

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawaii 96813

October 24, 2014

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

REQUEST FOR FINAL APPROVAL TO ADOPT A NEW CHAPTER UNDER HAWAII  
ADMINISTRATIVE RULES AS TITLE 13 CHAPTER 60.8, HĀ'ENA COMMUNITY-  
BASED SUBSISTENCE FISHING AREA, KAUA'I, TO MANAGE AND PROTECT FISH  
STOCKS AND TO REAFFIRM TRADITIONAL AND CUSTOMARY NATIVE HAWAIIAN  
SUBSISTENCE FISHING PRACTICES WITHIN THE AHUPUA'A OF HĀ'ENA

Submitted for your consideration and final approval is a request to adopt Hawaii Administrative Rules ("HAR") chapter 13-60.8 to establish new aquatic resource regulations for the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i ("Hā'ena CBSFA"), to better manage and protect fish stocks and to reaffirm traditional and customary native Hawaiian subsistence fishing practices within the ahupua'a of Hā'ena.

In 2006, the Legislature designated the Hā'ena CBSFA and instructed the Department to adopt administrative rules regulating various uses and activities in the area.<sup>1</sup> Over the past 8 years, the Department and the Hā'ena community have consulted extensively with various stakeholders including local residents, commercial, recreational, and subsistence fishers, commercial tour operators, boaters, surfers, windsurfers, kiteboarders, and other interested parties in the development of appropriate regulations. Adoption of these administrative rules is the final step in the implementation process.

On May 23, 2014, the Board approved the proposed rules for public hearing. On August 26, 2014, the Governor approved the proposed rules for public hearing.

The Division of Aquatic Resources ("DAR") accepted public testimony on the proposed rules from August 31, 2014 to October 17, 2014 and held a public hearing in Hanalei, Kaua'i on October 3, 2014. DAR received a total of 161 oral and written testimonies (115 individuals and 46 organizations). DAR also received a number of petitions with signatures from 517 additional individuals (not including those who also provided oral or written testimony). Out of all the testimonies submitted (oral, written, and petition), 672 were in full support of the rules as proposed (99.1%); 4 individuals supported the intent of the rules, but proposed revisions; 1 was opposed; and 1 took no position. The minutes from the public hearing and written testimonies are attached as **Exhibit 1**. A more detailed analysis of the public hearing and testimony is provided in the attached Analysis of Public Hearing and Testimony. See **Exhibit 2**.

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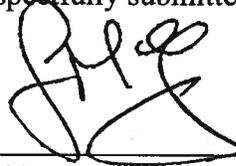
<sup>1</sup> See HAW. REV. STAT. §188-22.9 (L 2006, c 241, §3)

Based on the thorough and inclusive process that the community led to develop the management plan, the ecological soundness of the proposed rules based on best available knowledge, and the overwhelming support for the rules in testimony submitted throughout the chapter 91 public hearing process, DAR recommends the adoption of the rules as proposed, with one minor non-substantive change. DAR has amended the language of subsection 5(e) to clarify the Department's protection of native Hawaiian traditional and customary rights as recognized under article XII, section 7, of the State Constitution. This change is not based on any public testimony, but on the Department's need for consistency in its administrative rules. The amended language mirrors an identical provision in the new Maui Bag and Size Limit rules, which were adopted after the Hā'ena rules were approved for public hearing. A Ramseyer draft of the proposed Hā'ena CBSFA rules is attached as **Exhibit 3**.

RECOMMENDATION:

"That the Board give final approval to adopt Hawaii Administrative Rules chapter 13-60.8, Hā'ena Community-Based Subsistence Fishing Area, Kaua'i."

Respectfully submitted,



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FRAZER MCGILVRAY, Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



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WILLIAM J. AILĀ, JR., Chairperson  
Board of Land and Natural Resources

Attachments:

- Exhibit 1 – Public Hearing Minutes
- Exhibit 2 – Analysis of Public Hearing and Testimony
- Exhibit 3 – Ramseyer Draft

## Exhibit 1

Public Hearing Minutes  
Adoption of Hawaii Administrative Rules  
CHAPTER 13-60.8  
Ha'ena Community-Based Subsistence Fishing Area, Kaua'i

Hearing Location: Hanalei Elementary School, Hanalei, Kauai  
Hearing Date: October 3, 2014

### I. Opening

A public hearing was held on October 3, 2014 in Hanalei, Kaua'i. The meeting was called to order at 6:30 p.m. Frazer McGilvray, Administrator of the Division of Aquatic Resources, conducted the hearing. Also present were Katie Nalesere, Education Specialist for Kauai; David Sakoda, Marine Law Fellow; Erin Zanre, CBSFA Planner; and Emma Anders, Planner, from the Oahu DAR office.

### II. Background

- A. In 2006, the State Legislature designated the waters of the Ha'ena ahupua'a as a Community-Based Subsistence Fishing Area. Under this designation, inhabitants of the ahupua'a would assist in the development of fishing regulations to address growing problems of indiscriminate fishing practices in the area. The legislation, codified as Hawaii Revised Statutes §188-22.9, also instructed the Department of Land and Natural Resources to consult with Hā'ena inhabitants and other interested parties to develop administrative rules regulating various uses and activities in the area. In 2011, the Hui Maka'ainana o Makana submitted to DLNR a management plan and proposed regulations to protect traditional subsistence fishing practices. Since 2011, DAR has consulted with the Hā'ena community, to draft these proposed administrative rules.
- B. Approvals to conduct this public hearing were obtained from the Board of Land and Natural Resources on May 23, 2014, the Small Business Regulatory Review Board on June 18, 2014, and Governor Abercrombie on August 26, 2014.
- C. Copies of the administrative rules were made available for inspection at the public hearing.

### III. Notice of public hearing

- A. The Legal Notice of this public hearing was published in the August 31, 2014, Sunday issues of the Honolulu Star-Advertiser and The Garden Island News. On September 29, 2014, the department issued a press release regarding the public hearings.

IV. Hearing procedures

The hearings officer explained the proposed new administrative rules. Each person who wanted to testify was given 3 minutes to provide their testimony.

V. Testimonies

A. Hanalei Public Hearing

Over 200 people in attendance (by headcount)  
168 filled out attendance sheet  
74 oral public testimonies received  
68 expressed full support the proposed rules  
4 supported the intent of the rules, but recommended revisions  
1 opposed the proposed rules  
1 held no position

Of the 4 testimonies that supported the intent of the rules, but recommended revisions:

- One supported the rules, but asked for an exemption to allow for the commercial harvest of two fish species: *ta'ape* (bluelined snapper) and *mū* (bigeye emperor). This person was a commercial fisher and testified that he primarily targets these species in the area.
- One was not opposed to the intent of the rules, but requested that language be amended to clarify the meaning of the vessel transit boundary. This individual was a commercial tour vessel operator.
- One supported the rules, but suggested a review after three years instead of five years.
- One supported the rules, but opposed the complete closure of the Makua Pu'uhonua because it might set a precedent for closure in other areas that may be designated as CBSFAs in the future.

