Community-based Subsistence Fishing Area Designation Procedures Guide

Pilot Version

2014

Division of Aquatic Resources

Hawai‘i Department of Land and Natural Resources

Standardized Operating Procedures for Community-based Subsistence Fishing Area Designation under Hawai‘i Revised Statutes §188-22.6

prepared for the Hawai‘i Department of Land and Natural Resources
Division of Aquatic Resources

by

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Introduction to Community-based subsistence Fishing Area Designations

In the early 1990s, Governor John Waiheʻe convened a Task Force to determine the importance of subsistence living on Molokaʻi, identify problems affecting subsistence practices, and recommend policies and programs to improve the situation. As a result of the policy recommendations put forward by the task force, the legislature passed Hawaiʻi Revised Statutes (HRS) §188-22.6 (See Appendix P) in 1994 which gave the DLNR the authority to create community-based subsistence fishing areas (CBSFAs) for the purpose of protecting and reaffirming fishing practices customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion. Under HRS §188-22.6, the Department of Land and Natural Resources (DLNR) can designate community-based subsistence fishing areas and carry out fishery management strategies for such areas by adopting rules in accordance with the administrative rule-making procedures for state agencies outlined in HRS Chapter 91. In addition, the CBSFA statute requires that community organizations propose CBSFAs to the DLNR for consideration by submitting a management plan which includes regulatory recommendations.

The best way to understand CBSFA designation is through the lens of the Hawaiian value of aloha ʻāina, which emphasizes the connection between the environment and communities, whereby if you care for the land, the land will care for you. CBSFAs represent a state recognized avenue for community groups to mālamaʻāina by proposing regulatory recommendations and management activities to sustain the health and abundance of marine resources for current and future generations. In this context, place-based knowledge, acquired through generations of observation, along with the cultural values and associated codes of conduct traditionally governing pono fishing practices, form the foundations of community proposed fisheries management strategies. In this way, CBSFAs represent a more bottom-up approach to fisheries management that is community driven and place-based in nature, as well as an avenue for the DLNR to fulfill its obligation to protect traditional and customary practices as a matter of law, the public trust, and ceded lands trust[1],

While CBSFAs are community-driven initiatives, it is not always possible to accommodate community proposed management recommendations based on traditional knowledge and practices within the State's existing regulatory and legal framework (e.g. restricting access to ahupuaʻa residents only, self-enforcement by members of the community). Before adapting community proposed management recommendations into rules, the DLNR must ensure adherence to Federal, State, and County law as well as consider its own agency management mandates and priorities. Furthermore, there are state mandated public input opportunities that ensure due process and the consideration of all public interests during rulemaking, which can further influence the content of the rules developed from a community's regulatory recommendations. Although DLNR is unable to guarantee the adoption of all management recommendations it receives, DAR is committed to working with communities who adhere to the designation procedures in this guide, as capacity permits.

[1] See in re Hawaiʻi Admission Act of 1959 Section 5(f), Public Law 86-3, 73 Stat. 4; Hawaiʻi State Constitution Article XII §4 and XII §7.

Purpose of the CBSFA Designation Procedures Guide

To effectively engage with communities seeking CBSFA designation and fulfill its mandate pursuant to HRS §188-22.6, the Division of Aquatic Resources (DAR) identified a need for standardized protocols and guidance for how the DLNR and communities will work together to designate CBSFAs. In response, DAR contracted the development standardized procedures for CBSFA designation, which were developed through extensive literature reviews and legal analysis, as well as numerous interviews, surveys, meetings and workshops with DLNR staff from DAR, DOCARE and DOBOR, involved and interested community members, and local experts from academia and NGOs working with communities.

The resultant CBSFA designation procedures outlined in this guide represent recommendations for successfully realizing CBSFA designation within the existing management and legal framework of the DLNR and the State of Hawai‘i. CBSFA proposals are more likely to be successful, and the designation process more straightforward, when the procedures outlined in this guide are followed.

While this guide lays out standardized procedures for CBSFA designation, each ~~area~~ and community is expected to have different needs; and the planning process, management tools, and information provided to support CBSFA proposals is expected to differ in accordance with what is appropriate to each site. DAR also recognizes the importance of being adaptive, and is committed to continuing to work with stakeholders to review and improve the CBSFA designation procedures in this guide as new lessons are learned as these procedures are implemented.

Community-Based Subsistence Fishing Area Designation Procedures Overview

1) **Community Self-Evaluation:** community dependent timeframe
   - Community Group Responsibilities: identify marine resource concerns and build support for management amongst traditional subsistence fishing practitioners. Evaluate the appropriateness of a CBSFA and send a letter of inquiry to DAR outlining the group's interest in CBSFA designation.
   - DLNR Responsibilities: provide information that helps communities evaluate the appropriateness of a CBSFA and respond to community letters of inquiry.

2) **Pre-Proposal:** community dependent timeframe, 3 month pre-proposal review
   - Community Group Responsibilities: begin collecting information to support CBSFA proposal. Prepare a pre-proposal outlining the justification for CBSFA designation and submit it to DAR. Host a DLNR site visit.
   - DLNR Responsibilities: DAR evaluates the community's pre-proposal to determine the appropriateness of a CBSFA designation and whether to support CBSFA management planning. Participate in site visit.

3) **Management Planning:** community dependent timeframe, 6 month DLNR investment (concurrent with community process)
   - Community Group Responsibilities: Conduct stakeholder analysis and discuss community engagement plans with DAR. Consult with community stakeholders, build support for regulatory recommendations as needed, and document engagement efforts. Continue collecting information to support the CBSFA proposal as needed and develop a management plan in consultation with DLNR and submit it to DAR.
   - DLNR Responsibilities: DAR facilitates a stakeholder analysis and reviews the group's community engagement plans. DAR coordinates DLNR's input on community management plan and regulatory recommendations. DAR monitors the group's community engagement efforts and participates in meetings with stakeholders.

4) **Proposal Review and Rule Package Development:** 6 month**s**
   - Community Group Responsibilities: Continue community consultations to build support for rules as necessary. Attend information meetings hosted by DAR.
   - DLNR Responsibilities: DAR reviews full proposal and decides how to adapt community regulatory recommendations into a Ramseyer format rule package. DAR hosts informational workshops at the community location. DAR may revise rules as needed and will coordinate review of finalized rule package by Division Administrators, the DLNR Chair and the Attorney General.

5) **Administrative Rule Making (Chapter 91):** 1-1.5 years
   - Community Group Responsibilities: provide input on the small business impact statement as needed and testimony at public hearings.
   - DLNR Responsibilities: DAR prepares small business impact statement and facilitates rule package progress through the Chapter 91 administrative rule making process.

Community-based Subsistence Fishing Area (CBSFA) Designation Procedures

STAGE 1: Community Self -evaluation

- Objective: Communities evaluate whether CBSFA is right for their place.
- Timeframe: community dependent

1) A **community group** interested in pursuing a CBSFA designation should fist engage individuals who traditionally gather, cultivate or depend on marine resources for native Hawaiian subsistence, culture and religion in the potential designation area to identify common marine resource stewardship goals and concerns, including identifying marine resources important to native Hawaiian subsistence and cultural practices. The proposing community group is expected to be representative of the community's traditional subsistence practitioners, and while full support from all subsistence practitioners is not expected, the group should have a larger base of support than opposition amongst this interest group at the very least. The community group is encouraged to document all community engagement efforts to the best extent feasible using the templates provided in Appendix A, and seek support from **Non-governmental Organizations (NGOs)** or other **support organizations/institutions** as necessary. See Appendix B for a Resource Management Prioritization Tool to help prioritize management issues.
2) After engaging subsistence practitioners to identify marine resources important to subsistence and shared management goals and concerns, the **community group** self-evaluates the appropriateness of pursuing a CBSFA designation using the Overview of Marine Management Options in Appendix C and the CBSFA Evaluation Tool in Appendix D.
3) If the group determines CBSFA designation is the most appropriate management strategy, the **group** prepares a letter of inquiry (LoI) the template provided in Appendix E, and sends it to the **CBSFA Coordinator**, attaching the group's completed self-evaluation checklist, a list of all group members, and any documentation of community engagement efforts to date.
4) The **CBSFA Coordinator** acknowledges receipt of the group's LoI, and discusses it with **DAR island staff** and **Administrator** to flag any immediate concerns about the appropriateness of a CBSFA. If the submission is incomplete, or questions about appropriateness arise, the group will be contacted to discuss them, and alternative management remedies may be recommended. If there are no obvious concerns, the **CBSFA Coordinator** notifies the group that is should prepare a pre-proposal. If the **group** is also interested in a Makai Watch designation, they will be put in touch with the **Makai Watch Coordinator** at this time.

Stage 1 Completion Checklist

- ☐ Shared fishery management goals and concerns identified in consultation with traditional subsistence practitioners (consultations documented)
- ☐ CBSFA/Self-evaluation checklist completed by community group members
- ☐ Letter of inquiry sent to DAR
- ☐ Full list of the group's membership

STAGE 2: Pre-proposal

- Objective: DAR evaluates the community's justification for CBSFA designation to determine whether to support CBSFA management planning.
- Timeframe: Preparation - community dependent; DLNR Review - 3 months

The **group** may begin preparing their pre-proposal any time after reviewing the introductory information package (See CBSFA Pre-Proposal Template in Appendix F).

1) Site Characterization/Information Collection
   a. Contact the **CBSFA Coordinator** to arrange a meeting with relevant the **DAR Island Biologist** and **Legal Counsel** to discuss recommended information needs, suggested collection protocols, and resources available to support their efforts. Using the best available information to support the proposal is encouraged, which may include kamaʻāina testimony, archival documents, published reports or scientific studies. Providing *multiple* and *diverse* sources of information makes proposals more defensible if challenged, and will increase the likelihood of successful rule adoption, particularly when rules are highly contested. If available information is insufficient for demonstrating the reasonableness of its desired rules, further scoping or monitoring may be needed.
   b. The **group** begins collecting information needed to inform and advance its pre-proposal and management plan with support from **NGOs** or other **supporting institutions** as needed. The **CBSFA Coordinator** can help the group identify supporting partners where upon request. The following information is needed to support CBSFA proposals (See Appendix H for information collection recommendations). Not all of the following information needed to advance the pre-proposal, but starting information collection early is recommended to quicken the designation process (*pre-proposal component):
      - Community-based subsistence needs*
      - The importance of the area's marine resources to native Hawaiian subsistence, culture and religion*
      - Customary codes of conduct and traditional and customary fishing practices sought for protection.*
      - Threats to marine resources important to native Hawaiian subsistence, culture and religion*
      - Status of marine resources important to traditional fishing practices
      - Human uses in the area (navigation, fishing, and recreational activities)
2) Pre-proposal Preparation
   a. **Group** prepares the justification for designation in consultation with traditional subsistence fishing practitioners and respected cultural practitioners[2]. Document these community consultation efforts in accordance with recommendations provided in Appendix A. Groups can invite the **DLNR Aha Moku Advisory Committee (AMAC)** and **Office of Hawaiian Affairs (OHA)** representatives to support these efforts if desired.

[2] Office of Planning CZM Program's Native Hawaiian Access Rights Project (2000) defines "Hawaiian Cultural Practitioner" as a kamaʻāina or native born person, acknowledged by the community to have close ancestral ties and/or traditional knowledge passed to them through training, education, and experience of Hawaiian natural and cultural resources, usage and rights.

b. Attach letters of support from at least two independent cultural experts (i.e. not group members) endorsing the group's justification for designation and identified customary codes of conduct.

3) Pre-proposal Review
   a. Upon completion (see checklist below), the **group** submits their pre-proposal to the **CBSFA Coordinator**, who reviews it for completeness, and prepares a CBSFA State Feedback Form if incomplete (See Appendix I).
   b. If complete, the **CBSFA Coordinator** convenes a working group of **DAR Staff** to review the pre-proposal using the CBSFA evaluation questions from Appendix D to guide their evaluation. The working group will invite individuals with relevant experience working at the site or with the community group to advise the group on CBSFA site appropriateness and community partner readiness as needed (i.e. **partner NGOS**, **Island DOCARE**, **Office of Hawaiian Affairs (OHA)**, **AMAC**, **place-based cultural experts**). The **CBSFA Coordinator** notifies the group when the 3-month review begins. If the review period requires extension, written notice of reasons and anticipated end date will be provided.
   c. During the evaluation period, the **CBSFA Coordinator** will coordinate a site visit with relevant **DAR Island Staff** and other **DLNR** divisional staff, to meet all **group members** and view the area proposed for designation.

