

CHAPTER 6K
KAHO`OLAWA ISLAND RESERVE

Section

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Note

L 2014, c 218, §8 purports to amend this chapter.
Commission to submit a financial self-sufficiency and sustainability plan to 2017 legislature. L 2016, c 72, §2.

Cross References

Conclusive presumptions; unexploded ordnance on Kaho`olawe and in the ocean adjacent to Kaho`olawe, see §662-18.

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Case Notes

Administrative rules pertaining to entrance into the Kaho`olawe island reserve did not: (1) abridge defendants' constitutional right to engage in traditional and customary Hawaiian practices; or (2) unconstitutionally burden defendants' right to practice their religion. 132 H. 36, 319 P.3d 1044 (2014).

Complaints filed by the State against defendants for the offense of entrance into the Kaho`olawe island reserve dismissed without prejudice because the complaints did not allege the requisite state of mind of intentionally, knowingly, or recklessly. 132 H. 36, 319 P.3d 1044 (2014).

Where the defendants' purpose was to claim and manage, control, and subsequently occupy Kaho`olawe, the defendants' intent to communicate through their presence on Kaho`olawe could

not be deemed "speech" for purposes of the First Amendment freedom of speech protections. 132 H. 36, 319 P.3d 1044 (2014).

[\$6K-1] Administration of chapter. The Kaho'olawe island reserve commission and the department of land and natural resources shall administer this chapter. [L 1993, c 340, pt of §2]

[\$6K-2] Definitions. As used in this chapter, unless the context otherwise requires:

"Commission" means the Kaho'olawe island reserve commission.

"Department" means the department of land and natural resources.

"Island reserve" means the area designated as the island of Kaho'olawe and the submerged lands and waters extending seaward two miles from its shoreline.

"Waters" means the area extending seaward two miles from the shoreline. [L 1993, c 340, pt of §2]

[\$6K-3] Reservation of uses. (a) The Kaho'olawe island reserve shall be used solely and exclusively for the following purposes:

- (1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes;
- (2) Preservation and protection of its archaeological, historical, and environmental resources;
- (3) Rehabilitation, revegetation, habitat restoration, and preservation; and
- (4) Education.

(b) The island shall be reserved in perpetuity for the uses enumerated in subsection (a). Commercial uses shall be strictly prohibited. [L 1993, c 340, pt of §2]

§6K-4 Powers and duties. The department and other departments and agencies of the State shall be subject to the oversight of the commission with regard to the control and management of the island reserve. Subject to section 6K-6, the department shall:

- (1) Implement controls and permitted uses for the island reserve;
- (2) Enforce this chapter;
- (3) Provide administrative support to the commission; and

- (4) Authorize those of its employees as it deems reasonable and necessary to serve and execute warrants and arrest offenders or issue citations in all matters relating to enforcement of the laws and rules applicable to the island reserve. [L 1993, c 340, pt of §2; am L 1994, c 161, §3]

[\$6K-4.5] Procurement; exemptions. Contracts made by the commission for the procurement of food or fuel products necessary to carry out the purposes of this chapter shall be exempt from chapter 103D; provided that the commission shall continue to comply with any reporting requirements under chapter 103D or rules adopted thereunder for contracts entered into pursuant to this section. [L 2010, c 159, §§1, 4; am L 2013, c 244, §2]

§6K-5 Commission. (a) There is established the Kaho'olawe island reserve commission to be placed within the department of land and natural resources for administrative purposes as provided in section 26-35. The commission shall consist of seven members to be appointed in the manner and to serve for the terms provided in section 26-34; provided that:

- (1) One member shall be a member of the Protect Kaho'olawe Ohana;
- (2) Two members shall be appointed by the governor from a list provided by the Protect Kaho'olawe Ohana;
- (3) One member shall be a trustee or representative of the office of Hawaiian affairs;
- (4) One member shall be a county official appointed by the governor from a list provided by the mayor of the county of Maui;
- (5) One member shall be the chairperson of the board of land and natural resources; and
- (6) One member shall be appointed by the governor from a list provided by native Hawaiian organizations.

(b) The governor shall appoint the chairperson from among the members of the commission.

(c) The members of the commission shall serve without pay but shall be reimbursed for their actual and necessary expenses, including travel expenses, incurred in carrying out their duties.

(d) Any action taken by the commission shall be approved by a simple majority of its members. Four members shall constitute a quorum to do business.

(e) The commission, without regard to the requirements of chapter 76, may hire employees necessary to perform its duties. [L 1993, c 340, pt of §2; am L 1994, c 161, §4; am L 2000, c 253, §150]

§6K-6 Responsibilities and duties of the commission. The general administration of the island reserve shall rest with the commission. In carrying out its duties and responsibilities, the commission:

- (1) Shall establish criteria, policies, and controls for permissible uses within the island reserve;
- (2) Shall approve all contracts for services and rules pertaining to the island reserve;
- (3) Shall provide advice to the governor, the department, and other departments and agencies on any matter relating to the island reserve;
- (4) Shall provide advice to the office of planning and the department of the attorney general on any matter relating to the federal conveyance of Kaho'olawe;
- (5) May enter into curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices for the purposes stated in section 6K-3;
- (6) Shall carry out those powers and duties otherwise conferred upon the board of land and natural resources and the land use commission with regard to dispositions and approvals pertaining to the island reserve. All powers and duties of the board of land and natural resources and the land use commission concerning dispositions and approvals pertaining to the island reserve are transferred to the commission;
- (7) Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the county of Maui by chapter 205A. The powers and duties of the county of Maui and its agencies concerning coastal zone dispositions and approvals pertaining to the island reserve are transferred to the commission;
- (8) Shall carry out those powers and duties concerning the island reserve otherwise conferred upon the island burial councils and the department with regard to proper treatment of burial sites and human skeletal remains found in the island reserve;
- (9) Shall adopt rules in accordance with chapter 91 that are necessary for the purposes of this chapter and shall maintain a record of its proceedings and actions;
- (10) May delegate to the executive director or employees of the commission, by formal commission action, such power and authority vested in the commission by this

- chapter as the commission deems reasonable and proper for the effective administration of this chapter; and
- (11) May solicit and accept grants, donations, and contributions for deposit into the Kaho'olawe rehabilitation trust fund to support the purposes of this chapter. [L 1993, c 340, pt of §2; am L 1994, c 161, §5; am L 1996, c 299, §3; am L 1997, c 205, §1; am L 2001, c 126, §1]

[\$6K-7] Fishing. Section 6K-3 notwithstanding, the commission shall adopt rules pursuant to chapter 91 to permit fishing in the waters around Kaho'olawe that are consistent with the purpose of this chapter and that take into consideration the health and safety of the general public. [L 1993, c 340, pt of §2]

§6K-8 Penalty. Any person who violates any of the laws or rules applicable to the island reserve shall be guilty of a petty misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both, for each offense. Each day of each violation shall be deemed a separate offense. [L 1993, c 340, pt of §2; am L 1997, c 66, §2]

Case Notes

Cited: 132 H. 36, 319 P.3d 1044 (2014).

[\$6K-8.5] General administrative penalties. (a) Except as otherwise provided by law, the commission is authorized to set, charge, and collect administrative fines, or bring legal action to recover administrative costs of the commission or the department, or payment for damages, or for the cost to correct damages resulting from a violation of chapter 6K or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, by a fine of not more than \$10,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$15,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$25,000.

(b) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of natural resource or any historic property taken, killed, injured, broken, or damaged in violation of any rule adopted under this chapter. For purposes of this section, "natural resource" includes any archaeological

artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds. Also for purposes of this section, "historic property" means any building, structure, object, districts, area, or site, including heiau and underwater site, which is over fifty years old.

(c) Any criminal penalty for any violation of this chapter or any rule adopted under this chapter shall not be deemed to preclude the commission from bringing a civil legal action to recover additional administrative fines and costs. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted under this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.

(d) In any judicial proceeding to recover an administrative penalty imposed, the commission need only show that notice was given, that a hearing was held or the time granted for requesting a hearing has run without such a request, that an administrative penalty was imposed, and that the administrative penalty remains unpaid. [L 1997, c 66, §1]

[\$6K-8.6] Administrative violation system. With the mutual consent of both the commission and the department, the commission may use the civil natural resource violations system of the department of land and natural resources; provided that the commission shall act whenever the board is authorized to act, to process violations of chapter 6K or any rules adopted thereunder. [L 2004, c 142, §3]

Cross References

Civil natural resource violations act, see chapter 199D.

[\$6K-9] Transfer. Upon its return to the State, the resources and waters of Kaho'olawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.

All terms, conditions, agreements, and laws affecting the island, including any ongoing obligations relating to the clean-up of the island and its waters, shall remain in effect unless expressly terminated. [L 1993, c 340, pt of §2]

§6K-9.5 Kaho'olawe rehabilitation trust fund. (a) There is created in the state treasury a trust fund to be designated as the Kaho'olawe rehabilitation trust fund to be administered by the department with the prior approval of the commission. Subject to Public Law 103-139, and this chapter:

- (1) All moneys received from the federal government for the rehabilitation and environmental restoration of the island of Kaho'olawe or other purposes consistent with this chapter;
- (2) Any moneys appropriated by the legislature to the trust fund;
- (3) Any moneys received from grants, donations, or the proceeds from contributions; and
- (4) The interest or return on investments earned from moneys in the trust fund,

shall be deposited in the trust fund and shall be used to fulfill the purposes of this chapter.

(b) The commission may use moneys in the trust fund to carry out the purposes of this chapter, including hiring employees, specialists, and consultants necessary to complete projects related to the purposes of this chapter.

(c) Moneys deposited into or appropriated to the trust fund shall remain available until they are obligated or until the trust fund is terminated.

(d) If the trust fund is terminated, all funds shall be transferred to the general fund; provided that all unexpended or unencumbered balances shall be disbursed in accordance with any requirements set by funding sources and for purposes consistent with this chapter.

(e) The commission shall submit an annual report on the status of the Kaho'olawe rehabilitation trust fund to the legislature, no later than twenty days prior to the convening of each regular session of the legislature. The annual report shall include the total number of and amount of grants, donations, and contributions received and balances remaining on June 30 of each year. [L 1994, c 161, §2; am L 2001, c 126, §2]

[§6K-10] Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the

provisions of this chapter are severable. [L 1993, c 340, pt of
§2]