One commercial fisher from Hanamaulu, Kauai testified in opposition to the rules, but he did not provide any specific reasons for his opposition.

Overall, there was overwhelming support for the rules. Of the 17 Hā'ena residents who testified, all were in full support of the rules. Of the 36 individuals who identified themselves as subsistence fishers or subsistence users, all were in full support of the rules. Of the 43 individuals who identified themselves as native Hawaiian, all were in full support of the rules. Testimony highlighted the importance of the rules for preserving traditional and customary native Hawaiian subsistence fishing practices.

**B. Written/Email Testimony**

Overall, there were 110 written testimonies (letter and email) received.  
All 110 testimonies were in full support of the rules as proposed.  
23 were from individuals who also provided oral testimony  
41 were from individuals who did not also provide oral testimony  
46 were from organizations

**VI. Adjournment**

The public hearing was adjourned at 9:10 p.m.

## Exhibit 2

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

### **Analysis of Public Hearing and Testimony on Proposed New Rules for the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i**

On October 3, 2014 the Division of Aquatic Resources (DAR) held a public hearing in Hanalei, Kaua'i to receive public comments and testimony on the proposed adoption of new rules for the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i. DAR also accepted written (letter and email) testimony from August 31 to October 17, 2014. DAR received oral and written testimonies from 115 individuals and 46 organizations. DAR also received a number of petitions with signatures from 517 additional individuals. The overwhelming majority of testimonies (oral, written, and petition) were in full support of the proposed rules (99.1%). There were four individuals who supported the intent of the rules, but opposed or requested amendments to certain portions of the rules. Only one testimony opposed the rules entirely. One testimony neither supported nor opposed the rules.

Among those who fully supported the rules were the Office of Hawaiian Affairs, the Aha Moku Advisory Committee, Mayor Bernard P. Carvalho, Jr., and 23 individuals with ancestral ties to Hā'ena, including 18 who currently reside there. The following analysis summarizes the primary reasons offered in support of the rules, describes the opposition to portions of the rules, and explains DAR's response to opposing testimony.

#### **Testimony in Full Support**

There were a number of recurring themes throughout the oral and written testimonies in support of the rules. Hā'ena residents spoke of the importance of subsistence gathering to their family and community relationships. They relayed experiences of being taught the values and practices of fishing by their kūpuna and passing that knowledge on to their children and grandchildren. Later in the hearing, a community facilitator read the names of kūpuna who were instrumental in obtaining the legislative CBSFA designation, whose knowledge was critical to developing the management plan, and who have passed since planning efforts began in 2006. While the testimony demonstrated great appreciation for the resources, the residents also spoke of decline in their environment and implored the Division to adopt the rule package so that future generations of Hā'ena will be able to continue practicing traditional subsistence fishing. From testimony it is clear that the marine resources of the area are critical to the community for sustenance and for perpetuating traditional practices and values.

Many testimonies emphasized the time-tested sustainability of traditional fishing practices that supported native Hawaiian communities. Speakers commended Hā'ena for implementing ahupua'a management by caring for the land and sea, guided by traditional values and within traditional boundaries. Testimonies also highlighted the importance of preserving traditional and customary fishing practices to perpetuate native Hawaiian culture; a few speakers noted that they did not expect to see a benefit in their own lifetime but felt strongly that action now is critical for future generations. Many of these testimonies came from members of subsistence fishing communities throughout the State, who stressed the importance of place-based co-management guided by local expertise rather than a "one size fits all" approach. Some of these speakers came with petitions of support signed by members of their communities. Several comments contained a strong sense of urgency with individuals advocating that the Department act quickly as many years of work and thought has been invested in the proposed management plan and regulations. Testimonies also noted that the community had made many compromises with users as well as with the Department and that the rule package represents the best translation of traditional place-based values to the contemporary resource management context.

There were also a number of testimonies from individuals with science and resource management backgrounds, including scientists who have conducted research in Hā'ena, that supported the ecological basis for the proposed rules and affirmed the effectiveness of community-based co-management as demonstrated in other communities around the world. Finally, many testimonies reminded the Department of its obligations, not only to adopt rules for the Hā'ena CBSFA, but also to properly manage the State's marine resources and to protect traditional and customary native Hawaiian practices.

### **Petitions in Support**

The Division received hand-written and online petitions in support of adoption. The total number of people who signed either a paper or online petition in support (not including those who also submitted oral or written testimony) is 517 individuals.

### **Community-based Organizations in Support**

The following community-based organizations submitted written or oral testimony in support of the rule package and CBSFA efforts in general:

- Hui Ho'omalua I Ka 'Āina
- Polanui Hui Community Managed Makai Area
- Hui Mālama o Mo'omomi
- Hui Maka'ainana o Makana
- Hanalei Watershed Hui
- Mālama Koloa
- Waipa Foundation
- Ewa Limu Project
- Na Kua'aina o Waimanalo
- Lanai'i Limu Restoration Project
- Ho'ala 'Aina Kupono
- Ka'ala Farms Inc.
- Kahana Fishermen's Hui
- Kāko'o 'Ōiwi
- Mālama Maunalua
- Mālama Pupukea Waimea
- Papahana Kuaola
- Paepae O He'eia
- Ka Honua Momona
- Kupa'a No Lana'i
- Save Honolulu Coalition

- Maui Nui Marine Resource Council
- Kīpahulu ‘Ohana
- Waihe‘e Limu Restoration
- Hui Aloha Kiholo
- Ka‘ohana o Hōnaunau
- Kama‘aina United to Protect the ‘Āina
- Friends of Ho‘okena Beach Park
- West Hawai‘i Fisheries Council
- Wailuku CMMA
- Pa‘a Pono Miloli‘i
- Ka‘aha Kiolo o Moloka‘i
- Native Hawaiian Legal Corp.
- Hawai‘i Wildlife Fund
- Aha Moku Advisory Committee
- Na Mamo Mu‘olea

### **Testimony in Partial Support and DAR’s Response**

There were four testimonies in partial support of the proposed rules. Each opposed or requested amendments to different aspects of the rules. The following analysis describes these testimonies in detail and provides DAR’s response to these concerns.

One commercial fisherman testified that he supported the rules, but asked that the rules be amended to carve out an exemption to allow for the commercial harvest of two fish species: *ta‘ape* (bluelined snapper) and *mū* (bigeye emperor). This person testified that *ta‘ape* and *mū* are the two species that he primarily targets when fishing in the area. His testimony explained that these species occur in large schools in the 70’ to 120’ depths, and that they are voracious predators. This fisherman further testified that he sells these fish to people in the community for \$1/lb.