4) **DAR** will either approve, request revisions, or decline pre-proposals.
   – Upon approval, the **group** elects a primary and alternate point of contact for DAR during the designation process. **DAR** will notify the **Chair** and relevant **DLNR** divisions of its decision to initiate CBSFA management planning. If DAR's capacity to support management planning is limited at that time, it will continue to support the group's planning efforts by providing information, clarifications, and recommendations until it has sufficient capacity.
   – If revisions are requested, the **CBSFA Coordinator** will provide a CBSFA state feedback form with recommended next steps.
   – If the pre-proposal is declined, the rationale and recommended alternatives will be documented with a state feedback form and discussed with the **group**.

Stage 2 Pre-proposal Completion Checklist

- ☐ Fishery management issues discussed with DAR, and information collection recommendations to support the CBSFA proposal have been provided.
- ☐ Community organization has a charter including governance structure, leadership selection/succession and decision-making protocols, and membership process.
- ☐ Develop the pre-proposal justification in consultation with traditional fishing practitioners and respected cultural practitioners, including
  - ☐ Identification of resources important to traditional and customary practices
  - ☐ Traditional fishing practices and customary code of conduct defined
  - ☐ The extent of traditional gathering and use of marine resources and importance to native Hawaiian subsistence, culture and religion has been evaluated
- ☐ 2 letters of support from place-based cultural experts endorsing justification

STAGE 3: Management Planning

- Objective: Prepare management plan and ensure due process.
- Timeframe: Management Plan Preparation - community dependent; DLNR commitment - 6 months (concurrent with community process)

1) Upon pre-proposal approval, the **CBSFA Coordinator** will give the **group** a presentation on the management planning and rule package development process.
2) In the initial stages of management planning, the **community organization** contacts the **CBSFA Coordinator** to facilitate their community engagement planning, including conducting a stakeholder analysis and developing a stakeholder consultation strategy. The purpose of the consultation strategy is to identify (a) how stakeholders will be informed about the CBSFA initiative; (b) how stakeholder input will be sought and considered throughout the designation process; and (c) when to coordinate community engagement efforts with **DAR** (See the Community Engagement Planning Tool in Appendix J).
3) The **community group** is responsible for preparing their management plan and regulatory recommendations using the CBSFA Management Plan Template in Appendix G. Use the Rule-making Recommendations in Appendix K, and the State Regulation Menu in Appendix L to guide the development of regulatory recommendations. The group is encouraged to seek assistance from **NGOs** or other **support institutions** as needed, and may request help from the **CBSFA Coordinator** to identify supporting partners if needed. After drafting their initial ideas, the **group** contacts the **CBSFA Coordinator** to arrange meetings with relevant **DAR Island Staff**/**Island DOCARE**/**DLNR divisions** to discuss their proposed management activities and regulatory recommendations, and identify any evidentiary recommendations for justifying their desired rules (See Appendix H for Information Collection Recommendations). Any **DLNR** recommendations will be documented with a State Feedback Form (Appendix I).
5) The **community group** engages stakeholders to inform its management planning and build support for its regulatory recommendations, and invites **CBSFA Coordinator/DAR** to meetings as specified in its community engagement plan. The **CBSFA Coordinator** will consult with relevant **DLNR** divisions and the **Chair** as needed to ensure support for the group's regulatory recommendations as they evolve during the community engagement process. Expect several rounds of review and revision during this step, with any State revisions documented with a State Feedback Form (Appendix I) and discussed with the group. The **group** documents its engagement efforts to the best extent feasible using the templates provided in Appendix A, and submits them to the **CBSFA Coordinator** as completed, throughout this stage. The **group** needs to seek support from **NGOs** or other **support organizations/institutions** if it lacks the capacity to organize and facilitate community discussions, and the **CBSFA Coordinator** can help identify supporting partners upon request.
   - Broad community support for regulatory recommendations is expected, but full community agreement is not required.
   - The **group** is expected to consult with stakeholders and provide publicly noticed opportunities for community input on its regulatory recommendations.

- The **community group** may request **DAR's** help sending meeting notifications to commercial fishers reporting catches from the proposed area, using its catch reporting database.

6) The **community group** submits a final draft of their full proposal (pre-proposal + management plan) to the **CBSFA Coordinator** when the Stage 3 Completion Checklist provided below is complete.

Stage 3 Completion Checklist

- ☐ Stakeholder analysis and consultation planning conducted with DAR
- ☐ Provided at least 2 publicly noticed input opportunities on final draft of the group's regulatory recommendations within the last year, in coordination with DAR.
- ☐ Broad community support for the current version of regulatory recommendations has been demonstrated at meetings
- ☐ Designation's potential interference with fishing, navigation and recreation has been evaluated
- ☐ Engagement efforts documented (i.e. # meetings, participants, public notices).
- ☐ DLNR divisions have been consulted on relevant components of the management plan
- ☐ State feedback has been addressed

STAGE 4: Proposal Review and Rule Package Development

- Objective: Develop Ramseyer rule package informed by the community's management recommendations
- Timeframe: 6 months

1) Upon full proposal submission, **DAR**, with other relevant **Divisions** as needed, will evaluate the group's full proposal and the best available information to determine how best to adapt the group's regulatory recommendations into a formal Ramseyer draft rule-package. The **CBSFA Coordinator** works with **Legal Counsel** and relevant **Divisions** to draft the Ramseyer draft rule-package. **DAR** may revise the groups regulatory recommendations or generate alternative options for public vetting as needed to reasonably accommodate overlapping uses. Any requests for additional information, revisions or alternative options will be documented with a State Feedback Form and discussed with the group before being vet in a public forum (Appendix I).
2) Once DAR has drafted a rules package and discussed it with the group, **DAR** will host informational workshops to present and gather public input on its proposed rules, in the most proximate public space to the community available, and with a minimum of 30 days public notice. The **community group** encourages community attendance, while **DAR**'s responsibilities for the meeting are as follows:
   - Organize venue and host meeting; invite and coordinate **DLNR** attendance including a pre and post meeting briefing with **DAR**/**DLNR**; prepare public meeting notice for **DLNR**/**DAR** website; provide overview of CBSFA designation process and stakeholder consultation process to date; facilitate meeting discussion; and record public comments.
3) **DAR** will consider the input received, and the **CBSFA Coordinator** will work with **Legal Counsel** and relevant **Divisions** to adapt the rule-package as needed, discussing any changes with the group, and checking the enforceability of the finalized rules' language with **DOCARE** and getting final agreement from relevant **DLNR** administrators.
4) Once finalized, **DAR** sends the rule package to the **Chair** and the **Attorney General** for final review. Any requests for additional information or revisions will be documented with a State Feedback Form and discussed with the group (Appendix I).
5) Once all revisions are complete, relevant **DAR staff** will brief the **Board of Land and Natural Resources (BLNR)** on the community's CBSFA proposal, and the **CBSFA Coordinator** arranges to meet with the **group** to go over the Chapter 91 process.

<u>Stage 4 Completion Checklist</u>

- ☐ Full proposal submitted (pre-proposal + management plan)
- ☐ Full proposal has been evaluated by DAR and the group's management recommendations adapted into a state supported rule package.
- ☐ DAR has gathered public input on the proposed rules and made revisions as needed.
- ☐ Finalized rule package is signed off by the DLNR Chair and Attorney General

STAGE 5: Administrative Rule-making (Ch. 91)

- Objective: Seek adoption of CBSFA rules package through Chapter 91 administrative procedures
- Timeframe: 1-1.5 years

1) The **CBSFA Coordinator** will facilitate proposal progress through the administrative rule making process (See Ch. 91 Overview in Appendix M), and will update the group monthly.
2) After **Attorney General** endorsement, the **DAR Administrator** recommends rules for public hearing, and the **Chair** puts the request on an upcoming **BLNR** meeting agenda. Members of the public can provide oral or written testimony at the meeting, and the **group** can request that the public hearing be held at the community location at this time. If the BLNR denies the request for public hearing, the **CBSFA Coordinator** will prepare a formal feedback form with the BLNR's comments and any recommendations for moving forward.
3) If rules are anticipated to affect small businesses (< 100 employees), **DAR** will prepare the small business impact statement in accordance with Hawai'i Revised Statutes § 201M. Once completed, **DAR** submits the statement to the **Small Business Regulatory Review Board (SBRRB)** for review at an SBRRB public meeting.
   - If there are no significant impacts to small businesses, the SBRRB is likely to recommend the Governor approve the rules for public hearing.
   - If significant small businesses impacts are anticipated, the **SBRRB** may request explanations or consideration of alternatives, and can submit a recommendation to the Governor to deny the request for public hearing.
4) After public hearing approval by the BLNR and the SBRRB's small business impact statement review, the **Chair** sends the rules to the **Governor** for approval to go to public hearing.
5) Once approved by the Governor, the **CBSFA Coordinator** schedules a public hearing and works with appropriate **DLNR/ DAR staff** to advertise the public hearing with 30 days' notice. The **group** also posts notices and encourages turnout locally.
6) At the hearing, the **hearing officer** from DAR records oral testimony and collects written testimony, and the **CBSFA Coordinator** prepares a summary report of testimony post-meeting.
7) **DAR** considers all testimony and may determine that revisions are needed. Additional public hearings will schedule additional if substantive changes are made. If no revisions are made, **DAR Administrator** will recommend the board adopt the rules at one of its regularly scheduled meetings.
8) **BLNR** will vote to adopt, revise or reject the proposed rule change at a board meeting.
   - With BLNR approval, the **DAR** sends the rule package to the **Attorney General** for final approval, after which the **Chair** sends it to the **Governor** for signing into law.
   - If BLNR recommends substantive rule changes, the **group** may need to re-vet them with the community before **DAR** requests another public hearing.
   - If a small businesses impact statement was prepared, **DAR** sends a public hearing summary to the **SBRRB**, who send a recommendation to the Governor to approve or reject the rules.
9) Upon Governor approval, rules are filed with the Lieutenant Governor's office and take effect 10 days after filing, and the group's management plan is officially approved by **DAR**.

Appendix A: Community Engagement Documentation
STAGES 1, 2, 3, 4

Use the "Summary Table of Community Engagement Documentation" provided below to review the different documentation templates and their recommended uses.

Summary Table of Community Engagement Documentation

Type of Documentation	Recommended Use	Why Helpful
1. Discussion/ Meeting Agenda	• *Recommended as Needed* for: – Community group meetings – Public meetings – Focus group discussion	• Posting agendas with meeting notices helps attract the appropriate participants. • Keeps meetings focused. • Provides DLNR with notice of planned discussions so staff can plan attendance as needed.
2. Attendance Sign-in Sheet	• *Always Recommended* for: – Community group meetings – Public meetings – Focus group discussion	• Keeps track of participation at each meeting • Collects contact information for participation in future discussions
3. Discussion Notes/Meeting Minutes		• Helps the group keep track of comments, identified concerns and potential solutions, and any decisions on next steps. • Can be submitted as supporting materials with rules to the BLNR to evidence the group's efforts to seek and consider community input. • Promotes transparency and trust when made accessible to participants. • Can use to update DAR on the group's planning progress and allow DAR to provide recommendations as needed to advance the proposal.
4. Public Comment Form	• *Always Recommended* for: – Any CBSFA related meeting or discussion that is open to the public	• Gives participants an opportunity to voice their opinion privately.
5. Copy of public meeting notification(s)		• Provides evidence of public participation opportunities • Useful supporting evidence to submit to the BLNR with rules that documents the notice of opportunities to participate provided to stakeholders throughout the planning process.
6. **Meeting/ Discussion Master List (EXCEL):** Discussion Date, Venue, Public Notice Dates and Outlets, Meeting Attendance	• *Always Recommended* to create entries *for*: – Community group meetings – Public meetings – Focus group discussion	• Keeps a record of ***total*** number of discussions/meetings, the notice provided and overall attendance at each (from sign-in sheet). • Useful supporting evidence to submit to the BLNR with the CBSFA rules to demonstrate that stakeholders were provided opportunities to input during the planning process.
7. **Meeting/ Discussion Participant Master List (EXCEL):** Name, Contact Information, Affiliation/Interest, Attendance Date	• *Always Recommended* to create entries for: – One on one meetings – Sign-in sheet entries.	• Keeps track of the ***total*** number of individuals engaged, as well as each person's level of participation throughout the planning process. • Can act as master contact list • Useful supporting evidence to submit to the BLNR with the CBSFA rules because provides a clear summary of the extent of community participation.
8. Community Engagement Process Roadmap	• *Optional, Use as Desired for:* – Community group meetings – Public meetings	• Promotes transparency by contextualizing the meeting within the larger planning effort and setting clear expectations for how and when participation is possible. • Helps keep discussions focused by minimizing misunderstandings about the purpose of the meeting.

