

Item H-4      REQUEST FOR FINAL APPROVAL TO REPEAL HAWAII  
ADMINISTRATIVE RULES CHAPTER 13-125, RULES REGULATING  
WILDLIFE SANCTUARIES, AND ADOPT CHAPTER 13-126, RULES  
REGULATING WILDLIFE SANCTUARIES

A.      Public input and discussion

In total, there were eighty (80) comments received in writing or at the public hearings regarding the proposed rules changes for wildlife sanctuaries rule.

Of those eighty comments DOFAW received, fifty (50) were in strong support of the proposed rules as written. All but three were very specific, citing the need to protect native resources and cultural sites from human impacts. DOFAW also received a number of helpful technical comments that clarify and improve the rules. All were incorporated or addressed below.

Comment:      The comments consistently cited the need for strong regulations to protect biological and cultural resources in sanctuaries, the need to close and restrict sensitive sanctuaries, and the importance of resource conservation in general.

Discussion:      We acknowledge the overwhelming support for the rules as written and are confident that these rules will greatly enhance wildlife protection in sanctuaries. This response is consistent with a statewide survey conducted in 2005 in which a supermajority of residents expressed strong support for efforts to conserve and protect native wildlife, including support for the establishment of fees for commercial use<sup>1</sup>.

Comment:      Concern that it is not clear what criteria were used to designate sanctuaries as closed, restricted, or commercial, how the limits were identified, and why no limits were established for non-commercial use of restricted sanctuaries.

Discussion:      DOFAW designated sanctuaries based on department priorities for resource protection first, public recreation second, and commercial use third. Sanctuaries were designated closed if they are known or suspected to support especially high biological diversity or sensitive resources, or if entry is a public safety risk. We designated sanctuaries to be restricted in cases where those restrictions are likely to allow human use with low risk to the resources. Enhanced protection from the proposed rules, such as restrictions on camping and visiting hours, is expected to be sufficient to protect the resources in those cases. We intend to monitor resources

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<sup>1</sup> Teel TL, Dayer AA. 2005. Preliminary state-specific results from the research project entitled “Wildlife values in the west 2004.” Fort Collins: Human Dimensions in Natural Resources Unit, Colorado State University, [http://warnercnr.colostate.edu/images/docs/hdnr/Hawaii\\_Final\\_Report\\_3\\_06.pdf](http://warnercnr.colostate.edu/images/docs/hdnr/Hawaii_Final_Report_3_06.pdf)

where human activities are high and will take further steps to restrict activities where necessary.

Comment: Concern that the high water mark not enforceable.

Discussion: The mean high water mark is a clear geological feature that is generally apparent and has biological significance as the point at which terrestrial flora and fauna become limited in suitable habitat. We have consulted with DOCARE and our managers on this and they are comfortable with this rule. We will use signs and other markers.

Comment: Questions on restrictions for particular sanctuaries seeking more details on where access is allowed, requesting a map.

Discussion: Placing a map in the rules with specific trails constrains management options. Routine operations require that trails sometimes be discontinued and others newly established to protect resources that may be impacted from human use. We prefer to maintain the flexible approach of using signage to designate trails for use.

Comment: Concerns about the commercial permit process, recommending that requirements for permits under 13-126-9 be also required for commercial permits.

Discussion: The purpose of the permits issued under 13-126-9 are to authorize activities for science, research, education, conservation, or cultural practice that are otherwise prohibited in the rule. For this reason, strict requirements are in place to ensure resource protection. Commercial permits do not authorize activities that are otherwise prohibited by rule.

Comment: Concerns that affected communities be involved in decisions to issue commercial use permits, particularly for Kawainui.

Discussion: We recognize the strong community concerns and desire for involvement in any commercial activities. We intend to work closely with the communities, neighborhood boards and other interested parties to develop the commercial permit system for that and other sanctuaries.

Comment: Concern that permits issued for educational purposes are strictly evaluated to ensure they meet that purpose.

Discussion: This is addressed in 13-126-10. Applications for Permits.

Of the eighty comments DOFAW received, seventeen (17) were from individuals with concerns about the establishment of commercial fees for kayak rentals. Specific comments with concern about commercial fees were for the use of kayaks on Oahu:

Comment: Concerns about the costs. Some cited a perceived burden on the vendors, although one comment stated that the fees were too low, and one recommended that all users require permits (and presumably pay fees).

Discussion: Following an analysis of the numbers of users that visit the islets we have revised the fees to charge \$5/person for individuals that visit the islet as part of a guided group commercial tour, and \$3/person for individuals that rent commercial kayaks and visit the islets independent of a guide.

These fees are estimated to be approximately 4-10% of the cost to the consumer for the commercial activity. The fees are well within generally accepted limits and are not expected to inhibit any customers from renting a kayak or signing up for a guided tour.

The fee levels were set to be consistent with the fees for commercial use of the trail system and to address the management needs associated with commercial use impacts to the sanctuaries.

The fees will be applied towards education, outreach, and enforcement to minimize human impacts on the islets, as well as to support active conservation and restoration of the sites. This will increase the intrinsic value of the islets, enhance the experience both directly and vicariously for residents and visitors, and as a destination increase the value of the kayak companies' product.