DAR has considered an exemption to the “no commercial take” rule to allow for the harvest of non-native species such as *roi*, *to‘au*, and *ta‘ape* for commercial purposes. However, DAR does not recommend this exemption because it would be nearly impossible to enforce. In addition, the bag net or surround net methods commonly used by commercial fishers has the potential to result in significant bycatch, given that *ta‘ape* are often found schooling with *weke* and other species. Furthermore, because the boundaries of the Hā‘ena CBSFA only extend along approximately three miles of coastline and out to one mile, the adverse impact of the rule on commercial fishers is minimal. Finally, DAR notes that while *ta‘ape* and *mū* do school in deeper waters, they often come inshore to feed. They are often caught on hook-and-line by shorefishers, and may provide important subsistence resources for Hā‘ena residents.

One commercial tour operator testified that he was not opposed to the intent of the rules, but that he opposed certain language as currently written. Specifically, he requested that the rules be amended to further clarify what the “Vessel Transit Boundary” means. He testified that he came to a correct understanding of the Vessel Transit Boundary after asking for clarification from DAR, but that the language could be confusing to other boaters.

The Vessel Transit Boundary was included for safety reasons to allow vessels to transit the area with prohibited fishing gear onboard. This boundary in no way affects the general operation of vessels in the Hā‘ena CBSFA. Although this designation may be a source of confusion for vessel operators, DAR does not recommend amending the language of the rule to address this concern. Instead, DAR is committed to working with DOBOR, DOCARE, and the Hā‘ena

Makai Watch program to provide outreach and education to ensure that boaters and other ocean users have a clear understanding of the rules.

One individual strongly supported the rules, but recommended that the Department consider a review after three years instead of five “because you can constantly make improvements as it relates to the plan.” DAR notes that the current rule requires the Department to hold a meeting in Hā‘ena after five years to review the effectiveness of the regulations. DAR does not recommend imposing a three-year mandatory review because we do not expect to see significant measurable changes in the ecosystem in that time due to the life cycles of important reef species and natural environmental variability. However, DAR maintains the discretion and flexibility to review and amend the management plan and rules sooner than five years if necessary or appropriate.

One commercial fisherman from the west side of Kaua‘i testified in general support of the rules, but asked that the department make one small change to remove the “closure” referring to the Makua Pu‘uhonua. He testified that he would like to see CBSFAs perpetuate around the whole island. However, he was concerned that if there is a closure for an area within the Hā‘ena CBSFA, it may set a precedent for more closures in future CBSFA designated areas, which could affect people’s gathering rights.

The statute that designated the Hā‘ena CBSFA, HRS §188-22.9, requires “the establishment of no harvesting zones within the fishing area without depriving ahupua‘a inhabitants of access to traditional sources of subsistence.” Throughout the community consultation process, this area was revised numerous times to minimize impacts to traditional fishers and other ocean users and to maximize its effectiveness as a marine refuge. This statutory requirement is unique to the Hā‘ena CBSFA designation, and is not a requirement for designation under the general CBSFA statute, HRS §188-22.6. Every area has unique habitat and resources with unique management needs. As DAR considers CBSFA designations for other areas, it will continue to prioritize the protection of “fishing practices customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion” as required by law.<sup>1</sup>

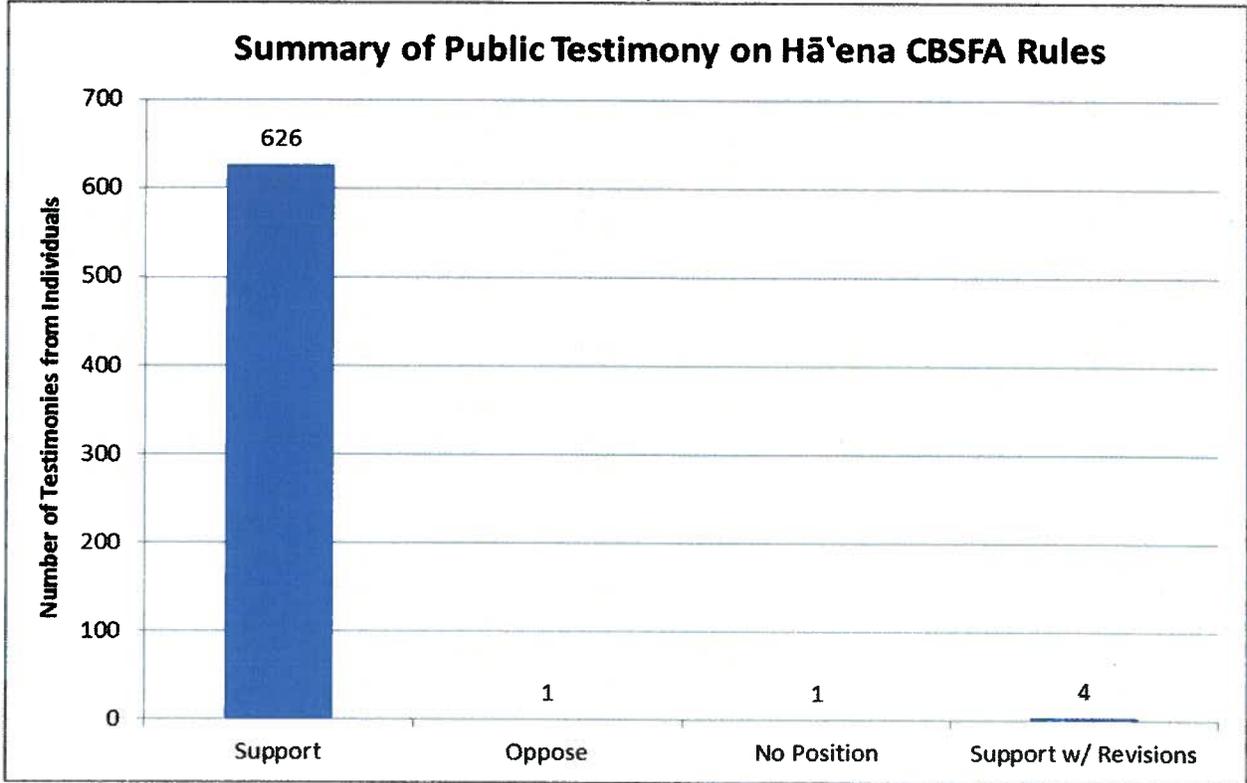
### **Testimony in Opposition**

At the public hearing, one commercial fisherman from east Kaua‘i attempted to ask a question regarding the rules. When the hearing officer told him that he could only offer testimony and could not ask questions, he testified that he was opposed to the rules. He gave no further explanation for his opposition. DAR has not received any further inquiries from this individual regarding his question about the rules or his reasons for opposing. As noted earlier, however, the Hā‘ena CBSFA covers a relatively small area of coastline and will have minimal impacts on commercial fishing practices.