CBSFA Discussion Agenda Template

Discussion Location/Address:
Discussion Date:
Discussion Time:

Discussion Purpose:

- Who is hosting the discussion?
- What is the discussion about?
- What will be achieved? (i.e. provide information, get input, reach agreement, make decision)

Agenda Items/Discussion Topics:

I. Item1
II. Item 2

Other Planned Opportunities to Participate:

How to Receive Information/Updates:

Community Group Contact Info: Group name, website, email, phone

CBSFA Meeting Sign-in Sheet

Discussion Date: _____ Discussion Location:_____

Participant Name (Please Print)	**Contact Information*** **(*Please provide your contact information if you wish to receive updates or info about future CBSFA discussions)**	**Please indicate your relationship to the proposed management area** (Indicate all that apply)		
		Regular Area User (Check All That Apply)	**Area Resident/ Ancestral Ties to Area**	**Other** (Please Specify)
		_____ Commercial Activity (non-fishing) _____ Traditional gathering or Hawaiian cultural use _____Recreation _____Commercial fishing _____Boating _____Non-commercial fishing	Yes / No	
		_____ Commercial Activity (non-fishing) _____ Commercial Activity (non-fishing) _____ Traditional gathering or Hawaiian cultural use _____Recreation _____Commercial fishing _____Boating _____Non-commercial fishing	Yes / No	
		_____ Commercial Activity (non-fishing) _____ Traditional gathering or Hawaiian cultural use _____Recreation _____Commercial fishing _____Boating _____Non-commercial fishing	Yes / No	
		_____ Commercial Activity (non-fishing) _____ Traditional gathering or Hawaiian cultural use _____Recreation _____Commercial fishing _____Boating _____Non-commercial fishing	Yes / No	
		_____ Commercial Activity (non-fishing) _____ Traditional gathering or Hawaiian cultural use _____Recreation _____Commercial fishing _____Boating _____Non-commercial fishing	Yes / No	
		_____ Commercial Activity (non-fishing) _____ Traditional gathering or Hawaiian cultural use _____Recreation _____Commercial fishing _____Boating _____Non-commercial fishing	Yes / No	

CBSFA Discussion Minutes Template

Discussion Date:
Discussion Location:

General Summary of Comments:

Key Issues/Concerns Raised:

Ideas/Strategies for Addressing Issues/Concerns:

Any Solutions Reached:

Follow-up Actions/Next Steps:

Community Based Subsistence Fishing Area

Public Comment Form

Date: _____/_____/_____ **Proposed Site Name**:_____

Name (Please Print):_____

I wish to receive updates or information from the group related to its CBSFA proposal: Yes ___ No ___

Contact Information (provide your contact information if you checked yes above)**:**

Street Address:_____

E-mail: _____ Telephone: (_____)_____

What is your relationship to the proposed designation area? (Select all that apply)

☐ Regularly use the area for (check all that apply)

_____ Commercial Activity (non-fishing) _____Commercial fishing

_____ Non-commercial fishing _____Recreation

_____ Traditional gathering or Hawaiian cultural use _____Boating

☐ Reside in or have ancestral ties to the area

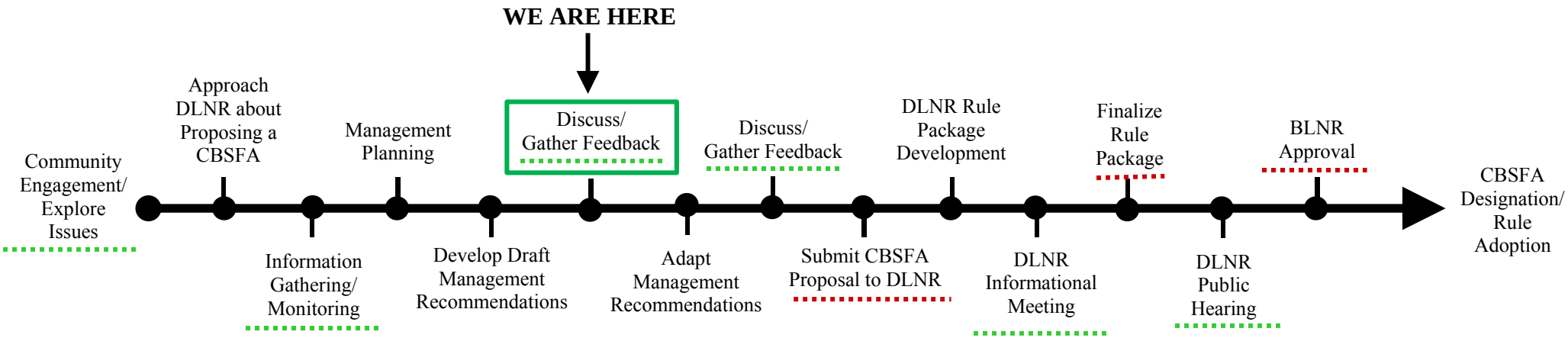
☐ Other (Please Specify):_____

Comments/Suggestions:

Example Community Engagement Process Roadmap

(Optional)

The example Process Roadmap below is a useful tool for framing community discussions and may be used or adapted to better reflect the group's planning process or community engagement strategy. To help moderate participants' expectations and encourage their constructive participation, it can be useful to show participants a roadmap of the planning process upfront. Using a roadmap will ensure partiicpatns understand the context of the current discussion within the larger planning process, as well as when key decisions will be made, and where they are able to input or contribute to those decisions.



- Opportunities for Public Input

- Decision Making

Appendix B: Marine Resource Management Prioritization Tool [3]
STAGE 1

A. Tool Purpose
In order for a marine managed area to succeed, the strategies you apply in your management plan should address the highest priority threats. A failure to prioritize can lead to a hit and miss management approach, which can be both costly and ineffective. If you carefully prioritize the threats that are affecting a management area, you can more precisely develop and apply the strategies to overcome these threats and thus effectively manage the area.

Threat prioritization is a particularly important part of the management planning process, and feedback from numerous participants indicated that this process has helped change their perceptions of the highest priority threats and thus has completely altered the management approach.

B. Facilitation Suggestions
You may find it useful to carry out this exercise as a large group, unless your group is simply too large (30 people or more). The facilitator should prepare a flip chart ahead of time following the instructions on the worksheet below. Ask you group to fill in the chart following the instructions on the worksheet.

C. Marine Resource Management Prioritization Activity
1) If you have not done so already, you should identify the marine resources important to native Hawaiian subsistence, culture and religion.

2) List the perceived threats to these resources on a flip chart.

3) Create a table with six columns and a row for each identified threat. At the top of the table, name each column from left to right as follows:

Threats	Target	Area	Intensity	Urgency	Total Score

4) Under "threats," list all of the threats you have identified, one per row. Use short hand if necessary.

5) Use four criteria to find out which of these threats are the most important (highest priority) for you to try and address:

    a) "Target"- the number of natural resource targets affected by this threat.

[3] Marine Resource Management Prioritization Tool adapted from: "Reimaanlok - An approach for Community-based Management (2012). A facilitator's Guide to Implementing the Reimaanlok Conservation Planning Process.

b) "Area"- the amount of physical space at your site affected by this threat. (Is all of the habitat/resource impacted, or just a portion of it?)

c) "Intensity"- the degree of the threat's actual impact on the target(s) at your site. (Will the threat completely destroy the habitat/resource or affect it only slightly?)

d) "Urgency"- how immediate the need is to address the threat at your site. (Is the threat active now or will it occurs tomorrow or perhaps not for a few years?)

6) As a group, count the number of natural resource targets that are affected by each threat identified. Record the total number of targets affected under the "target" criteria column for each threat.

7) Next, for each threat listed, discuss as a group and choose a ranking for the other three criteria. Rank the three criteria using the following scales:

"Area" ranking:
1 =only a small amount of area at our site is affected by the threat
2 =a moderate amount of area is affected, but not all of the area at our site
3 =all of the area at our site is affected by the threat

"Intensity" ranking:
1 = low intensity; causes only minor impact or damage
2 = medium intensity; somewhat impacts/damages
3 = high intensity; high impact or highly destructive

"Urgency" ranking:
1 = not very urgent; does not require immediate action
2 =somewhat urgent; will require action soon
3 =very urgent; requires immediate action

Write the group's three rankings under the appropriate column for each threat. Continue until all threats have been ranked.

8) Across each threat listed, determine the total score of all four criteria by adding up the four numbers listed in that row in the table. Check your math.

Example: Threat prioritization results table

Threats	Target	Area	Intensity	Urgency	Total Score
1. Erosion	5	3	2	1	11
2. Poor Water Quality	5	2	3	3	13
3. Increase in alien marine species	1	1	3	3	12
4. Overfishing (e.g. take more than need, too many fishers depleting resource)	2	3	3	3	11
5. Near shore recreation	1.5	1	2	3	7.5
6. Lack of compliance	7	3	1	3	14
7. Removing coral/rocks/shells	1.5	2	1	3	7.5
8. New value systems don't promote caring or respect for resources and give rise to unsustainable behaviors	5	3	2	3	13
9. Fishing practices hinder population replenishment of important species (e.g. over targeting of key species, take while spawning)	7	3	1	3	14

9) When all of the total scores have been listed and checked, identify the threats with the highest total scores in the table. There may be more than one threat with the same highest score. These highest scoring threats are your "highest priority" threats. On a flip chart, list these top priority threats (in order from highest to lowest, or alphabetically in the case of a tie) and corresponding scores in a table as follows:

Priority	Threat*	Total Score
1	Lack of Compliance	14
2	Fishing practices hinder population replenishment	14
3	New value systems give rise to unsustainable behaviors	13
4	Poor Water Quality	13
5	Increase in Alien Marine Species	12
6	Overfishing	11
7	Erosion	11
8	Near shore recreation	7.5
9	Removing coral/rocks/shells	7.5

* CBSFA designation may not be an appropriate tool for addressing all of the identified threats because its authority is limited to fisheries management (e.g. land management issues). Similarly, non-regulatory options may be more appropriate for dealing with some threats and should be considered (e.g. outreach to address changing value systems).

Appendix C: Overview of DLNR Marine Management Designations[4]
STAGE 1

	MLCD HRS § 190 - 3	FMA/FRA HRS § 188-53	CBSFA HRS § 188-22.6	NARS HRS § 195-1-12	Makai Watch (MW)
PURPOSE/ When Appropriate	• PURPOSE: - Supplement and increase the state's marine resources by: ▪ Establishing areas to conserve marine life ▪ Regulating the take of marine life • WHEN APPROPRIATE - Protect areas w/ high species biodiversity and/or abundance, or potential to replenish populations. - Mitigate impacts of human use on vulnerable or rare habitat, or habitat important to rare, threatened or endangered species. - High potential for endangered, and/or protected species to be unless the area is managed to prohibit fishing and possibly restrict all public use.	• PURPOSE: - Establish areas to manage, preserve, protect, conserve or propagate fisheries/marine life - • WHEN APPROPRIATE - Rules are needed to sustain or restore one or more types of fisheries due to the intensity of fishing or fragility of habitat. - There are declining populations of target species, low numbers of large individuals, declining catch per unit effort by fishers, or fishing damage to habitat. - Protect areas critical to fish spawning or as nursery areas during vulnerable life stages of aquatic species - Reduce impacts to marine species or habitats due to ease of public access, fragility of the environment, and/or types and increases in public use i.e. replenishment area	• PURPOSE: - Create designation to carry out fishery management strategies to protect traditional and customary fishing practices carried out for the purpose of Native Hawaiian subsistence, culture, or religion • WHEN APPROPRIATE - Human uses of marine waters negatively impact the species and/or habitats important to Native Hawaiian subsistence culture and religion - Human uses of the marine environment impede traditional fishing practices from being carried out - Existing regulations fail to sustain marine resources important to Native Hawaiian subsistence, culture and religion.	• PURPOSE: - Establish a reserve to protect & preserve unique marine & terrestrial resources for future generations • WHEN APPROPRIATE - When existing system of preserves, sanctuaries & refugees are ineffective; - To provide baselines for changes occurring elsewhere in Hawai'i - To preserve areas as unmodified as possible, for perpetuity.	• PURPOSE - Increase awareness of and compliance with existing ocean regulations - Support DLNR in natural & cultural resource enforcement, education, outreach, monitoring & surveillance to protect resources • WHEN APPROPRIATE - Communities assist resource managers & regulators; - Active participation through presence & education is crucial to watch for suspicious activity, monitor & care for resources & reporting inappropriate activity to law enforcement.

[4] Overview of Marine Management Options developed in collaboration with Adam Ayers.

