

STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

July 10, 2015

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT: REQUEST FOR APPROVAL TO ADOPT A NEW SECTION UNDER HAWAII ADMINISTRATIVE RULES AS TITLE 13 CHAPTER 123 SECTION 21.2 TO RESTRICT USE OF AND ACCESS TO PORTIONS OF PUBLIC HUNTING AREAS, UNITS A AND K, MAUNA KEA, HAWAII ISLAND, THROUGH EMERGENCY RULEMAKING PROCEDURES TO PROTECT AGAINST IMMINENT PERIL TO PUBLIC SAFETY AND NATURAL RESOURCES .**

THE RULE CAN BE REVIEWED ONLINE AT [HTTP://LTGOV.HAWAII.GOV/THE-OFFICE/ADMINISTRATIVE-RULES/](http://ltgov.hawaii.gov/the-office/administrative-rules/) OR CAN BE REVIEWED OR OBTAINED IN PERSON AT THE DIVISION OF FORESTRY AND WILDLIFE (DOFAW) OFFICES ON OAHU AT 1151 PUNCHBOWL ST. ROOM 325 HONOLULU, HAWAII, 96809 OR ON HAWAII ISLAND AT 19 E. KAWILI STREET, HILO, HAWAII 96720 FROM 8:00 AM TO 3:30 PM, MONDAY THROUGH FRIDAY, EXCEPT HOLIDAYS.

Submitted for your consideration and approval is a request to adopt Hawaii Administrative Rules (HAR), Title 13, Chapter 123, section 21.2, via emergency rulemaking, provided for under section 91-3, Hawaii Revised Statutes, to address threats to public safety and impacts to natural resources, occurring within portions of public hunting areas, Units A and K, Mauna Kea, Hawaii Island, resulting from unauthorized activities occurring within those units.

**BACKGROUND**

Public Hunting Area, Unit A, on Hawaii Island, comprises lands within the Mauna Kea Forest Reserve and Game Management Area, as well as lands included in the Mauna Kea Science Reserve. Portions of Public Hunting Area, Unit K, the Mauna Kea Ice Age Natural Area Reserve,

are located within interior portions of Unit A on the upper slopes of Mauna Kea. Those Public Hunting Areas contain numerous sensitive natural resources, including indigenous plants and animals, geological features, and cultural sites, which are protected under state laws. Those Public Hunting Areas are also located in remote and high elevation areas subject to natural hazards and extreme and inclement weather.

Within the last two weeks, increasing numbers of persons have established overnight long term occupancy of portions of those Public Hunting Areas that includes the establishment of structures and facilities, including tents, encampments, and other shelters, portable rest room facilities, and various related amenities. The long term residency of those areas by such persons currently poses a risk to public safety by establishing the presence of persons in those very remote areas where they may expose themselves and others to hazardous conditions and severe weather. Numerous law enforcement actions have taken place in recent days, placing staff, officers, and the public at risk. The presence of such persons is also resulting in impacts to the natural resources through trampling and other direct impacts, as well as by the accumulation of waste, litter, and other disposables.

Consultation with law enforcement and other appropriate entities indicates that the detrimental impacts occurring as a result of this situation are likely to continue and that current administrative rules do not provide an immediate and effective means of addressing the threats posed by those activities to public safety and natural resources.

## AUTHORITY

The Department of Land & Natural Resources has been delegated the power and duty to “manage and regulate all lands which may be set apart as game management areas, public hunting areas, and wildlife sanctuaries.”<sup>1</sup> To carry out these duties, the Department is authorized to promulgate rules, “Concerning the preservation, protection, regulation, extension, and utilization of, and conditions for entry into wildlife sanctuaries, game management areas, and public hunting areas designated by the department.”<sup>2</sup>

Chapter 91, HRS, provides the general procedures for administrative agencies to adopt rules within their statutory authority. In most situations, “prior to the adoption of any rule authorized by law,” an agency must “give at least thirty days’ notice for a public hearing,” and “afford all interested persons opportunity to submit data, views, or arguments,” all of which must be “fully considered” prior to the agency’s decision on adopting the rule.<sup>3</sup> However, if “an agency finds an imminent peril... to public health, safety, ... or natural resources requires adoption, amendment, or repeal of a rule upon less than thirty days’ notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting of the abbreviated notice and hearing on the

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<sup>1</sup> HRS §183D-2

<sup>2</sup> HRS §183D-3

<sup>3</sup> HRS §91-3(a).

Internet as provided in section 91-2.6, as it finds practicable<sup>4</sup> to adopt an emergency rule to be effective for a period no longer than one hundred twenty days without renewal.<sup>5</sup>

## PURPOSE

The Division of Forestry and Wildlife proposes to adopt emergency rules prohibiting the possession and use of the following items: backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, and entry into and remaining in, portions of the Public Hunting Areas, Units A and K, on Hawaii Island, from 8 p.m. to 5 a.m., for the portions of the public hunting area within one mile of the Mauna Kea Observatory Road, indicated in Exhibit A and referred to here as the “Restricted Area”. The Division is proposing these rules to address impacts to natural resources that are occurring in those units due to the presence of permanent encampments and their associated structures, facilities, activities, and impacts, as well as to eliminate the risks posed to public safety that result from the presence of numerous individuals that remain in those areas after dark, where they may place themselves and others at risk due to the remote nature of the areas and the possible impacts from hazardous conditions and inclement weather.

The Division recognizes that certain members of the public wish to access the subject public hunting areas and does not intend to impede such activities if conducted in a safe manner that does not jeopardize public safety and natural resources. We are, therefore, proposing an emergency rule that will restrict access to those areas during 8 p.m. to 5 a.m,

The proposed rules are attached as **Exhibit A**.

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<sup>4</sup> The Department has found it practicable to post abbreviated notice of the proposed emergency adoption of HAR chapter 13-123-21.2 on the Internet pursuant to HRS §91-2.6. The proposed rules can be viewed online at: <http://dlnr.hawaii.gov/dar/rules-and-public-notice/>

<sup>5</sup> HRS §91-3(b) (emphases added).

RECOMMENDATIONS:

“That the Board find that there is an imminent peril to public safety and the state’s natural resources related to the presence of persons in portions public hunting areas, Units A and K, Mauna Kea, Hawaii, as identified in Exhibit A, and referred to as the “Restricted Area”, between the hours of 8 p.m. and 5 a.m., which requires adoption of a rule upon less than thirty days’ notice of hearing.”

“That the Board approve the adoption of Hawaii Administrative Rules, Chapter 13-123-21.2, Prohibited Activities, for portions of Public Hunting Areas, Units A and K, Mauna Kea, Island of Hawaii, as indicated in Exhibit A”.

Respectfully submitted,



SCOTT FRETZ, Acting Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL

*For*   
SUZANNE CASE, Chairperson  
Board of Land and Natural Resources