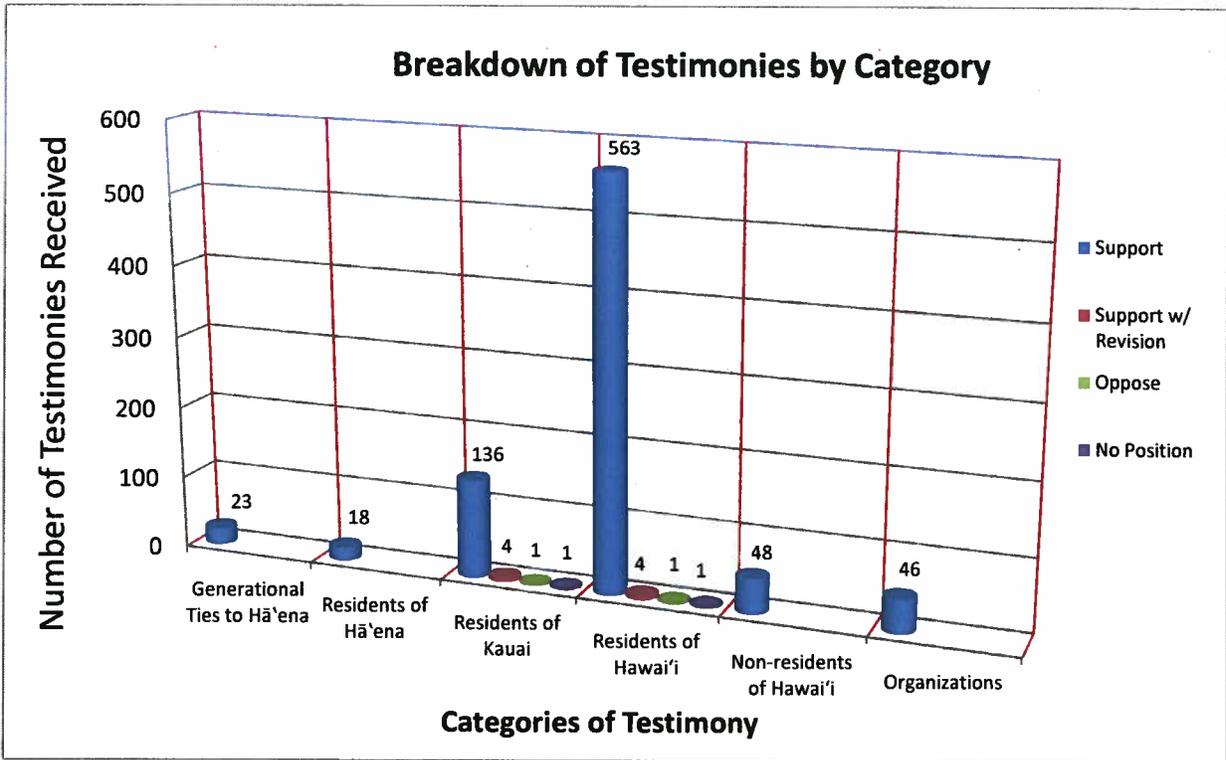
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<sup>1</sup> See HAW. REV. STAT. §188-22.6 (L 1994, c 271, §1)

**Table 1. Summary of Individual Public Testimony on Hā'ena CBSFA Rules.**



**Table 2. Number of Testimonies by Category**



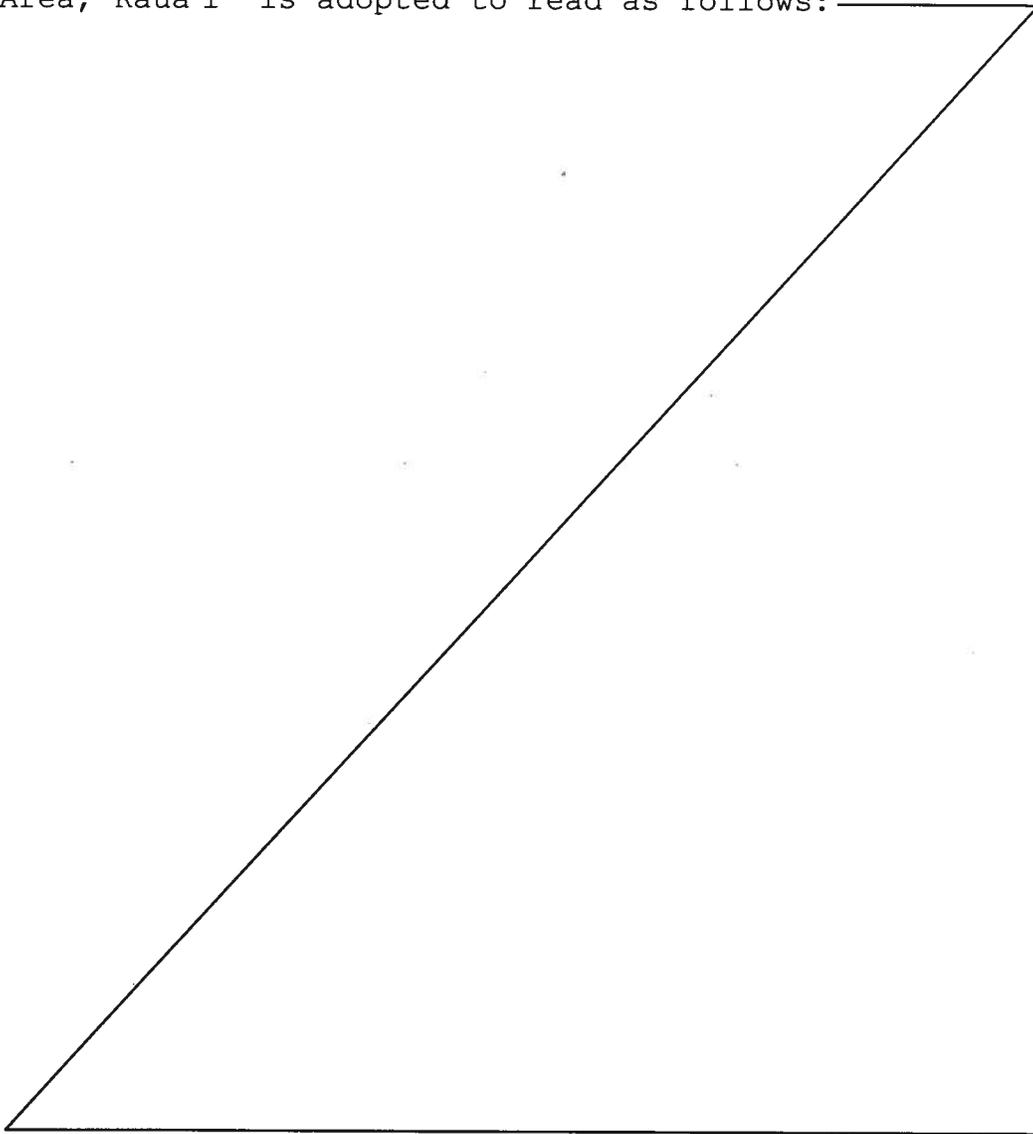
**Exhibit 3**

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.8  
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.8, Hawaii Administrative Rules, entitled "Hā'ena Community-Based Subsistence Fishing Area, Kaua'i" is adopted to read as follows:





"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.8

HĀ'ENA COMMUNITY-BASED SUBSISTENCE FISHING AREA, KAUA'I

§13-60.8-1	Purpose
§13-60.8-2	Definitions
§13-60.8-3	Boundaries
§13-60.8-4	Management plan and review
§13-60.8-5	Permitted and prohibited activities
§13-60.8-6	Prohibited activities, Makua Pu'uhonua
§13-60.8-7	Penalty
§13-60.8-8	Severability

§13-60.8-1 Purpose. The purpose of this chapter regarding the Hā'ena Community-Based Subsistence Fishing Area is to:

- (1) Sustainably support the consumptive needs of the Hā'ena ahupua'a through culturally-rooted community-based management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of aquatic life;
- (3) Establish the Makua Pu'uhonua (Marine Refuge) for the preservation and protection of this nursery habitat for juvenile reef fishes;
- (4) Recognize and protect customary and traditional native Hawaiian fishing

- practices that are exercised for subsistence, cultural, and religious purposes in the area; and
- (5) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users.  
[Eff \_\_\_\_\_ ] (Auth: HRS §§188-22.9, 188-53, 190-3) (Imp: HRS §§188-22.9, 188-53, 190-3)

§13-60.8-2 Definitions. As used in this chapter:

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots products, and other parts thereof.

"Area" means the Hā'ena Community-Based Subsistence Fishing Area (Hā'ena CBSFA), as encompassed within the boundaries described in section 13-60.8-3(a).

"Day" means a twenty-four hour period.

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

"Deploy" means to place the specified gear in the water, whether in whole or in part.

"Fish" means any species of aquatic life with a backbone, gills, and with limbs that are fins, if any.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings generally large enough to permit the heads of fish to pass through, ensnaring

them around the gills, fins, spines, or mid-section when they attempt to escape.

"Hand-harvest" means to gather directly with the hands only, and without the use of any net, spear, trap, rake, or any other tool or implement.

"He'e" means any cephalopod mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"Kūpe'e" means any marine snail known as *Nerita polita* or any recognized synonym.

"Limu" means any marine alga including algae in the intertidal zone.

"Lobster" means any crustacean in the family Palinuridae or in the family Scyllaridae. Lobsters are also known as ula (spiny lobster) or ula pāpapa (slipper lobster).

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Noncommercial purposes" means for personal, cultural, recreational, or subsistence use, and not for compensation of any kind, regardless of whether the compensation is received inside or outside of the boundaries of the area.

"Ōpihi" means any mollusk of the genus *Cellana* or any recognized synonym. Ōpihi are also known as kō'ele, 'ālinalina, makaiauli, or limpets.

"Pa'ipa'i net fishing" means a technique of fishing where a person or persons engage or attempt to engage in the act of deploying a gill net in the water in a specific location in a straight line or semi-circular configuration, and a person or persons chase aquatic life into the net.

"Pipipi" means any marine snail known as *Theodoxus neglectus*, *Nerita picea*, *Neripteron neglectum*, or any recognized synonym.

"Pole spear" means a spear consisting of a straight shaft terminating in up to three pointed prongs, and to which up to two elastic bands may be attached. A pole spear is released solely by hand and without the aid of any trigger mechanism as characteristic of a speargun or hinge gun.

"Pūpū" means any marine or terrestrial species belonging to the order Gastropoda or Bivalvia. Unless otherwise specified, as used in this chapter, pūpū refers to the live mollusk as a whole, not just the hard outer shell.

"Scoop net" means a hand net consisting of a bag of mesh material attached to a frame to hold the bag open, which may be attached to a single handle no more than three feet in length.

"Snorkel" means an underwater breathing apparatus consisting of a tube no more than two feet in length, which extends from a person's mouth to the surface of the water, through which a person is able to breathe air using only the lungs and without the aid of a compressor.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Surround gill net fishing" means a fishing technique where any person deploys or attempts to deploy a gill net in the water to encircle aquatic life. Aquatic life may entangle within the net mesh as the aquatic life swim or move into the net. Surround gill net fishing involves a closed net configuration, a moving net, a person or persons chasing aquatic life into the net, and only entangled aquatic life are captured.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually

casting or throwing the net over fish or other aquatic life.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while below the surface of the water.

"Urchin" means any invertebrate in the class Echinoidea. Urchins are also known as wana, hālula, hā'uke'uke, hāwa'e, 'ina, or sea urchin.

"Vessel" means any craft used or capable of being used as a means of transportation on or in the water. [Eff ] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.9, 190-3)

§13-60.8-3 Boundaries. (a) The Hā'ena Community-Based Subsistence Fishing Area includes that portion of the northwestern coast of Kaua'i consisting of all State waters and submerged lands bounded by a line drawn along the shoreline; a straight line that extends seaward from the shoreline at the boundary between Hā'ena State Park and Na Pali State Park, as drawn through the points 22°12'42.50"N, 159°35'44.50"W and 22°13'21.62"N, 159°36'22.27"W; a line that follows the contours of the shoreline at a distance of one mile seaward from the shoreline; and a straight line that extends seaward from the shoreline at the boundary between Hā'ena and Wainiha, as drawn through the points 22°13'28.00"N, 159°33'13.50"W and 22°14'19.91"N, 159°33'6.21"W; as shown on Exhibit A entitled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i", dated 4/16/14, located at the end of this chapter.