	MLCD HRS § 190 - 3	FMA/FRA HRS § 188-53	CBSFA HRS § 188-22.6	NARS HRS § 195-1-12	Makai Watch (MW)
Benefits of Designation	• Involves rule-making • Rules may be proposed by DLNR or any group or member of the public • Rules designed to conserve and protect important species and habitat	• Involves rule-making • Rules may be proposed by DLNR or any group or member of the public • Manages marine resources to sustain fisheries • Mitigates conflict between fishery users • Rules designed sustain fisheries	• Involves rule-making • Rules and management plan may be proposed by a community organization • Gain formal recognition of community based stewardship responsibilities • Results in a collaborative marine resource co-management partnership between community group and the DLNR • Rules designed to meet subsistence fishing needs	• Involves rule-making • Rules may be proposed by DLNR or any member of the public • Strong protection – areas may be protected for perpetuity;	• Community group must contact DOCARE to initiate a Makai Watch • State provides training in outreach and awareness and observation and incident reporting and • community group can support DLNR's enforcement of marine regulations by conducting outreach and observation and incident reporting • Results in a collaborative working partnership b/w DOCARE and the Makai Watch group.
Obligations of Designation	• Proposed rules apply equally to all, no exclusion of outsiders • DLNR retains management authority • No community enforcement powers • Requires public engagement and support for rules • Provide supporting evidence to justify designation/proposed rules (i.e. monitoring)	• Proposed rules apply equally to all, no exclusion of outsiders • DLNR retains management authority • No community enforcement powers • Requires public engagement and support for rules • Provide supporting evidence to justify designation/proposed rules (i.e. monitoring)	• Proposed rules apply equally to all, no exclusion of outsiders • No community enforcement powers • DLNR retains management authority • Requires public engagement and support for rules, especially amongst local traditional subsistence practitioners. • Provide supporting evidence to justify designation/proposed rules • Demonstrate customary nature of fishing practices sought for protection • Proposing community group is an incorporated organization, or is sponsored by an incorporated organization	• Proposed rules apply equally to all, no exclusion of outsiders • No community enforcement powers • DLNR retains management authority • Requires public engagement and support for rules • Provide supporting evidence to justify designation/proposed rules (i.e. monitoring) • Strong protection – Areas may be protected in perpetuity • Administered by DOFAW • Although NARS seems to offer strong protection,	• Community group is an incorporated organization, or is sponsored by an incorporated organization • Does not involve rule-making • No community enforcement powers • Volunteer training requirements • Semi-annual reporting schedule • Seek funding and other support necessary to implement MW activities • Time Commitment: 20 hours of MW activities per month • Consent to background screening for all volunteers

	MLCD HRS § 190 - 3	FMA/FRA HRS § 188-53	CBSFA HRS § 188-22.6	NARS HRS § 195-1-12	Makai Watch (MW)
			• Conduct education and outreach • Commit to adaptive management - monitoring and evaluation activities, Rule review /revision schedule • Be able to justify the • Seek funding and other support necessary to implement CBSFA management plan.	DAR has authority to provide the same level of protection through other designations, e.g. FMAs, MLCDs, etc.	participating in observation and incident reporting activities
Suggested Resource/ Capacity Needs (Seek NGO Support)	• Community organizing/ stakeholder engagement • Meeting planning and facilitation • Monitoring support	• Community organizing/ stakeholder engagement • Meeting planning and facilitation • Monitoring support	• Respected community leadership • Experience in traditional resource management and cultural education • Organizational governance • Community organizing/ stakeholder engagement • Meeting planning and facilitation • Management planning • Monitoring and evaluation support • Outreach and communication skills	• Community organizing/stakeholder engagement • Identify individuals for Advisory Council	• Outreach communication skills • Record keeping and reporting • Proposal writing/fundraising • Dedicated volunteer coordinator
Estimated Time to Designation	• *Pre HRS § 91 rule-making*: Community Dependent – allocate time for information collection/monitoring and stakeholder engagement • *HRS § 91 rule-making*: ≥1yr minimum (if everyone is 100% on-board)	• *Pre HRS § 91 rule-making*: Community Dependent – allocate time for information collection/monitoring and stakeholder engagement • *HRS § 91 rule-making*: ≥1yr minimum (if everyone is 100% on-board)	• *Pre HRS § 91 rule-making*: Community Dependent – allocate time for organizing community group, information collection/monitoring, stakeholder engagement and management planning • *HRS § 91 rule-making*: ≥1yr minimum (if everyone is 100% on-board)	• *Pre HRS § 91 rule-making*: Community Dependent – allocate time for information collection/monitoring and stakeholder engagement • *HRS § 91 rule-making*: ≥1yr minimum (if everyone is 100% on-board)	• *Pre DOCARE Designation*: Community Dependent – allocate time for organizing volunteer group and training • *DOCARE Designation*: Dependent on DOCARE capacity and training schedule

	MLCD HRS § 190 - 3	FMA/FRA HRS § 188-53	CBSFA HRS § 188-22.6	NARS HRS § 195-1-12	Makai Watch (MW)
State Supported Management Strategies	• Regulate the take of marine life (provide supporting evidence to demonstrate necessity of prohibiting take) • "May" prohibit non-extractive activities that disturb, degrade, or alter the marine environment (provide supporting evidence to demonstrate necessity or benefits of prohibiting activities) • provide documentation of linking claimed negative impacts to their alleged cause) • Establish open and closed seasons • Establish no take areas • supporting evidence linking impact to claimed cause needed)	• Restrict the level of public use i.e. replenishment areas, refuges (provide supporting evidence to demonstrate necessity or benefits of prohibiting activities) • Regulate fishing activities/harvest (provide supporting evidence to justify fishery management strategy) - Open and closed seasons - Regulate gear types - Bag and size limits - Establish fishing reserves/refuges	• Regulate extractive activities that damage marine resources important to Native Hawaiian subsistence, culture and religion - Establish open and closed seasons - Regulate gear types - Bag and size limits • May* prohibit non-extractive activities that disturb, degrade, or alter the marine environment important to Native Hawaiian subsistence culture or religion, or which impede the exercise of traditional and customary fishing practices (*expect a high burden of proof linking claimed negative impacts to their alleged cause when seeking this type of regulation under CBSFA authority).	• Establish a statewide natural area reserves system; • Preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawai'i.	• Obey existing State/Fed rules and regulations

Appendix D: CBSFA Evaluation Tool
STAGE 1 and STAGE 2

STAGE 1:

In Stage 1, the purpose of the CBSFA evaluation tool checklist is to help communities self-evaluate the appropriateness of CBSFA designation. The evaluation questions reflect considerations related to fulfilling the statute's mandate and community partner readiness for co-management that the DLNR has identified as important to informing its decision to support a community's pursuit of CBSFA designation. The considerations reflect extensive legal analysis of constitutional, statutory and case law, literature review findings about successful fisheries co-management, as well as the input of DLNR staff, communities and other public interests.

DIRECTIONS: Answer the questions with the full membership of the community group. If the group answers "no" to *any* of the *management consideration* questions, CBSFA is not the best management tool, and the group should explore alternative management remedies. *Many* "no" responses to the *community partner consideration* questions may indicate the group is not ready for co-management at this time, and the group is encouraged to carefully consider its capacity and commitment to CBSFA management planning and rule making. If, after completing the evaluation questions, the group determines CBSFA designation is appropriate, it should prepare a Letter of Inquiry (LoI) and submit it to DAR along with the group's completed evaluation checklist (See Appendix E for LoI Template). DAR may contact the group to discuss any "no" responses.

Please keep the following definitions from the CBSFA statute in mind when using the CBSFA Evaluation Tool:

- *Subsistence* refers to the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.
- *Native Hawaiian* refers to any decedent of the races inhabiting the Hawaiian Island prior to 1778.

STAGE 2

In Stage 2, DAR will use these same evaluation tool questions to guide its evaluation of CBSFA pre-proposals. Pre-proposals will be evaluated on a case by case basis, and each community is expected to meet these considerations in their own unique way. The Department's decision to pursue a CBSFA at any given time will also take into consideration the State's management priorities, capacity, and available resources. If a pre-proposal is declined, the decision will be documented with a State Feedback Form and discussed with the group.

CBSFA Evaluation Checklist
STAGE 1

Management Considerations

- Are species and/or habitat important to traditional fishing practices present in the proposed area? ☐ YES ☐ NO
- Are human impacts to species or habitats reducing, or pose a substantial risk of reducing, the marine resources important to native Hawaiian subsistence, culture and religion; OR are human activities impeding the exercise of traditional fishing practices? ☐ YES ☐ NO
- Are existing aquatic resource regulations insufficient to address the threats to marine resources important to native Hawaiian subsistence, culture and religion? ☐ YES ☐ NO
- Are the traditional fishing practices that are sought for protection being carried out for the purpose of native Hawaiian subsistence, culture or religion? ☐ YES ☐ NO
- Are the fishing practices sought for protection being conducted in a manner that is compatible with the traditional practices and associated values and protocols that guided fishing five generations ago (prior to November 25, 1892)? ☐ YES ☐ NO
- Are the traditional fishing practices the group would like to propose for protection being conducted in a manner that does not destroy, degrade or substantially reduce the area's marine resources or ecological integrity? ☐ YES ☐ NO
- Is the area desired for designation a reasonable size for meeting community-based subsistence needs? ☐ YES ☐ NO

Community Partner Considerations

- Is there broad support for the community group's efforts amongst local traditional subsistence fishers? ☐ YES ☐ NO
- Does the group's membership include individuals with long-time connections to the area and traditional subsistence fishing practitioners? ☐ YES ☐ NO
- Is the proposed designation area in a location where the group's traditional subsistence fishers reside; or in an area where their families have gathered or cultivated marine resources over the last 5 generations? ☐ YES ☐ NO
- Is the group an incorporated organization, or sponsored by an incorporated organization, that is legally permitted to conduct business in the State of Hawai'i (i.e. a nonprofit organization, for-profit corporation, legally registered association, or legally incorporated community based organization)? ☐ YES ☐ NO
- Does the group have an understanding of, and background in, traditional and customary practices and associated values and protocols? ☐ YES ☐ NO
- Does the group have a high likelihood of sustaining the co-management initiative?
  - Does the group have a charter that includes membership and decision-making protocols? ☐ YES ☐ NO
  - Does the group have strong leadership (i.e. multiple or intergenerational leaders)? ☐ YES ☐ NO If not, is group working to build and strengthen its leadership? ☐ YES ☐ NO
  - Has the community organization been organized a long time (i.e. 3+ years)? ☐ YES ☐ NO

- Has the group demonstrated a commitment to the responsible stewardship of their natural or cultural resources over time (i.e. have a history of conducting stewardship activities, have invested people/time/resources). ☐ YES ☐ NO
- Is the group partnered with any networks, institutions or organizations that foster learning and capacity building, or provide resources, tools or funding to support its stewardship activities? ☐ YES ☐ NO

- Does the group understand that a CBSFA designation does not confer enforcement authority or exclusive rights of use to the community or group? ☐ YES ☐ NO
- Does the group understand that a CBSFA proposal must be consistent with other local, state, and federal agency rules, regulations, laws and policies? ☐ YES ☐ NO

Appendix E: Letter of Inquiry (LoI) Template
STAGE 1

Letter of Inquiry**:** The LoI should be no more than 2 pages, *excluding* attachments. Send the letter to the following address upon completion:

Division of Aquatic Resources
c/o [***CBSFA Planner Name***]
1151 Punchbowl St. Room 330
Honolulu, Hawai‘i 96813

Aloha [***DAR CBSFA Planner***],

The [***Community Group Name***] is writing to invite DAR to our [***Community/Place Name***] to provide our group with guidance on the CBSFA designation process.

Include the following information in your Letter of Inquiry:

i. The community organization's mission statement and the date it was founded.

ii. Name of the CBSFA community/site, specifying the geographic area desired for designation (e.g. coastline between [*Geographic Point 1*] and [*Geographic Point 2*] and [*distance*] from shore).

iii. Why your group is an appropriate representative of the community to pursue this designation.

iv. Who has been consulted and supports your group taking management action and inviting DAR into the community?

v. Identify the fishery management issues your group hopes to address with CBSFA designation and outline the anticipated benefits of designation.

vi. Briefly outline any support or resources available to your organization for developing a CBSFA proposal.

vii. Provide contact information for 2 group members elected to act as a primary and alternate point of contact for DAR.

Mahalo,

[Signature of Community Group Po‘o]

Attachments:

i. Attach a list of the complete membership of your community organization (following page)

ii. Attach your group's completed CBSFA Evaluation Tool Checklist (previous page)

iii. Attach any documentation of community engagement efforts undertaken to date if available (See Appendix A).