DOFAW met with the two largest kayak rental vendors in Kailua to discuss and seek their assistance to develop a simple permit system that would minimize impacts to businesses and customers. We have developed a plan to establish a simple on-line system to purchase entry authorizations. This will be done by the vendor and will be incorporated into the purchase of the rental.

Comment: Concerns about the practical aspects of the commercial permitting system and that the permitting system would prohibit or curtail their ability to rent a kayak and visit the islets.

Discussion: We have developed a plan to establish a simple on-line system to purchase entry authorizations. This will be done by the vendor and will be incorporated into the purchase of the rental. The proposed limit guidelines are above current use and should place no restrictions on users or vendors at this time.

Comment: Questions about the purpose, need, or legality of the commercial use fees for kayaks and questioned why it is applied only to commercial kayak users.

Discussion: The purpose of the proposed commercial fees is to assess a user entry fee from those users with the greatest impacts in order to monitor and limit negative impacts and improve management and enforcement.

The commercial user group constitutes 87% of total visitors. Commercial kayak users to the Mokulua and Popoia islets constitute by far the biggest human impacts. Most are individuals that rent from the commercial vendors and visit the islets on their own. A smaller subset visit the islands as part of a guided tour by the same rental companies. Some of the most common impacts, including littering and harassment of seabirds, are mostly caused by visitors using rental kayaks to access the islets.

The Office of the Attorney General advises that statutory authority for these entry fees is provided by §§183D-3 (1) and (4).

Comment: Questions as to how the limits were determined and whether information on impacts was used to make the determination.

Discussion: DOFAW obtained information on the numbers of users and set the limits at current use. DOFAW intends to monitor use and impacts into the future to ensure resource protection. There is a strong indication that the cumulative effects of impacts are not determined only by the nature of the activities, but also by the volume of visitors, which is dominated by commercial use. There is clear evidence that limiting the number of people utilizing an area, such as a trail on Popoia, resulted in the return of native vegetation, including rare species, to the denuded area.

Comment: Concern that Popoia and Mokulua would count as two islands for the fees.

Discussion: This is a misunderstanding. The fee of \$3/person/rental could be used to go to both islets.

Comment: Opposed to commercial activities on Mokuauia. (one comment)

Discussion: DOFAW received only one comment opposed to this and does not anticipate significant negative impacts from this rule at this time. DOFAW disagrees with the sentiment that all commercial activities have negative impacts. In fact, our experience as managers has found many cases where commercial activities resulted in improved management assistance from the users. Presently there are no commercial operators at

Mokuauia. If and when a permit for such activity is requested, the Department will establish strict guidelines for the activities to ensure that they are compatible with the purpose of the sanctuary system.

Comment: Establish a market share system to issue kayak permits.

Discussion: At this time, the limit on the number of vessel visits to those islets exceeds the use. At this time, no vendor will be limited in the number of permits issued.

If use reaches the limit sometime in the future, then DOFAW will develop an RFP or other system to issue limited permits on a merit basis. §13-126-51(a) provides that “If there is a great demand for commercial permits, the board or its authorized representative may determine a method by which commercial operators may be issued permits.”

Comment: Kayak permits should be transferable.

Discussion: There is no advantage to transferring permits since they are presently issued on an equitable basis and not by RFP or other merit system. Any vendor that meets the basic liability and safety criteria is eligible for permits.

Comment: Recommendation for a number of basic requirements for commercial permits to ensure insurance for liability and safety of operations.

Discussion: DOFAW agrees. Basic insurance requirements and safety protocols will be established.

Comment: Requested that the limit for the number of commercial visitors be increased.

Discussion: DOFAW made an amendment to increase the previously proposed limit from 100 to 200 vessel visitors per day.

Comment: Commercial kayak entry fees be limited to visitors in groups of guided tours, and exclude visitors that rent off site and visit independently of a guided tour.

Discussion: Visitors that rent kayaks off site and visit independent of a guided group constitute approximately 80% of commercial users and therefore have a significant negative impact on the islets. The purpose of the fees is to assess a user entry fee from the highest impact users in order to offset, limit, and monitor impacts. The amounts set for the fees are designed to provide sufficient revenue to employ resource management and outreach

personnel. Removing the fees from 80% of the commercial users would not provide sufficient revenue for this purpose.

**Comment:** Concern that the vendor would be cited for a customer that visited a sanctuary without authorization and recommended we cite the visitor rather than the vendor.

**Discussion:** DOFAW has determined that it is important that the vendor be held responsible in order to facilitate compliance. Therefore, if a commercially owned non-permitted vessel is in a wildlife sanctuary, the citation is issued to the vendor. DOFAW proposes that the vendor contractually notify the customer that entry fees are required to access the wildlife sanctuaries, then if cited the vendor may charge the customer's credit card for the citation. This is similar to rental car companies that advise customers that they are responsible for parking tickets and charge the customer for any citation received on the car.

Of those eighty comments DOFAW received, thirteen (13) were regarding the addition of Kapapa Islet to the sanctuary system. All of these comments expressed concern or opposition to restrictions on recreational use of Kapapa Islet, especially with regard to overnight fishing and camping.

