

JAN 22 2010

A BILL FOR AN ACT

RELATING TO THE HAWAIIAN MONK SEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaiian monk seal is one of the rarest
2 marine mammals in the world, and among the world's most
3 endangered species. The monk seal population is currently
4 declining at four per cent annually and is estimated at fewer
5 than one thousand two hundred individuals. Food limitations,
6 entanglements in marine debris, and human interactions including
7 being caught as bycatch in fishing gear, mother-pup disturbance
8 on beaches, and exposure to disease all threaten the remaining
9 population.

10 In 2008, the Hawaiian monk seal was designated as the
11 State's mammal to increase awareness of it as an endangered
12 species with the hope that this awareness would result in
13 increased protection and its repopulation. Although the main
14 Hawaiian island seals are a small population, they are a much
15 healthier population and are slightly increasing in numbers
16 rather than declining like the larger northern Hawaiian island
17 population.



1 Two recent incidents of intentionally killed monk seals on
2 Kauai and one on Molokai have brought attention to the human
3 threat to the seals. In September, a Kauai man plead guilty to
4 shooting a seal in violation of the federal Endangered Species
5 Act. The man received a ninety-day jail term, one year
6 supervised release, and a twenty-five dollar fine. The
7 legislature finds that this sentence is not sufficient to deter
8 future harassment of Hawaiian monk seals. In order to protect
9 the seals from future harassment and death, greater penalties
10 need to be imposed.

11 The purpose of this Act is to:

- 12 (1) Establish the intentional or knowing taking of an
13 Hawaiian monk seal as a class C felony; and
14 (2) Provide a private right of action against persons who
15 violate the laws or rules regarding the conservation
16 of aquatic life, wildlife, and land plants, which
17 includes the protection of the Hawaiian monk seal.

18 SECTION 2. Section 195D-9, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§195D-9 Penalty.** (a) Any person who violates any of the
21 provisions ~~[of]~~ of this chapter ~~[of]~~ or the provisions of any



1 rule adopted hereunder shall be guilty of a misdemeanor and
2 shall be punished as follows:

3 (1) For a first offense by a fine of not less than \$250 or
4 by imprisonment of not more than one year, or both;
5 and

6 (2) For a second or subsequent offense within five years
7 of a previous conviction by a fine of not less than
8 \$500 or by imprisonment of not more than one year, or
9 both.

10 (b) In addition to the above penalties, except for
11 violations under approved habitat conservation plans under
12 section 195D-21 or approved safe harbor agreements under section
13 195D-22 as determined by the board, a fine of \$5,000 for each
14 specimen of a threatened species and \$10,000 for each specimen
15 of an endangered species intentionally, knowingly, or recklessly
16 killed or removed from its original growing location, shall be
17 levied against the convicted person.

18 (c) The disposition of fines collected for violations of
19 the provisions concerning wildlife conservation shall be subject
20 to section 183D-10.5.

21 (d) Except as otherwise provided by law, the board or its
22 authorized representative by proper delegation is authorized to



1 set, charge, and collect administrative fines or bring legal
2 action to recover administrative fees and costs as documented by
3 receipts or affidavit, including attorneys' fees and costs, or
4 bring legal action to recover administrative fines, fees, and
5 costs, including attorneys' fees and costs, or payment for
6 damages or for the cost to correct damages resulting from a
7 violation of this chapter or any rule adopted thereunder. The
8 administrative fines shall be as follows:

- 9 (1) For a first violation, a fine of not more than \$2,500;
- 10 (2) For a second violation within five years of a previous
11 violation, a fine of not more than \$5,000; and
- 12 (3) For a third or subsequent violation within five years
13 of the last violation, a fine of not more than
14 \$10,000.

15 (e) In addition, an administrative fine of up to \$5,000
16 may be levied for each specimen of wildlife or plant taken,
17 killed, injured, or damaged in violation of this chapter or any
18 rule adopted thereunder.

19 (f) Any criminal action against a person for any violation
20 of this chapter or any rule adopted thereunder shall not be
21 deemed to preclude the State from pursuing civil legal action to
22 recover administrative fines and costs against that person. Any



1 civil legal action against a person to recover administrative
2 fines and costs for any violation of this chapter or any rule
3 adopted thereunder shall not be deemed to preclude the State
4 from pursuing any criminal action against that person.

5 (g) Notwithstanding any law to the contrary, any person
6 who intentionally or knowingly takes an Hawaiian monk seal
7 (Monachus schauinslandi) in violation of this chapter shall be
8 guilty of a class C felony; provided that the maximum fine shall
9 be not more than \$50,000."

10 SECTION 3. Section 195D-32, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~[+]§195D-32[+]~~ **Citizen suits.** (a) Except as provided in
13 subsection (b), any person, acting as a private attorney
14 general, may commence a civil suit on the person's behalf:

15 (1) Against any other person, or any state or county
16 agency or instrumentality, that is alleged to be in
17 violation of [the terms of, or [fails] to fulfill the
18 obligations imposed and agreed to under any habitat
19 conservation plan or safe harbor agreement and
20 accompanying license for public lands as authorized
21 under sections 195D-21 and 195D-22,] this chapter or
22 any rule adopted pursuant to this chapter; or



1 (2) Against the department or board, where there is
2 alleged a failure of the department or board to
3 perform any act or duty required under [~~a habitat~~
4 ~~conservation plan or safe harbor agreement and~~
5 ~~accompanying license issued for public lands.~~] this
6 chapter or any rule adopted pursuant to this chapter.

7 (b) The circuit courts shall have jurisdiction to enforce
8 this section or to order the department or board to perform any
9 act or duty required under this [~~section,~~] chapter or any rule
10 adopted pursuant to this chapter, provided that:

11 (1) No action may be commenced under subsection (a) (1)
12 less than sixty days after written notice of the
13 alleged violation has been given to the department,
14 and to the person, or state or county agency or
15 instrumentality, alleged to be in violation of this
16 [~~section,~~] chapter or any rule adopted pursuant to
17 this chapter, except that the action may be brought
18 immediately after the notification in the case of an
19 emergency posing a significant risk to the well-being
20 of any species of fish, wildlife, or plant; and

21 (2) No action may be commenced under subsection (a) (2)
22 less than sixty days after written notice of the



1 alleged violation has been given to the department,
2 except that the action may be brought immediately
3 after the notification in the case of an emergency
4 posing a significant risk to the well-being of any
5 species of fish or wildlife, or plant.

6 (c) Any suit brought pursuant to this section may be
7 brought in the judicial circuit where the alleged violation
8 occurred or is occurring. In any suit brought pursuant to this
9 section, where the State is not a party, the attorney general,
10 at the request of the department, may intervene on behalf of the
11 State as a matter of right.

12 (d) The court, in issuing any final order in any suit
13 brought pursuant to this section, may award costs of litigation,
14 including reasonable attorney and expert witness fees, to any
15 party, when deemed appropriate.

16 ~~[(d)]~~ (e) The injunctive relief provided by this section
17 shall not restrict any right that any person or class of persons
18 may have under any other law, including common law, to seek
19 enforcement of any standard or limitation or to seek any other
20 relief, including relief against any instrumentality or agency
21 of the State."



1 SECTION 4. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.

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Report Title:

Hawaiian Monk Seal; Felony; Private Right of Action

Description:

Establishes the intentional or knowing taking of an Hawaiian monk seal as a class C felony; provides a private right of action to enforce conservation of aquatic life, wildlife, and land plants laws, including the Hawaiian monk seal.

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