Community Group Membership List

STAGE 1

Member Name	**Member Title/Role** (if applicable)	**Area Resident/ Ancestral Ties to Area** (Y/N)	**Traditional Fishing Practitioner** (Y/N)	**Signature of Member Support for CBSFA**

Appendix F: CBSFA Pre- Proposal
STAGE 2

PRE PROPOSAL COMPONENTS

1) *Organization Information*
   a. Organization/Group Name:
   b. Date Group Established:
   c. Organization/Group Charter:
      i. Mission Statement:
      ii. Governance Protocols/By-Laws: provide details on the group's governance structure and leadership selection/succession process, decision-making protocols, and membership process.
   d. Organization/Group Membership: provide a list of group members, indicating whether they are traditional subsistence fishing practitioners or members of families with long-time connections to the area, and their organizational roles if applicable (previously submitted w/ Stage 1 LoI).
   e. Partnership and Network Affiliations: provide information on any partnerships and/or networks the organization is involved with (e.g. government, other community groups, supporting NGOs).
   f. Natural or cultural resource stewardship experience: provide an overview of any past and present natural or cultural resource stewardship projects/activities the group has undertaken.

2) *Justification for CBSFA Designation*
   a. Define Traditional and Customary Fishing Practices
      i. Describe how traditional fishing activities proposed for protection are being conducted in a manner that is compatible with the traditional practices and associated cultural values and protocols that were established 5 generations ago (prior to November 25, 1892), and do not degrade, destroy, or pose a substantial risk to the area's marine resources or ecological integrity. Include any documentation of traditional practices to support your claims such as archival documents, moʻolelo, transcripts/video/audio of kūpuna and kamaʻāina testimony etc.
      ii. Define the customary "code of conduct" that traditionally guided how fishing was practiced in the area to ensure the long-term sustainability of the resource.
   b. Identify Community-based Subsistence Needs
      i. Identify the marine resources that are traditionally and customarily gathered or cultivated for native Hawaiian subsistence, culture or religion within the proposed designation area.
      ii. Identify the extent community reliance on renewable ocean resources for native Hawaiian subsistence, culture and religion.
      iii. Describe the importance of these marine resources to native Hawaiian subsistence, culture and religion (i.e. ways used; personal, family, or community benefits from traditional practice or use).
   c. Identify the threats to the marine resources important to native Hawaiian subsistence, culture and religion, citing any supporting evidence. Multiple and diverse sources of information are encouraged to lend support for the group's regulatory recommendations.

3) *Identify CBSFA Boundaries*
   a. Describe the location and boundaries of the marine waters and submerged lands proposed for designation and provide a map of the proposed boundaries.
   b. Explain the proposed size of the CBSFA in terms of its necessity for meeting native Hawaiian subsistence, cultural, and/or religious needs.

5) *Letters of Support*
   a. Letters endorsing the justification for designation from at least two independent cultural experts
   b. Any other letters endorsing the group as a suitable CBSFA co-management partner from parties with experience working with the group i.e. NGO partner(s), agencies, donors etc.

Appendix G: CBSFA Proposal Management Plan Template
STAGE 3

MANAGEMENT PLAN COMPONENTS

1) *Description of Marine Resources*
   a. Describe the ecological and life history characteristics of the marine resources targeted for management citing any knowledge or information sources (i.e. spawning cycles, reproductive size, distribution/habitat needs etc.).
   b. Describe the current condition of the marine resources targeted for management citing any knowledge or information sources.
2) *Description of Other Marine Resource Uses*
   a. Describe the fishery within the proposed CBSFA: types of fishing, the target species, technologies or methods used, areas used, type of boats, estimated number of fishers or companies if known.
   b. Describe the non-fishing uses of marine waters within the proposed CBSFA boundary (e.g. boating, recreation, small businesses).
3) *Management Goals and Objectives*
   a. Management Goals: goals are broad statements about what the CBSFA designation and management plan intend to accomplish, or the problems they intend to solve. Include the below goal, adding additional goals as desired.
      i. HRS 188-22.6 Goal (*always included*): Reaffirm and protect fishing practices customarily and traditionally exercised for the purposes of Native Hawaiian subsistence, culture or religion.
   b. Management Objectives: objectives are measurable, attainable outcomes that help achieve the statute's goal. They should state what and how much will be achieved, by when, and for/by who.
4) *Management Activities*: identify the management actions proposed to achieve each objective. Consult with DLNR to prepare this section, as detailed in Stage 3 of the Designation Process Guidelines.
   a. Regulatory Recommendations: tailor to address the identified threats.
   b. Activities to Perpetuate Traditional and Customary Fishing Practices
   c. Education and Outreach Activities
   d. Enforcement Activities
   e. Monitoring Activities
   f. Evaluation Criteria - describe plans for review or revision and identify expected outcomes and indicators of meeting objectives.
5) *CBSFA Designation Impacts*
   a. Explain how the proposed management activities will protect or advance traditional and customary fishing practices.
   b. Explain how native Hawaiian subsistence, culture and religion will benefit from the proposed management activities.
   c. Explain how the proposed management activities will interfere with the following uses:
      i. Navigation
      ii. Fishing
      iii. Recreation
6) *Work Plan*: Create a work plan for implementing the proposed management activities. An example work plan template is provided below.
7) *Funding and Resources:* Develop a budget of expected costs the group may require to implement the proposed management activities, and indicate any plans for securing those funds. Funding is not required for CBSFA designation. A budget template is provided below as an example.

Example Work Plan Template

CBSFA Goal	Management Objective (designed to meet goal and/or address threat/impacts)	Proposed Activities to Achieve Objective	Expected Outcome from Activity (observed change resulting from activity/measure of achieving management objective)	Expected Completion Date	Responsible Party	Resources Required
GOAL 1: Reaffirm and protect fishing practices customarily and traditionally exercised for the purposes of Native Hawaiian subsistence, culture or religion (ALWAYS INCLUDED)						

Example Budget Template

Budget Item	Total Cost Year 1	Total Cost Year 2	Total Cost Year 3	Total Cost Year 4	Total Costs Year 5	Total Cost	Funds Secured	Other Sources of Potential Funding
Staff Salaries								
Program Coordinator								
Student Intern								
Education/Outreach								
Events								
Awareness Materials								
Publicity								
Projector								
Computer								
Printing/Ink								
Outreach Supplies								
Monitoring								
Database/Technology								
Monitoring Supplies								
Camera								
Site Management								
Boundary Markers								
Signage/Maintenance								
Tools								
Fuel								
Training/ Meetings								
Flights (round trip)								
Course Attendance								
Consultant/Facilitator								
Supplies								
Administration/Misc.								
Communication (phone/internet)								
Website maintenance								
Contingency (7%)								
TOTAL								

Appendix H: Information Collection Recommendations for Supporting CBSFA Proposals
STAGE 2 and STAGE 3

Information	Possible Indicators	Potential Methods of Collection	Considerations
Extent of community reliance on resources for subsistence	• Number of families/households fishing for native Hawaiian subsistence & culture • Estimated number of meals in a given timeframe that include marine resources gathered from area • Estimate frequency of use for subsistence, mahele and cultural practice in a given timeframe.	• Household or telephone survey (standardized survey template available from DAR) • Focus group discussion • Kama`āina interviews	• Required to justify CBSFA (Stage 2 pre-proposal) • Very helpful if the proposed area is large because the size needs to be justified based on meeting community subsistence needs. • Accurate and reliable information of this type is particularly helpful when: – The area is also important for navigation, fishing, or recreation uses, and a high level of opposition is expected from public users – There are many commercial interests with an economic stake in the area or who are likely to influence decision-making. • Also relevant to informing Stage 1 LoI and Stage 5 to justify designation relative to other interests • Household survey is recommended because can provide info needed to justify proposal and serve as a baseline for monitoring effectiveness of management.
Importance of the area's marine resources to native Hawaiian subsistence, culture and religion	• Ways resources used for Native Hawaiian subsistence, culture and religion • Benefits of subsistence activities: health, social, spiritual, cultural, economic (money saved)		
Evidence of traditional and customary practices in place*	• Historical accounts of customary rules of conduct and use in the area • Historical accounts of marine resources gathered in area • Historical accounts of traditional fishing technologies used in area • Accounts of historical extent of traditional gathering in the area	• Kama`āina/kūpuna interviews or focus groups • Mo`olelo • Archival documents, reports, literature • Participatory mapping (e.g. focus groups, interviews)	• Required to justify CBSFA (Stage 2 pre-proposal) *Information needed to inform management planning may be sensitive and communities may elect to exclude it from the public record
Threats to subsistence fishery	• Evidence linking alleged causes to claimed impacts to subsistence fishery. • Changes over time in catch per unit effort (CPUE) (estimated or observed) • Changes in abundance (perceived or observed)	• Kama`āina/kūpuna interviews or focus groups • Household surveys (survey template available) • Literature review showing impacts of threats (in Hawaii, or comparative studies from elsewhere) • Commercial catch reports from area • In-water studies/data collection • Human use monitoring/Fisher (CREEL) surveys • Makai Watch observation and incident reports	• Required at Stage 2 - Collect the best available information but expect higher evidentiary burdens when seeking restrictions on non-extractive general public uses, or to be successful passing highly contentious or politically unfavorable rules. • Likelihood of successful adoption of rules is increased when: – As many sources of information as possible indicate similar findings justifying necessity of rule (e.g. 2 kama`āina fisher interviews vs. 10 kama`āina fisher interviews) – A variety of different types of evidence showing similar findings is provided (e.g. kama`āina fisher accounts, literature review, and site-based monitoring make same conclusions) • Also relevant to Stage 3 and to counter challenges to rules in Stage 5.
	• Documentation of traditional fishing practices being impeded from being carried out	• Kama`āina fisher interviews/focus groups • Photographs/video showing hindrance to practice over time • Fisher (CREEL) or Human use survey (see below)	

Information	Possible Indicators	Potential Methods of Collection	Considerations
Human uses	• Activity types + Gear/technologies • Numbers of users • Patterns of use (frequency, time of day, seasons) • Locations of use (useful when mapped) • User demographics (ties to area, income, ethnicity, age)	• Household survey (survey template available) • Focus group discussions w/ area users • Participatory Mapping • Human use monitoring/ Fisher (CREEL) surveys • Commercial catch reports from area (if available)	• Helpful to informing the evaluation of the designation's extent of interference with navigation, fishing and public recreation, which is proposal requirement mandated by the CBSFA statute (Stage 3). • Helpful to identifying area users and informing the group's community engagement priorities • Monitoring highly recommended when: – To justify restricting non-extractive uses when they hinder traditional fishing practices or degrade the resources – Justifying the placement of a pu`uhonua by showing how proposed location minimizes public use impacts. • Relevant to Stage 2, Stage 3, and to counter challenges to rules in Stage 5.
Status and characteristics of marine resources important to traditional fishing practices	• Species richness and abundance for species targeted for management • Benthic cover • Species/habitat assemblages • Population/size assemblages • Species/habitat distribution map	• Kama`āina/kūpuna interviews or focus groups • In-water monitoring • Human use monitoring/Fisher (CREEL) surveys • Literature review of existing studies (in Hawaii, or comparative studies from elsewhere) • Commercial catch reports from area	• Required at Stage 3 Management Plan, but the information collected will vary by site. • Collecting information on present *and past* resource status can demonstrate degradation and support regulations pertaining to amount and size of catch. • In water surveys can be very helpful to justifying rules involving Pu`uhonua which are often highly contested because can demonstrate important species habitat or use areas, critical nursery sites etc. • Also relevant in Stage 5 to counter challenges to rules.

Appendix I: CBSFA State Feedback Form
STAGES 1, 2, 3, 4

Date: _____/_____/_____ **Site Name**: _____

Subject Topic: _____
_____

State Comments:

State Recommendations/Next Steps:

Feedback Sign Off

	Print Name	Sign Name	Date
State Parties:			

Community Parties:	Print Name	Sign Name	Date

Appendix J: Community Engagement Planning Tool
STAGE 3

Who is a Stakeholder?[5]

A "stakeholder" can be defined as:

> *Any individual, group, or institution who has a vested interest in the natural resources of the project area and/or who potentially will be affected by project activities and have something to gain or lose if conditions change or stay the same.*

Stakeholders are all individuals or groups who need to be considered in achieving project goals and whose participation and support are crucial to its success. Stakeholder analysis identifies all primary and secondary stakeholders who have a stake in the issues with which the CBSFA proposal is concerned. The goal of stakeholder analysis is to develop a strategic view of the landscape of different interests, and the relationships between the different stakeholders and the issues they care about most.