**Comment:** Most opposed and none supported the authorization of commercial activities on the islet. One comment opposed commercial activities in all wildlife sanctuaries.

**Discussion:** In response to the opposition to opening Kapapa to commercial use, the department agrees and is revising the rule to not allow commercial activities on Kapapa.

**Comment:** Long-standing tradition of recreational use of the island that includes some activities that would be prohibited under the new rules, such as overnight camping and use of fires.

**Discussion:** Most traditional recreational activities will still be allowed under the proposed rules, including fishing, gathering of marine and intertidal resources, and landing vessels.

Camping and fires are detrimental to the resources and not consistent with the purpose of the wildlife sanctuaries. Seabirds using Kapapa for nesting are nocturnal on land, coming in after dusk and leaving before dawn. Nocturnal human activity and lights interfere with nesting and chick rearing behavior and may deter birds from landing on the islet. Tents are often raised in fragile seabird nesting areas, and people walking across areas with seabird burrows are likely to step onto and crush burrows.

Comment: Concerns for protection of the resources of the islet but questioned the need for the rules or some aspects of them, citing community action or other rules protecting wildlife.

Discussion: The purpose of the wildlife sanctuary system is to protect the most sensitive native habitats in the state for the long-term integrity of their biological and cultural resources. Kapapa is an important component of this assemblage, providing habitats for native flora and fauna, and having a long history of cultural significance.

Kapapa is currently a biological sink that attracts seabirds to a location where they suffer high documented annual mortality. Despite the responsible intentions and efforts of many users, the island suffers from heavy significant human impacts.

Kapapa has been heavily impacted by damaging human use and is in need of measures to increase protection. Current impact of human use includes trampling of seabird burrows, predation by dogs, seabird entanglement in fishing gear, and desecration of the archeological sites.

Kapapa has produced less than 10% of the number of Wedge-tailed shearwater chicks produced on Mokuauia. Current rules and statutes do not effectively prevent take, disturbance, nor provide any protection to habitat. The Department received very strong support for the rules, including the addition of Kapapa for the purpose of resource protection.

Comment: Opposed to the use of the Kapapa Islet for conservation, suggesting the resources do not merit conservation, are not threatened, or impacted, or stating that wildlife conservation should not be the primary purpose of Kapapa Islet.

Discussion: Shoreline development and introduced species have left the offshore islets as some of the last refuges for nesting seabirds and their coastal biological communities. Well-documented human-caused mortality to shearwaters indicates that without protection the population would not be able to persist. Shearwater populations are sensitive to chronic disturbance and mortality at the breeding sites.

Comment: Want to help with stewardship of the island, taking care of resources and cleaning trash.

Discussion: DOFAW recognizes the value and importance of community stewardship of Kapapa and intends to work closely with the community to protect the island.

Under the proposed rules, the Department may issue permits for activities that are otherwise not authorized under the rules for the purposes of research, education, science, conservation, and cultural practice. Individuals or community groups wishing to participate in the stewardship of the islet can apply for such permits.

**Comment:** Suggested the need for community involvement in management planning and implementation for the islet.

**Discussion:** The Department recognizes that community stewardship can be an effective way to manage the islet. We have begun meetings with interested community members to establish a partnership for community stewardship.

If these rules are adopted, we will involve the community in the development and implementation of a management plan, seek to establish a community stewardship hui, and establish an advisory committee composed of community members. The proposed rules will not hinder the establishment of community stewardship.

#### B. Changes to draft rules based on input

1. Fees for rental kayaks were too high. The draft rule is being revised to lower costs for rental kayaks to be \$3 per single passenger kayak (versus \$5 in draft), and \$6 per double passenger kayak (versus \$10 in draft).
2. Visitor limits per day are too low for Popoia and Mokulua Islet. The rules will be revised to change and increase the daily use to 200 vessels per day. That will meet the current high season needs of the commercial users.
3. Oppose commercial use of Kapapa Islet. DOFAW removed Kapapa from the list of commercial use sanctuaries.

**C. Recommendations for Item H-4:**

“That the Board of Land and Natural Resources

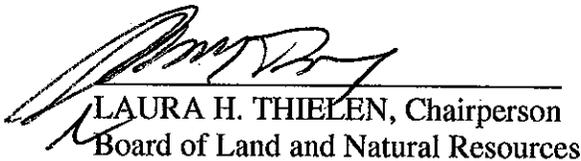
1. Grant approval to repeal Hawaii Administrative Rules, Chapter 13, §13-125, Rules Regulating Wildlife Sanctuaries, and adopt Chapter 13, §13-126, Rules Regulating Wildlife Sanctuaries as amended after public hearings.
2. Authorize the Chairperson, once approved as to form by the Attorney General, to sign for adoption the proposed administrative rules, to submit to the Governor for approval, and to submit to the Office of the Lieutenant Governor for filing.”

Respectfully submitted,



PAUL J. CONRY  
DOFAW Administrator

Approved for Submittal:



LAURA H. THIELEN, Chairperson  
Board of Land and Natural Resources