians consistent with the long-term preservation of the wildlife sanctuary resources.
4. Any other purpose consistent with chapter 195D, Hawaii Revised Statutes.

Sections 13-126-9 and 10, HAR, provide detailed standard conditions and procedures for the issuance of permits.

Sections 13-126-50 through 13-126-54, HAR, authorize the board or its authorized representative to issue permits for commercial activities within wildlife sanctuaries, and provide criteria for the issuance of those permits.

ANALYSIS

The Rules Regulating Wildlife Sanctuaries, Chapter 13-126, HAR, protect wildlife sanctuary resources by regulating access to sanctuaries, non-commercial activities within sanctuaries, and commercial activities within sanctuaries. Permits issued pursuant to different sections of the rules are likely to differ with regard to their complexity and potential impacts on wildlife sanctuary resources and public access to those resources. In delegating the authority to issue permits, consideration should be given to the complexity of the permit and the potential impacts the activities have on sanctuary resources. For more potentially impactful permits, for which the analysis of impacts is complex, delegation should be to higher levels of leadership within the department. For less impactful and routine permits, for which the analysis of impacts is straight forward, delegation is appropriate to management levels of leadership. The Division provides the following considerations:

Sections ~~13-126-6~~ and 13-126-7 authorize the board or its authorized representative to close or restrict access to wildlife sanctuaries that are otherwise not restricted. The issuance of such permits may have significant impacts on some users and a determination of impacts on the public

may be complex. The Division recommends that authority to issue such permits be delegated to the Chairperson.

Section 13-126-9 provides for the issuance of permits for activities that are otherwise prohibited under the rules. These include a wide range of activities, but for which the analysis of impacts is generally straightforward. The Division recommends that authority to issue such permits be delegated to the Administrator of the Division of Forestry and Wildlife.

Sections 13-126-4 and 13-126-5 restrict entry into wildlife sanctuaries or portions of sanctuaries. Permits issued under those sections are for access only, and do not authorize any actual activities that may be prohibited by other rules. These permits are generally routine and the potential impacts from their issuance are relatively straightforward to assess. The Division recommends that authority to issue such permits be delegated to the branch managers of the Division of Forestry and Wildlife.

Section 13-126-9(a)(3) provides for the issuance of permits for activities pursuant to subsistence, traditional, and customary practices by Native Hawaiians consistent with the long-term preservation of the wildlife sanctuary resources. These permits typically involve access to otherwise closed or restricted sanctuaries and collection of resources that is otherwise legal. These permits are generally routine and the potential impacts from their issuance are relatively straightforward to assess. The Division recommends that authority to issue such permits be delegated to the branch managers of the Division of Forestry and Wildlife.

Sections 13-126-50 through 13-126-54 authorize commercial activities but those activities do not include any activities that are otherwise prohibited by rule. Impacts from the issuance of these permits are expected to be minimal since the criteria and specific sanctuaries for which they may be issued are already identified in the rules and have undergone extensive public review and consideration. The Division recommends that authority to issue such permits be delegated to the branch managers of the Division of Forestry and Wildlife.

The Division notes that the delegation of authorities to issue permits as identified in table 1 below represent potential procedures that may be followed based on a case-by-case review of permit requests. In some cases, however, such as those dealing with new or unforeseen issues, based on that review, the delegated authority may conclude that a higher authority, or the Board, should review a permit request and determine whether the request should be approved or denied. In those cases the request will be forwarded to the appropriate authority for decision.

The recommendations are summarized in table 1 below.

Table 1. Delegation of authorities under the Rules Regulating Wildlife Sanctuaries, Chapter 13-126, Hawaii Administrative Rules.

Section	Rule	Delegation
13-126-4	Prohibited entry	Branch Manager
13-126-5	Restricted entry	Branch Manager
13-126-6	Closing of areas	Chairperson
13-126-7	Visiting hours	Chairperson

13-126-9	Permits	Administrator
13-126-9(a)(3)	Permits for customary practice	Branch Manager
13-126-50	Commercial activity	Branch Manager
13-126-51	Commercial permit criteria	Branch Manager
13-126-52	Advertisements	Branch Manager
13-126-53	Commercial filming, photography, and videotaping	Branch Manager
13-126-54	Commercial permit suspension and termination	Branch Manager

HRS CHAPTER 343

The Division requests that the Board authorize the department staff identified in table 1 to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for the activities authorized under permits issued pursuant to chapter 13-126, HAR.

Permit requests will be reviewed by the delegated department staff for potential impacts resulting from the requested activities. The delegated staff will make a determination as to whether the activities require preparation of an Environmental Assessment, or, as provided by CH 343, HRS, and chapter 11-200 HAR, determine whether the activities are exempt from the preparation of an Environmental Assessment in accordance with the current Exemption List for the Division of Forestry and Wildlife of the Department of Land and Natural Resources.

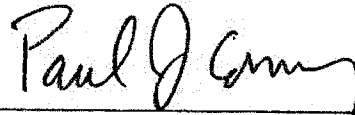
For projects that are eligible for a declaration of exemption, the Division will consult with agencies and individuals having expertise before seeking a project exemption as required under Chapter 11-200, HAR. For projects that require the preparation of an environmental assessment, an environmental assessment for the project will be developed and published.

RECOMMENDATION

The Department recommends that the Board:

1. Delegate the authority to issue permits under the Rules Regulating Wildlife Sanctuaries, Chapter 13-126, Hawaii Administrative Rules to the department chairperson and administrator and branch managers of the Division of Forestry and Wildlife as identified in Table 1.
2. Authorize the department chairperson and administrator and branch managers of the Division of Forestry and Wildlife to determine and approve Chapter 343, Hawaii Revised Statutes (HRS) environmental compliance requirements, including approval of declarations of exemptions, as applicable, for permits issued under the Rules regulating Wildlife Sanctuaries, as detailed in table 1.

Respectfully submitted,



Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

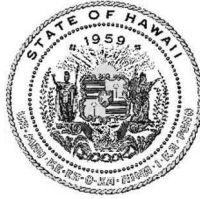
Attachment 1: Chapter 13-126, Hawaii Administrative Rules, Rules Regulating Wildlife Sanctuaries



Moku Nui Closed to Public

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

June 26, 2024

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Division Administrators, Heads of Offices, DOFAW Staff
FROM: David G. Smith, DOFAW Administrator *DGS*
SUBJECT: Acting Administrator, Division of Forestry and Wildlife

I will be on out on sick leave from June 27-July 2, 2024. In my absence, Protection Forester, Robert Hauff will be Acting Administrator.

Your usual courtesy and cooperation to Mr. Hauff will be greatly appreciated.


Acting Administrator - June 27-July 2, 2024

Final Audit Report

2024-06-26

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July 12, 2024, BLNR Meeting- submittal Mokulua Islet closure v5 DGS


Final Audit Report

2024-06-28


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