Why Is Stakeholder Analysis Important?[5]

A stakeholder analysis can help identify:

- The interests of all stakeholders who may affect or be affected by the program/project;
- Potential conflicts or risks that could jeopardize the initiative;
- Opportunities and relationships that can be built to advance the proposal;
- Groups that should be encouraged to participate in different stages of the project;
- Appropriate strategies and approaches for stakeholder engagement; and
- Ways to reduce negative impacts on different interest groups.

STAKEHOLDER ANALYSIS TOOL

1. Create a list of stakeholders in the first column of the table on the following page. Use the following questions to help identify key interest groups and individuals who may be important to consult[6]:
   - Who uses the area?
   - Who may be affected by the proposed CBSFA (positively and negatively)?
   - Whose activities potentially affect the proposed CBSFA (positively and negatively)?
   - Whose support, cooperation, expertise or influence would be helpful to the establishment and/or implementation of the CBSFA?
   - Who opposes the proposed CBSFA and/or could be detrimental to the establishment and/or implementation of the CBSFA?

[5] Text adapted from WWF (2005) Cross-Cutting Tool Stakeholder Analysis. https://intranet.panda.org/documents/folder.cfm?uFolderID=60976

[6] http://csc.noaa.gov/digitalcoast/_/pdf/stakeholder.pdf

Stakeholder Analysis

Stakeholder Groups	**List any key contacts, representatives, or identified leadership for this group**	**Interest in the issue** (i.e. their priority concerns/goals, or what is "at stake" for them)	**Describe the effect of the CBSFA proposal on the stakeholder's interests (+/-)**	**Describe the affected stakeholder's position/beliefs related to CBSFA/fisheries management rules** (e.g. in favor of permit, opposed to closed areas, against all regulations)	**How can this stakeholder group influence the success of the CBSFA proposal?** (e.g. will testify in support/against, will influence decision makers)

2. Identify where each of the identified stakeholder's should fall within the importance/ influence grid provided below to determine the best strategy for engaging stakeholders during the group's planning process. Use the following definitions to inform discussions[7]:
    - **Importance** refers to the degree to which the proposal's success depends on the active involvement of a particular stakeholder group. Important stakeholders are generally those whose needs will be met or affected by designation, as well as those whose interests converge with the objectives of the project.
    - **Influence** refers to the power that stakeholders have over a project. It can be exercised by controlling the decision making process directly and by facilitating or hindering the project's implementation. This control may come from a stakeholder's status or power, or from informal connections with leaders.

    a. Identify a stakeholder group's level of Priority for Engagement based on where they fall within the importance/influence grid below (i.e. High, Moderate, Low, or Least). Write the names of the stakeholder groups under the relevant level of priority in column 1 of the table labeled "Stakeholder Consultation Strategy" below.
    b. Next, identify the most appropriate Type of Participation for this stakeholder group using their level of importance/influence to guide the determination. Write the selected type of participation in column 2 of the table labeled "Stakeholder Consultation Strategy" (i.e. Inform, Consult, Discuss, or Collaborate).
    c. Identify the points during the designation process when the stakeholder group's participation should be sought. Write responses under When to Engage in column 3 of the "Stakeholder Consultation Strategy" table below.
    d. Identify methods for how to engage the stakeholder group given the specified type of participation (e.g. one on one meeting, survey, focus group, public meeting, info campaign, outreach event etc.). Write responses under Methods of Engagement in column 4 of the consultation strategy table.
    e. Consult with DAR about when stakeholder consultations should be coordinated with the division and document the need for DAR Coordination in column 5 of the same table.

[7]Stakeholder analysis tool adapted from: McCracken and Narayan (1998). Participation and Social Assessment: Tools and Techniques

Importance/Influence Grid[5,6,8 9]

The grid specifies appropriate approaches for involving stakeholders of differing levels of influence and importance, but these are just rules of thumb provided for guidance rather than hard and fast rules. Use your best judgment to determine the best engagement strategies

High Influence

Moderate Priority for Engagement

Discuss: *Discuss the issues with stakeholders and work with them to find solutions*

Hints:

- These stakeholders are not the target of the project but may oppose the designation; therefore, they should be kept informed and their views acknowledged to avoid conflict
- *Engage & consult on interest area*
- *Try to increase level of interest*
- *Aim to meet their needs*

Highest Priority for Engagement

Collaborate: *Decisions are reached collaboratively by following a process*

Hints:

- *These are key players who* should be closely involved throughout to ensure their support for the CBSFA designation.
- *Focus efforts on this group*
- *Involve in governance/decision making bodies*
- *Engage & consult regularly*

Low Importance

High Importance

Least Priority for Engagement

Inform: *Information that interests or affects stakeholders is communicated*

Hints:

- These stakeholders require *minimum effort and d*on't require special participation strategies *as they're* unlikely to be closely involved in project
- *Inform via general communications – press release, outreach events, informational meetings*

Low Priority for Engagement

Consult: *Input gathered, may or may not be considered*

Hints:

- Should be shown consideration
- Require special efforts to ensure their needs are met and their participation is meaningful.
- Make use of interest by involving them in low risk areas
- Keep informed & consult on interest area
- Potential supporter/ goodwill ambassador

Low Influence

[8] http://www.stakeholdermap.com/stakeholder-analysis.html
[9] Stakeholder analysis tool adapted from: McCracken and Narayan (1998). Participation and Social Assessment: Tools and Techniques

Stakeholder Consultation Strategy

1) Stakeholder Groups (organized by priority of engagement)	**2) Type of Participation** *Inform, Consult, Discuss, Collaborate*	**3) When to Engage** Stage/step(s) in designation process when stakeholder's participation is sought	**4) Methods of Engagement** (e.g. one on one meeting, survey, focus group, public meeting, info campaign, outreach event etc.)	**5) DAR Coordination**
Highest Priority for Engagement				
Moderate Priority for Engagement				
Low Priority For Engagement				
Least Priority for Engagement				

Appendix K: Rule-making Recommendations
STAGE 3

The purpose of the following rule-making recommendations is to help communities develop regulatory recommendations with a high likelihood of successful adoption. Rules may have an increased chance of being revised or challenged, and/or the rule-making process may take longer, when these recommendations are not followed. The group should therefore discuss its regulatory ideas with DAR to weigh the potential benefits and challenges of different regulatory options before developing its regulatory recommendations.

Recommendations:

1. Select rules that best reflect customary codes of conduct for pono fishing whenever feasible.
2. Focus regulatory recommendations on the take or use of *living aquatic resources* because the CBSFA statute gives the DLNR authority to carry out "fisheries management strategies", and fisheries represent living aquatic resources, which fall under the management jurisdiction of DAR.
3. Regulating non-extractive uses/activities (i.e. boating, recreation) in CBSFAs may be justified in the following circumstances:
    - The non-extractive use has a demonstrable negative impact on marine resources important to native Hawaiian subsistence, culture, and religion; or,
    - The non-extractive use prevents traditional fishing practices from being carried out. Alternatively, groups may pursue rules for non-extractive uses through relevant divisions independent of the CBSFA process.
3. Commercial activities may be restricted when they impinge on the natural or cultural resources, or hinder traditional fishing practices from being carried out.
4. Regulatory recommendations are clearly linked to a resource management outcome by addressing an identified threat.
5. Regulatory recommendations should be reasonable[10], which means:
    - Regulatory recommendations are consistent with the legislative purpose of the CBSFA statute to protect traditional and customary fishing practices for native Hawaiian subsistence, culture or religion and to meet community-based subsistence needs.
    - If the rationale or evidence for adopting the rule were presented to an unbiased person with no agenda, they would similarly conclude that the rule was necessary to achieve desired resource management outcome. Controversial regulatory recommendations may require higher evidentiary burdens of proof to demonstrate their reasonableness before the State will support them.
    - Select the least restrictive regulatory option capable of achieving the desired management objectives to mitigate impacts to other users as much as possible.
6. Regulatory recommendations must apply equally to all members of the public. Propose regulations that the group and members of the public alike will follow.
7. Regulations should be consistent with local, state, and federal laws and policies.

[10] See in re Hawai'i State Constitution Article XII §7; Pele Defense Fund v. Paty, 73 Haw. 578 (1992); Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission, 79 Haw 425 (1995); Ka Pa'akai O Ka 'Āina v. Land Use Commission, 94 Haw. 31 (2000).

Appendix L: State Regulation Menu
STAGE 3

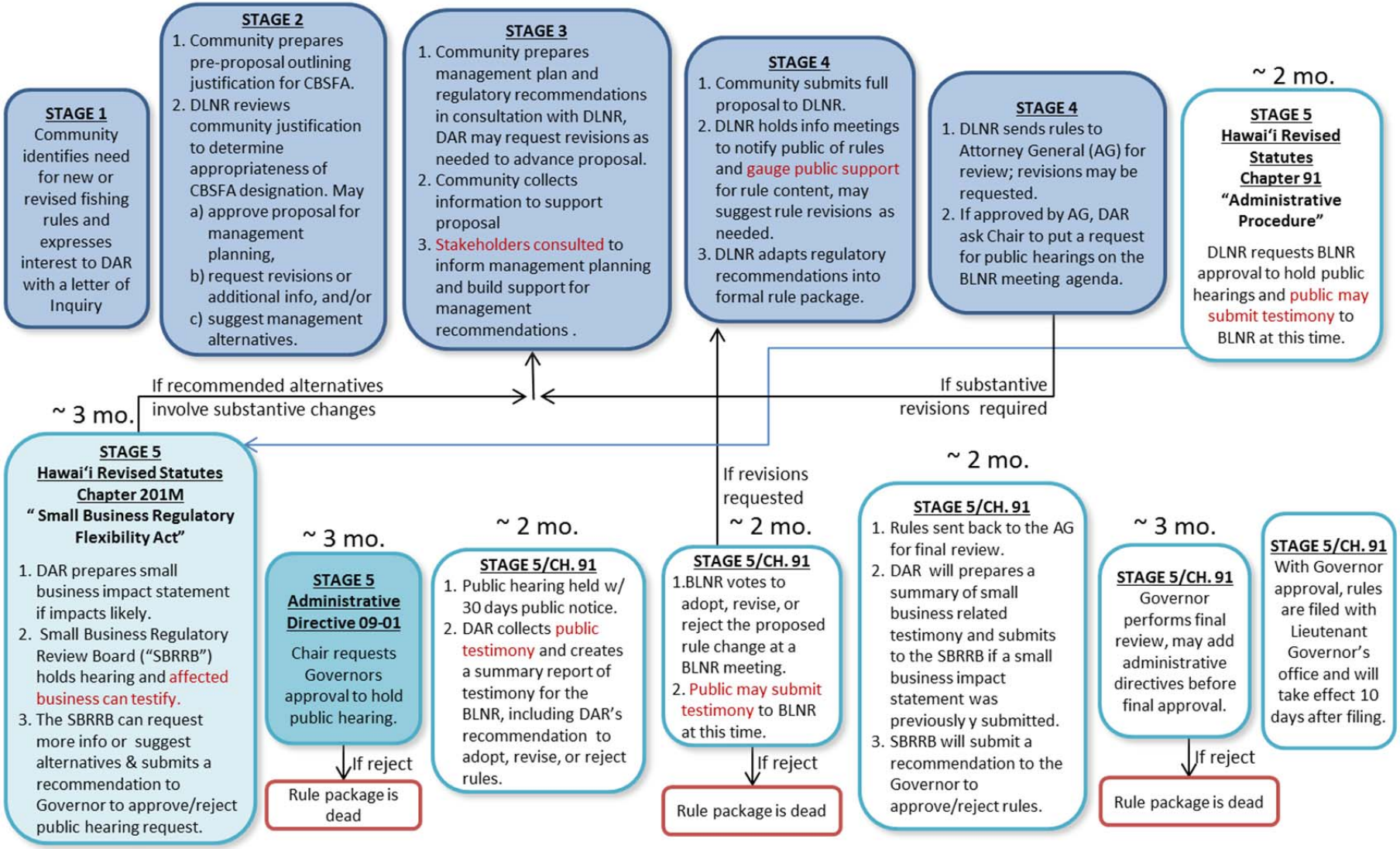
Step 1: Identify Community Management Concern Identify the management concerns outlined in the pre-proposal, in the rows below	**Step 2: Identify Customary Codes of Conduct for Addressing Concerns** Write in the place-based codes of conduct identified in the pre-proposal, which traditionally addressed each of the identified management concerns.	**Step 3: Develop Regulatory Recommendations based on State Regulatory Options** Develop regulatory recommendations by selecting from the state regulatory options listed to address the specified concern. Select regulatory options that best reflect the identified customary code(s) of conduct whenever possible. Keep in mind the Rule-making Recommendations from Appendix K. Color Indicates Relative Difficulty to Get Adopted: **LOW/MODERATE/HIGH**	**Step 4: Non-Regulatory Management Activities** Identify non-regulatory management strategies for addressing concerns and include under management activities in the management plan. The list of activities below is not exhaustive, propose other activities as desired
Extractive Use Issues			
Fishing technologies deplete subsistence fishery		Low Difficulty • Minimum size limits • Bag/possession limits • Gear restrictions: – Regulate methods that fishing nets are used (lay vs. surround net), but it is better to regulate gear rather than method – Regulate net dimensions/mesh size, soak time, net attendance – Require registration of nets – Limit amount of fishing gear per person (e.g. number of poles/lines/hooks) – Limit or prohibit gear uses between certain hours of the day (6pm-6am) – Prohibit or limit use of traps – Regulate harvest methods (e.g. by hand) Moderate Difficulty – Prohibiting or limiting non-traditional technologies or practices - may be considered when those technologies or practices adversely affect traditional fishing practices, but not on the basis that they are not traditional. – Scuba spear prohibition • Restrict fishing vessel size	• Education and outreach to promote pono codes of conduct
Fishing practices hinder population replenishment (i.e. over targeting of important subsistence species, no rest periods or rest areas, take while spawning or resting, target large reproductive individuals, take juveniles)		Low Difficulty • Spawning season closures • Moratorium on take of certain species • Prohibit fishing between certain hours (6pm-6am) • Bag/possession limits • Minimum size limits Moderate Difficulty • Slot limits • Fishery replenishment area/pu`uhoua	