(b) The following subzones are established within the Hā'ena Community-Based Subsistence Fishing Area:

- (1) The "Ōpihi Management Area," which includes all State waters and submerged lands within 300 feet from the shoreline between a line that extends seaward from the shoreline at the boundary between Hā'ena State Park and Nā

Pali State Park, as drawn through the points 22°12'42.50"N, 159°35'44.50"W and 22°13'21.62"N, 159°36'22.27"W; and a line that extends seaward from the shoreline at the western edge of Kē'ē Beach, as drawn through the points 22°13'13.61"N, 159°35'5.11"W and 22°13'15.75"N, 159°35'7.34"W; as shown on Exhibit B entitled "Map of the 'Ōpihi Management Area", dated 4/16/14, located at the end of this chapter;

- (2) The "Makua Pu'uhonua," which includes all State waters and submerged lands located within the fringing reef of Makua lagoon, bounded by a line drawn starting from a point located at 22°13'33.88"N, 159°33'42.41"W, to a point located at 22°13'41.15"N, 159°33'44.67"W; then to a point located at 22°13'44.57"N, 159°33'34.71"W; then to a point located at 22°13'38.26"N, 159°33'31.56"W; then back to the starting point; as shown on Exhibit C entitled "Map of the Makua Pu'uhonua", dated 4/16/14, located at the end of this chapter;
- (3) The "Vessel Transit Boundary," which includes all State waters and submerged lands bounded by a line drawn starting from the shoreline at the boundary between Hā'ena State Park and Na Pali State Park, located at 22°12'42.50"N, 159°35'44.50"W, to a point approximately 1,000 feet seaward, located at 22°12'49.98"N, 159°35'51.79"W; then eastward to a point approximately 1,300 feet from shore, located at 22°13'35.57"N, 159°34'59.73"W; then to a point approximately 2,300 feet from shore, located at 22°13'55.42"N, 159°33'42.00"W; then to a point located approximately 2,100 feet from shore, located at 22°13'48.84"N, 159°33'10.76"W; then to a point on the shoreline at the boundary between Hā'ena and

Wainiha, located at 22°13'28.00"N, 159°33'13.50"W; as identified in the map shown on Exhibit A entitled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i", dated 4/16/14, located at the end of this chapter;

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff ] (Auth: HRS §§188-22.9, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.9, 190-3)

§13-60.8-4 Management plan and review. (a) The department shall consult with inhabitants of the Hā'ena ahupua'a and other interested parties to provide for a management plan, which describes:

- (1) Existing marine activities permitted by the department within the area;
- (2) Specific activities to be conducted in the area;
- (3) Processes for community-based monitoring and evaluation of the area; and
- (4) Methods of funding and enforcement.

The management plan shall serve as a framework to assist the department and the community in monitoring, evaluating, and managing the area.

(b) Five, ten, and twenty years beginning from the effective date of this chapter, the department shall hold at least one meeting within the Hā'ena ahupua'a to:

- (1) Review the effectiveness of the Hā'ena Community-Based Subsistence Fishing Area;
- (2) Revise the management plan as needed; and
- (3) Consider whether the area should be expanded to include other ahupua'a.

The meeting shall be publicly noticed at least two weeks prior to the meeting date, by posting the date, time, location, and subject matter of the meeting in a newspaper of general circulation within the Hā'ena ahupua'a. [Eff \_\_\_\_\_ ] (Auth: HRS §§188-22.9, 188-53) (Imp: HRS §§187A-2, 188-22.9)

§13-60.8-5 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as allowing within the Hā'ena Community-Based Subsistence Fishing Area any activity or fishing gear otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State.

(b) It is unlawful for any person to sell or offer for sale any marine life taken from within the area, or to otherwise take marine life from within the area for commercial purposes.

(c) Unless otherwise allowed in subsection (d) of this section, it is unlawful for any person to engage in or attempt to engage in the following activities within the Hā'ena Community-Based Subsistence Fishing Area:

- (1) Take or possess any marine life;
- (2) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature or specimen;
- (3) Possess, deploy, or use any fishing gear or device that is designed or may be used for the taking, injuring, or killing of marine life, or the altering of any geological feature or specimen; or
- (4) Deliberately introduce into the water any food material, substance, or device used as an attractant for marine life, for any purpose other than the taking of marine life as may be allowed under subsection (d) of this section.

(d) Except while within the Makua Pu'uhonua, an individual within the Hā'ena CBSFA may:

- (1) Take and possess any empty pūpū shell, provided that empty pūpū shells may not be taken or possessed while using any underwater breathing apparatus other than a snorkel;
- (2) At any time after \_\_\_\_\_, 2017, take up to twenty total living 'ōpihi, pipipi, kūpe'e, or pūpū per person per day from the 'Ōpihi Management Area only, and possess up to twenty total living 'ōpihi, pipipi, kūpe'e, or pūpū at any one time;
- (3) Take and possess any limu by hand-harvest only; provided further that the following species of invasive or introduced algae may be taken and possessed for any purpose, including a commercial purpose: *Gracilaria salicornia*, *Acanthophora spicifera*, *Avrainvillea amadelpha*, *Kappaphycus* (any species), *Eucheuma* (any species), or *Hypnea musciformis*;
- (4) Take up to two lobsters per day by hand-harvest only, and possess up to two lobsters at any one time;
- (5) Take up to five urchins per species per day, and possess up to five urchins per species at any one time;
- (6) Take up to two he'e per day, and possess up to two he'e at any one time, provided that he'e may only be taken by hand-harvest or with the use of a stick no longer than two feet in length;
- (7) Take and possess any fish in compliance with this chapter and all other state law;
- (8) Subject to paragraphs (1)-(7), above:
  - (A) Possess and use up to two hook-and-lines with up to two hooks per hook-and-line;
  - (B) Possess and use a pole spear to take fish between 6:00 a.m. and 6:00 p.m., provided that the pole spear shall be

no greater than eight feet in total length;

- (C) Possess and use a throw net;
- (D) Use pa'ipa'i net or surround gill net fishing methods, provided that nets may only be deployed from the shore, or from a vessel less than fourteen feet long, and provided further that at least two people must be within five feet of the net at all times while it is deployed; and
- (E) Possess and use a scoop net between 6:00 a.m. and 6:00 p.m., provided that a scoop net may not be used to take greater than three specimens of marine life per day; and

- (9) Possess any fishing gear while on a vessel in active transit seaward of the Vessel Transit Boundary, as described in section 13-60.8-3(b)(3) of this chapter.

(e) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged. [Eff  
] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.9, 188-53, 190-3)

§13-60.8-6 Prohibited activities, Makua

Pu'uhonua. In addition to the prohibitions described in section 13-60.8-5(c), it is unlawful for any person to enter the Makua Pu'uhonua except with a special activity permit issued by the board under section 187A-6, HRS, under such terms and conditions allowing such entry and as deemed necessary for educational, scientific, or other purposes not inconsistent with sections 187A-6 and 188-53, HRS, provided that:

- (1) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (2) A person whose permit was revoked shall not be eligible to apply for another permit

until one year after the date of revocation.  
[Eff \_\_\_\_\_ ] (Auth: HRS §§187A-6, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-6, 188-22.9, 188-53, 190-3)

§13-60.8-7 Penalty. (a) Any person who violates any provision of this chapter, or the terms and conditions of any permit issued applicable to this chapter, shall be subject to administrative fines of:

- (1) Not less than \$100 and not more than \$1,000 for a first violation;
- (2) Not less than \$200 and not more than \$2,000 for a second violation within five years of any prior violation; and
- (3) Not less than \$500 and not more than \$3,000 for a third or subsequent violation within a five year period of any prior violation.