Overfishing (i.e. take more than need, too many fishers depleting resource, community fishery depleted by users coming from other areas)		• Bag/possession limits • Gear restrictions Low Difficulty • Limit when fishing is allowed (e.g. number of days) • Prohibit commercial take or sale of area's marine life (difficult to enforce) • Restrict fishing vessel size • Designate important "subsistence species" and prohibit commercial take of them Moderate Difficulty • Fishing by subsistence permit only (requires availability of state funds to administer, must be equitably available to all members of the public) • Limited entry quotas (e.g. unlimited entry for subsistence, limited number of commercial fishers in area through special use permits) • Total allowable catch for commercial activities (limit total catch permitted to be taken from area) High Difficulty	
Removing coral/rocks/shells		• Take of coral & live rock is already prohibited statewide (HAR 13-95) • Prohibit/limit take of shells important to native Hawaiian subsistence, culture and religion Low Difficulty	
Non-extractive Use Issues			
Boating and recreation activities degrade important species or habitat		• See existing statewide coral damage rules prohibiting damage to coral or live rock. (HAR 13-95-70 and 71) Low Difficulty • Regulate activities that disturb, degrade, alter the marine environment (MLCD HRS 190-3) • "No entry zone"/Pu`uhonua • Ocean Recreation Management Area (ORMA) (DOBOR rule) Moderate Difficulty • Addressing boating noise impacts on fishery through regulations may be considered when impacts on fish behavior are lasting so as to adversely affect subsistence fishing, expect higher evidentiary burdens to justify High Difficulty • Boating pollution or discharge issues fall outside of CBSFA authority, contact Department of Health.	• Education and outreach to promote pono codes of conduct
Illegal or destructive mooring		• See existing statewide coral damage rules prohibiting anchor damage to coral or live rock (HAR 13-95-70 and 71). Low Difficulty • Establishing day use moorings need to be pursued through DOBOR, and requires an Environmental Assessment be Conducted, and issuance of Army Corps of Engineers permit. Also requires availability of state funds. High Difficulty	• Makai Watch - observation and incident reporting

Other Environmental Issues			
Alteration of freshwater flows negatively affects near shore environment (e.g. stream diversions, groundwater extraction)		• Freshwater issues fall outside of CBSFA authority. Consult DLNR Commission on Water Resource Management (CWRM) about In-stream Flow Standard adjustments.	
Land based sources of pollution		• See existing statewide coral damage rules prohibiting damage to coral or live rock by sediment or pollution (HAR 13-95-70 and 71). Low Difficulty • Issues with land based sources of pollution fall outside of CBSFA authority, contact relevant owner or responsible agency with jurisdiction.	• Education and outreach to promote pono codes of conduct
Invasive species proliferation (e.g. limu, roi, ta`ape)		Low Difficulty • Prohibit or limit take of herbivores (e.g. invasive limu overgrowth) • Special use permits for invasive species removal in protected areas or using prohibited gear (HRS 187a-6)	• Invasive species eradication efforts (e.g., invasive species fishing tournaments, alien limu removal clean ups)
Traditional Practice Issues			
Difficult to carry out traditional fishing practices due to interference from competing uses		• Regulate fishing activities through gear restrictions Low Difficulty • Regulate boating and recreational activities with Ocean Recreation Management Area (ORMA) (DOBOR rules), Moderate Difficulty • Regulate times when different activities are allowed (DOBOR rules) • Fishing by subsistence permit only (requires availability of state funds to administer, must be equitably available to all members of the public) High Difficulty	
New value systems don't promote caring or respect for resources and give rise to unsustainable behaviors		High Difficulty • Fishing by subsistence permit only w/ place-based education course requirement (requires availability of state funds to administer, must be equitably available to all members of the public)	• Education and outreach to promote pono codes of conduct • Social marketing campaigns • Cultural education activities/events (e.g. Lawaia ohana camps)
Public use of sacred marine sites without following protocol		High Difficulty • "No entry" zone around sacred sites w/ access by special activity permit only (HRS 187a-6)	• Education and outreach to promote pono conduct • Cultural education activities • Signage

Enforcement Issues			
Lack of compliance w/ existing rules		n/a	• Makai Watch -observation and incident reporting • Education and outreach/Makai Watch to promote compliance
Low penalties/lack of threat of enforcement fails to deter violators		Low Difficulty • Graduated penalties for repeat violators • Asset forfeiture • Civil Resource Violation System (CRVS) administrative sanctions schedule	• Makai Watch - observation and incident reporting
Cannot inspect catch w/o probable cause		High Difficulty • Legislative amendments are required to create an authority for inspection without probable cause.	
Monitoring Issues			
No catch reporting		Moderate Difficulty • Require fishers to check in at fisher catch station before and after fishing to log catch (multiple access points make implementation challenging, burdensome on fishermen in large areas) High Difficulty • Fishing by subsistence permit only w/ catch reporting requirement (state funding needed to administer, must have equitable availability for all) • Non-commercial fishing license w/ catch reporting requirement (DAR needs non-commercial licensing authority from the legislature to implement, state funding needed to administer)	• CREEL/Fisher survey

Appendix M: Overview of Chapter 91 Administrative Rule Making Process[11]



[11] Figure adapted from: Kittinger, J. N., A. L. Ayers, and E. E. Prahler. 2012. Policy Briefing: Co-Management of Coastal Fisheries in Hawai'i: Overview and Prospects for Implementation. Stanford University, Center for Ocean Solutions & Department of Urban and Regional Planning, 39 University of Hawai'i at Mānoa, Monterey, CA and Honolulu, HI. [online] http://www.centerforoceansolutions.org/initiatives/ocean-governance

Appendix N: Estimated CBSFA Designation Timeframe

Designation Process Designation Process	Conservative Estimate of Time Investment (Months)																																							Comments
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	
Community Engagement																																								Depends on size of community and the level of community support and opposition.
Community CBSFA Self-Evaluation (Stage 1)																																								Preparation time community group dependent
Site Characterization/Resource Monitoring (Stage 2)																																								As necessary to supporting designation justification and regulatory recommendations
Community Pre-Proposal Preparation (Stage 2)																																								Preparation time community group dependent
DLNR Pre-Proposal Review (Stage 2)																																								
Management Planning and Stakeholder Engagement (Stage 3)																																								Depends on group capacity, number of stakeholder to consult, and level of support needed.
Community Prepares Management Plan (Stage 3)																																								Depends on community capacity
Formal Rule Package Development (Stage 4)																																								Rule package development depends on workload of legal counsel.
DLNR Information Meeting (Stage 4)																																								Depending input received, rules revisions or additional meetings may be needed.
Formal Rule Package Review (Stage 4)																																								Time depends on AG turn around
CH. 91: Small Business Impact Statement (Stage 5)																																								Takes 2 weeks to put request on agenda, depends on number of items on agenda
CH. 91: DLNR Requests BLNR Approval to Go to Public Hearing (Stage 5)																																								Depends on level of anticipated impacts to small businesses
CH. 91: Small Business Regulatory Review Board Review (Stage 5)																																								Only need if serious impacts to business likely as a result of designation
CH. 91: DLNR Requests Governor's Approval for Public Hearing (Stage 5)																												?	?	?										Depends on Governor (workload, political context), could be longer or shorter
CH. 91: Public Hearing w/ 30 Day Public Notice (stage 5)																																								Public Hearing schedule may vary depending on availability DLNR staff, venue and/or recorder
CH. 91: BLNR meeting to review testimony and vote on rules (Stage 5)																																								BLNR may vote to adopt/reject/revise rules. BLNR decision time dependent on volume of testimony
CH. 91: AG final review, submit summary of testimony to SBRRB (Stage 5)																																								AG turn around depends on caseload.
CH. 91: Governor Final Review (Stage 5)																																					?	?	?	Depends on Governor (workload, political context), could be longer or shorter

Appendix O: Agency and Institutional Actors in the CBSFA Designation Process

Key Actors	CBSFA Role
Division of Aquatic Resources (DAR, DLNR): responsible for managing the State's *living* marine and freshwater resources.	• Division with jurisdiction to manage CBSFAs and implement fisheries management strategies. • The CBSFA Planner is the primary point of contact for the community group during the CBSFA designation process.
Division of Conservation and Resource Enforcement (DOCARE, DLNR): responsible for enforcement of DLNR rules	• Division with jurisdiction over enforcement of all natural resource regulations and Makai Watch designations. • Consult about enforcement or compliance outreach activities proposed in the CBSFA Management Plan, and to provide input on the enforceability of any rules. • Helpful to build relationships with them and generate buy-in for the group's efforts.
Non-governmental or Partner Organizations (NGO) (e.g. Kuaʻāina Ulu Auamo (KUA), University of Hawaiʻi, The Nature Conservancy (TNC), Conservation International (CI) etc.)	• Provide support for activities/planning efforts when DLNR and/or community group capacity is lacking (e.g. organizational capacity building, monitoring/site characterization, community organizing, management planning, and advocacy).
Island Board of Land and Natural Resource Member	• Voting member of the Board of Land and Natural Resources, will vote on CBSFA rules. • Useful to keep updated about the CBSFA initiative throughout the designation process.
Island Small Business Regulatory Review Board Member(s)	• Reviews all proposed rules for potential impacts to small businesses. DAR must submit a small business impact statement to the Small Business regulatory review board. • Board members contribute to the recommendations the SBRRB submits to the Governor related to: 1) approving/rejecting public hearing request and 2) approving/rejecting the adoption of rules. • Useful to keep updated about the CBSFA initiative throughout the designation process.
Other Actors	**When to Contact**
Division of Boating and Ocean Recreation (DOBOR, DLNR): responsible for management of statewide ***boating and ocean recreation*** and coastal areas pertaining to ocean waters and navigable streams	• Have jurisdiction to address issues related to boating or recreation activities conducted on or in the ocean. • May engage for rule-making when boating or ocean recreation activities: – Negatively impact marine resources important to native Hawaiian subsistence, culture, and religion; or, – Prevent traditional fishing practices from being carried out.

Other Actors	When to Contact
Aha Moku Advisory Committee (AMAC, DLNR): serves in an advisory capacity to the chairperson of BLNR on issues related land and natural resources management identified through the aha moku system.	• To help the group prepare and/or endorse its justification for designation (i.e. identification of traditional codes of conduct, letters of support) • To help group advocate for CBSFA designation within the DLNR and Legislature
Office of Planning (OP) - Coastal Zone Management (CZM) Program: oversees the effective management, beneficial use, protection, and development of the coastal zone. The CZM program provides guidance and funding to counties to support their administration of the special management area permitting process, prepares and updates the Ocean Resources Management Plan, administers the Coastal Estuarine and Land Conservation Program, and evaluates federal actions for CZM Act consistency.	• No direct role in CBSFA designation, but may be useful to keep informed of the group's planning activities. • Potential provider of planning support for community groups, discuss availability of support with DAR.
Office of Conservation and Coastal Lands (OCCL, DLNR): oversees private and public ***lands*** that lie within the State Land Use Conservation District lands, and beach and marine lands out to the seaward extent of the State's jurisdiction.	• No direct role in CBSFA designation, but may be useful to keep informed of the group's planning activities. • Have authority to deal with issues related to coastal ***land*** (non-living marine geography), including: – Beach access – Use, removal or movement of sand or rocks – Construction or drilling on marine land (beach or in-water) – Beach nourishment – Commercial activities conducted from shoreline
State Parks (DLNR): manages state parks for outdoor recreation and heritage opportunities.	• No direct role in CBSFA designation • Engage as a stakeholder if the CBSFA located adjacent to State Parks property.
Commission on Water Resource Management (CWRM, DLNR): responsible for protecting the state's water resources (surface/stream and ground water). Oversees implementation and administration of the State Water Code to ensure the rightful sharing of water and availability of freshwater for generations to come.	• No direct role in CBSFA designation • Have jurisdiction over issues related to the availability of surface, stream or ground water (i.e. diversions), which are outside the scope of CBSFA jurisdiction
Department of Health, Clean Water Branch (DOH)	• No direct role in CBSFA designation • Have authority to deal with issues or monitoring related to water quality, point, and nonpoint source pollutant discharges, as these are outside the scope of CBSFA jurisdiction
National Oceanic and Atmospheric Association (NOAA)	• No direct role in CBSFA designation • Potential source of grant funding for marine stewardship activities.