(b) In addition to subsection (a), a fine of up to \$1,000 may be levied for each specimen of aquatic life taken, killed, or damaged in violation of this chapter.

(c) Any administrative fine imposed under this section for any violation of a provision of this chapter shall not preclude the imposition of criminal penalties pursuant to section 188-70, HRS, or as may be otherwise provided by law. [Eff \_\_\_\_\_ ]  
(Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-12.5, 188-22.9, 188-53, 188-70, 190-5)

§13-60.8-8 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 which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff \_\_\_\_\_ ]

[Eff \_\_\_\_\_ ] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.9, 188-53, 190-3)

2. The following exhibits are made a part of this chapter:

- (1) Exhibit A entitled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i", dated April 16, 2014;
- (2) Exhibit B entitled "Map of the 'Ōpihi Management Area", dated April 16, 2014; and
- (3) Exhibit C entitled "Map of the Makua Pu'u honua", dated April 16, 2014.

3. The adoption of chapter 13-60.8, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ and filed with the Office of the Lieutenant Governor.

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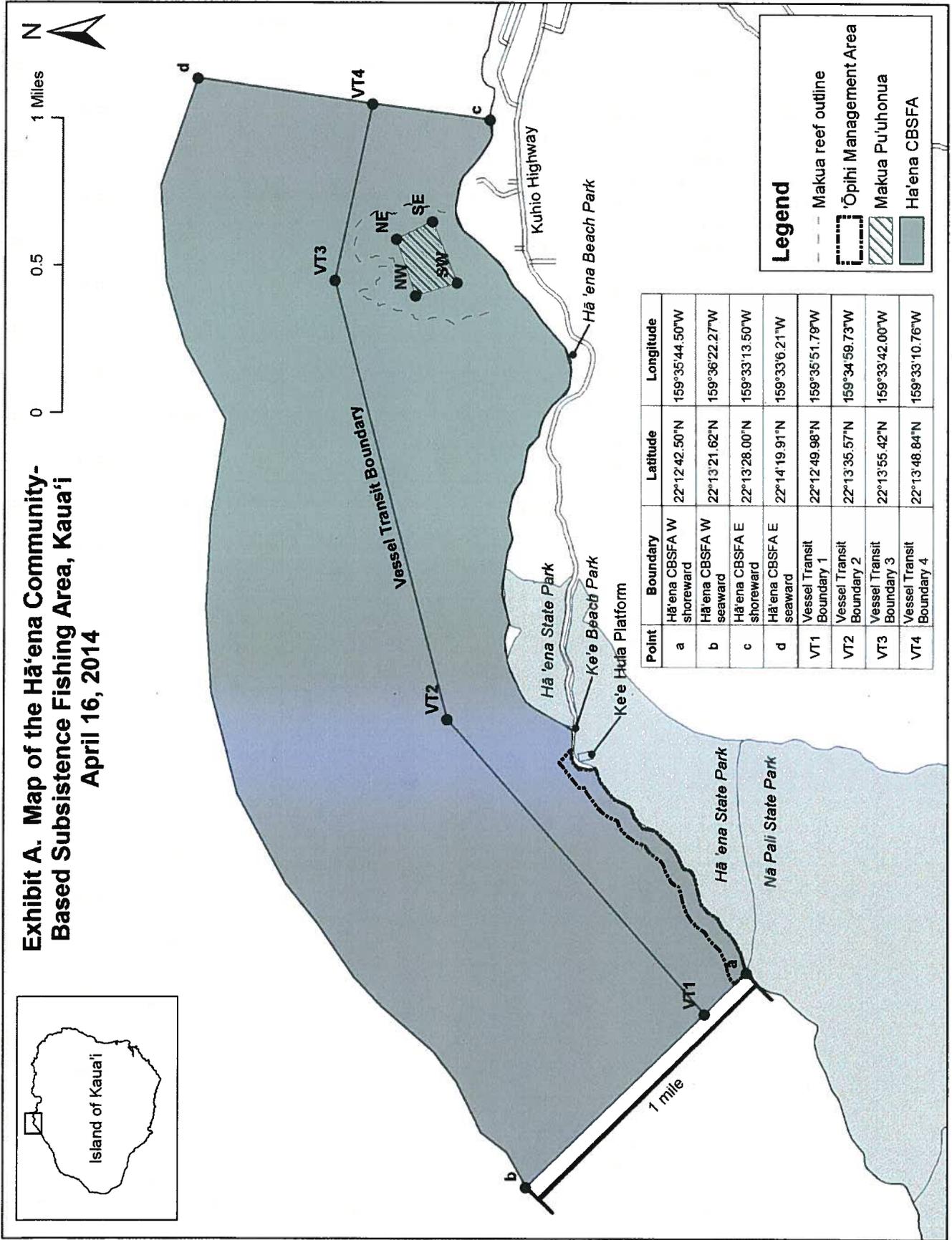
WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and Natural  
Resources

APPROVED AS TO FORM:

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Deputy Attorney General

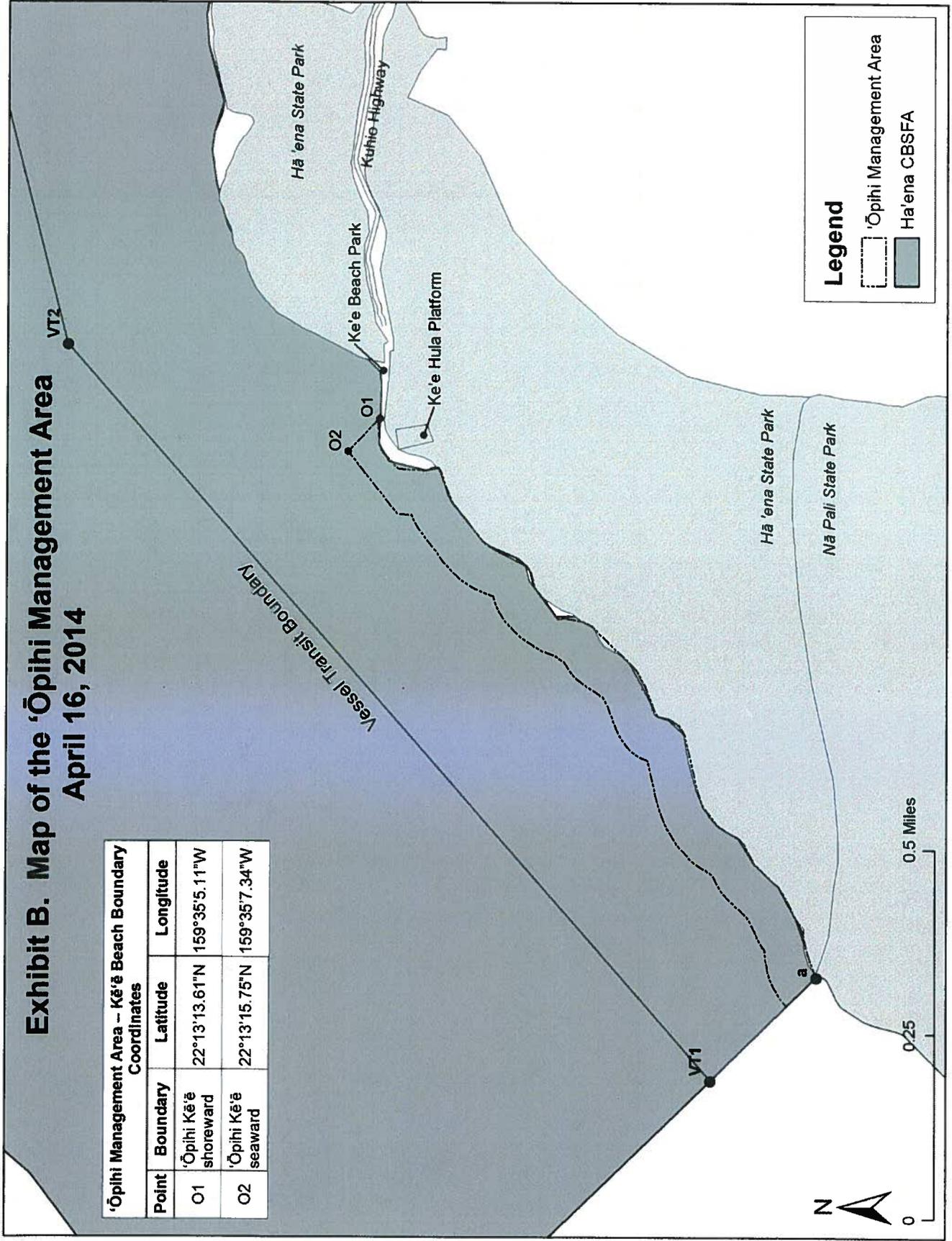
**Exhibit A. Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i  
April 16, 2014**





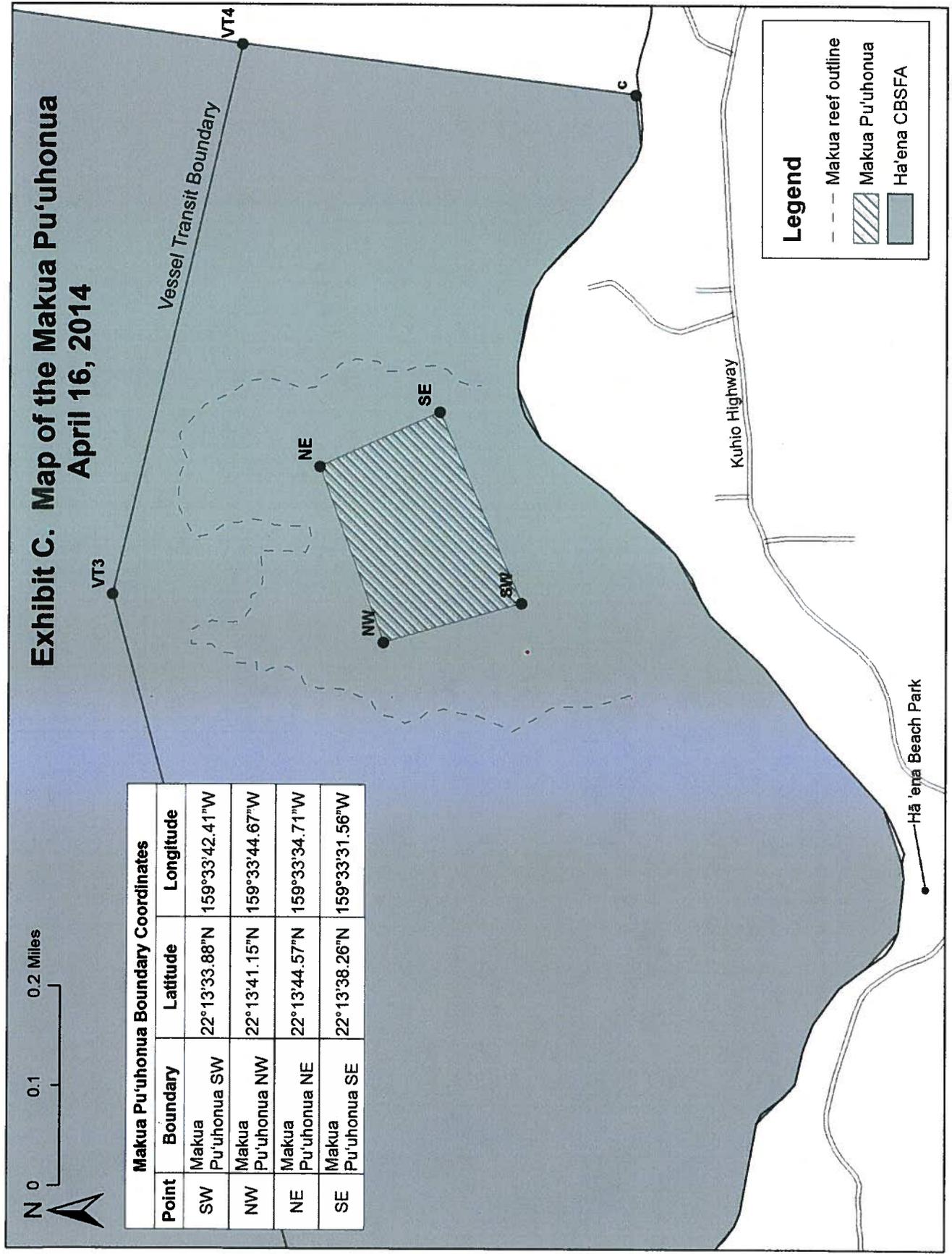
## Exhibit B. Map of the 'Ōpihi Management Area April 16, 2014

'Ōpihi Management Area - Kē'e Beach Boundary Coordinates		
Point	Boundary	Longitude
O1	'Ōpihi Kē'e shoreward	159°35'5.11"W
O2	'Ōpihi Kē'e seaward	159°35'7.34"W





# Exhibit C. Map of the Makua Pu'uuhonua April 16, 2014



Makua Pu'uuhonua Boundary Coordinates			
Point	Boundary	Latitude	Longitude
SW	Makua Pu'uuhonua SW	22°13'33.88"N	159°33'42.41"W
NW	Makua Pu'uuhonua NW	22°13'41.15"N	159°33'44.67"W
NE	Makua Pu'uuhonua NE	22°13'44.57"N	159°33'34.71"W
SE	Makua Pu'uuhonua SE	22°13'38.26"N	159°33'31.56"W

**Legend**

- - - Makua reef outline
- Makua Pu'uuhonua
- Ha'ena CBSFA