Other Actors	When to Contact
Legislators and Governor Staff (e.g. district representatives, island senators, island or state governor staff)	• No direct role in CBSFA designation, but may be helpful to keep them informed about the progress of the CBSFA initiative • Have the potential to influence the Governor's decisions
City/County Government (e.g. city council, mayor, parks and recreation, environmental services, police)	• No direct role in CBSFA designation, but may be helpful to keep them informed about the progress of the CBSFA initiative • City/county decision makers may be able to influence state decision makers. • Engage relevant city and county officials as stakeholders if the CBSFA located adjacent to city/county property/access points. • County government is responsible for monitoring and maintaining sewage systems, treatment facilities, ocean outfall, storm water conveyance systems, and solid waste management systems, and can regulate non-point source pollutant runoff through permits for construction, grading, and other development activities. • Outreach with local police to build relationships and generate understanding of rules.

Appendix P: CBSFA Statute

[§188-22.6] Designation of community-based subsistence fishing area.

(a) The department of land and natural resources may designate community-based subsistence fishing areas and carry out fishery management strategies for such areas, through administrative rules adopted pursuant to chapter 91, for the purpose of reaffirming and protecting fishing practices customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion.

(b) Proposals may be submitted to the department of land and natural resources for the department's consideration. The proposal shall include:
   1) The name of the organization or group submitting the proposal;
   2) The charter of the organization or group;
   3) A list of the members of the organization or group;
   4) A description of the location and boundaries of the marine waters and submerged lands proposed for designation;
   5) Justification for the proposed designation including the extent to which the proposed activities in the fishing area may interfere with the use of the marine waters for navigation, fishing, and public recreation; and
   6) A management plan containing a description of the specific activities to be conducted in the fishing area, evaluation and monitoring processes, methods of funding and enforcement, and other information necessary to advance the proposal.

Proposals shall meet community-based subsistence needs and judicious fishery conservation and management practices.

(c) For the purposes of this section:
   1) "Native Hawaiian" means any descendant of the races inhabiting the Hawaiian Islands prior to 1778; and
   2) "Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing. [L 1994, c 271, §1]

Appendix Q: Guidance for Preparation of Community-Based Subsistence Fishing Area Proposals under Hawaii Revised Statutes §188-22.6

(adopted by BLNR December 12, 2014)

INTRODUCTION

Pursuant to Haw. Rev. Stat. §188-22.6, the Department of Land and Natural Resources ("DLNR") may designate community-based subsistence fishing areas ("CBSFAs") and carry out fishery management strategies for such areas through the adoption of Hawaii Administrative Rules ("HAR") for the purpose of protecting and reaffirming fishing practices customarily and traditionally exercised for purposes of Native Hawaiian subsistence, culture, and religion.

The following guidance is proposed to inform communities in developing CBSFA proposals:

I. DEPARTMENTAL COMMUNICATION AND INTER-DIVISIONAL COOPERATION

a. The Division of Aquatic Resources ("DAR") is the lead division in the designation of CBSFAs and the main point of contact for community organizations or groups pursuing CBSFA designation.

b. Other DLNR divisions cooperate with DAR in designating CBSFAs and adopting rules to reaffirm and protect traditional and customary fishing practices carried out for Native Hawaiian subsistence, culture and religion.

c. Where rules falling under different divisional jurisdictions need to be coordinated, the divisions may pursue administrative rulemaking concurrently.

d. Communities should communicate early and frequently with DAR to develop their CBSFA proposal using DLNR standard operating procedures for CBSFA designation. DAR will engage with communities who follow CBSFA designation standard operating procedures (See Exhibit I).

e. Community groups or organizations may request that DAR provide information or suggestions to support marine stewardship efforts at any time.

II. INFORMATION NECESSARY TO ADVANCE A CBSFA PROPOSAL

Community groups interested in pursuing CBSFA designation should be prepared to do the following to advance their CBSFA proposal:

a. Provide a list of members of the community group developing the CBSFA proposal that includes individuals who traditionally and customarily gather and/or cultivate marine resources for Native Hawaiian subsistence, culture or religion within the proposed designation area.

b. Demonstrate the proposing community group's stewardship of the environment or natural resources within the proposed designation area.

c. Identify the traditional and customary fishing practices proposed for protection and provide evidence to verify custom[12]. Evidence of custom may include, but is not limited to, relevant and material expert or kamaʻāina testimony and affidavits describing the history and traditional practices of Native Hawaiians living in the geographic area, archival documents, and historical moʻolelo/narratives or reports[13].

d. Provide the best available information on the following characteristics of the proposed designation area:
   i. Status and ecology of species or habitat important to traditional fishing practices exercised for Native Hawaiian subsistence, culture and religion.
   ii. The importance and historical and current extent of traditional and customary gathering and use of marine resources for Native Hawaiian subsistence, culture and religion.
   iii. The fishery and other non-fishing uses of the area's marine waters including for recreation and navigation.
   iv. Impacts of human uses on the species and/or habitats important to traditional and customary fishing practices.
   v. Human uses interfering with the exercise of traditional and customary fishing practices.
   vi. Failures of existing marine resource regulations in sustaining aquatic resources or preventing damage to marine habitat important to Native Hawaiian subsistence, culture and religion.

e. Explain how the proposed area, activities and regulatory recommendations will support community-based Native Hawaiian subsistence, cultural and religious needs[14].

III. BASIS FOR JUSTIFYING REGULATORY RECOMMENDATIONS

a. The following considerations, may be used as a basis for justifying regulatory recommendations in a CBSFA proposal[15,16]:

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[12] See in re Hawaiʻi State Constitution Article XII §7; Hawaii Revised Statutes §1-1; Hawaii Revised Statutes §7-1; Kalipi v. Hawaiian Trust Co (1982); Pele Defense Fund v. Paty (1992); Public Access Shoreline Hawaiʻi v. Hawaiʻi County Planning Commission (1995); Kelly v. 1250 Oceanside Partners, No. 00-1-0192K, slip op. at 10-11 (Haw. 3d Cir. Ct. Oct. 21, 2002).

[13] Evidence for Substantiating Traditional and Customary Practice: Palama v. Sheehan, 50 Haw. 298, 440 P.2d 95 (1968); Ashford, 50 Haw. at 316, 440 P.2d at 77 (1968); State v. Hanapi, 89 Hawaiʻi 177, 970 P.2d 485 (1998).

[14] HRS §188-22.6

[15] Public Trust Doctrine: Hawaiʻi Admission Act of 1959 Section 5(f), Public Law 86-3, 73 Stat. 4; Hawaiʻi State Constitution Article XI §1 and §6, Hawaiʻi State Constitution Article XII §4.

[16] Obligation to Protect Traditional and Customary Practices:
- Hawaiʻi State Constitution Article XII §7 The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]
- Public Access Shoreline Hawaiʻi v. Hawaiʻi County Planning Commission (1995) holding that Native Hawaiians have rights distinguishable from the public when reasonably exercised to support subsistence, culture and religion, and must be protected by the State to the extent feasible; and
- Water Use Permit Applications (Waiāhole), 94 Hawaiʻi 97, 9 P.3d 409 (2000) holding that domestic uses and the exercise of Native Hawaiian traditional and customary practices are public trust purposes but private commercial uses are not.

i. *The Natural or Cultural Resource* - In the context of the public trust resources, the highest management priority is the conservation of the natural or cultural resource. Regulatory recommendations may be proposed to limit or prohibit uses or activities that are conducted in ways that unduly damage the natural or cultural resource.

ii. *Traditional and Customary Practices* -Traditional and customary practices exercised for purposes of Native Hawaiian subsistence, culture and religion are public purposes that are afforded protection under the public trust doctrine. Regulatory recommendations may be proposed based on their ability to protect and reaffirm traditional and customary practices exercised for Native Hawaiian subsistence, culture or religion.

iii. *General Public Use* - Public uses or activities that can be done without unduly damaging the resource are also public purposes that are afforded protection under the public trust doctrine. Regulatory recommendations should strive to protect public uses or activities that are conducted in ways that do not unduly damage the natural or cultural resource or impede traditional and customary fishing practices from being exercised.

iv. *Commercial Activities*[17] - Although commercial activities may produce important public benefits, such private interests are not afforded protection under the public trust doctrine. Regulatory recommendations proposed to limit or prohibit commercial activities may be justified when commercial activities impinge on the natural and cultural resources, use by the general public, or impede the exercise of traditional and customary practices for Native Hawaiian subsistence, culture and religion.

b. Regulatory recommendations may be justified using the best available information based not only on scientifically proven facts, but also relevant and material kamaʻāina testimony[18], future predictions, generalized assumptions, and policy judgments that also protect the resource wherever feasible[19].

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[17] See definition of Commercial Activity in DLNR Policy for Commercial Activities on State Owned and Managed Lands and Waters (1/30/1998): The collection by a party or their agent of any fee, charge, or other compensation for utilizing the marine waters or related resources shall make the activity commercial. Not for profit status of any group or organization under Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged or managed by such a group or organization is noncommercial. Not for profit groups that charge only a nominal fee for administrative costs that that utilize a resource or public facility at a frequency and/or magnitude that does not significantly contribute to the degradation of the facility and/or resource will be considered non-commercial.

[18] See in re Ashford, 50 Haw. at 316, 440 P.2d at 77 (1968) holding that kamaʻāina witnesses may be used in land disputes; and Diamond and Blair v. Craig Dobbin and Wagner Engineering Services, Inc. and BLNR (2014) holding that kamaʻāina testimony was sufficient historical evidence of the upper reaches of the wash of waves for establishing a certified shoreline.

[19] See in re Water Use Permit Applications (Waiāhole), 94 Hawaiʻi 97, 9 P.3d 409 (2000) holding that a) lack of full scientific certainty is not a basis for postponing the adoption of management measures to prevent the degradation of public trust resources, and b) that where scientific evidence is preliminary and not yet conclusive it is prudent to adopt the "precautionary principle" to protect the resource in which decisions are made based not only on scientifically proven facts, future predictions, generalized assumptions, and policy judgments that also protect the resource.

Exhibit I*

Community-Based Subsistence Fishing Area Designation
Standard Operating Procedures (SOP) Summary
(*updated March 2015)

1) **Community Self-Evaluation:** community dependent timeframe
   - Community Group Responsibilities: identify marine resource concerns and build support for management amongst traditional subsistence fishing practitioners. Evaluate the appropriateness of a CBSFA and send a letter of inquiry to DAR outlining the group's interest in CBSFA designation.
   - DLNR Responsibilities: provide information that helps communities evaluate the appropriateness of a CBSFA and respond to community letters of inquiry.
2) **Pre-Proposal:** community dependent timeframe, 3 month pre-proposal review
   - Community Group Responsibilities: begin collecting information to support CBSFA proposal. Prepare a pre-proposal outlining the justification for CBSFA designation and submit it to DAR. Host a DLNR site visit.
   - DLNR Responsibilities: DAR evaluates the community's pre-proposal to determine the appropriateness of a CBSFA designation and whether to support CBSFA management planning. Participate in site visit.
3) **Management Planning:** community dependent timeframe, 6 month DLNR investment
   - Community Group Responsibilities: Conduct stakeholder analysis and discuss community engagement plans with DAR. Consult with community stakeholders, build support for regulatory recommendations as needed, and document engagement efforts. Continue collecting information to support the CBSFA proposal as needed and develop a management plan in consultation with DLNR and submit it to DAR.
   - DLNR Responsibilities: DAR facilitates a stakeholder analysis and reviews the group's community engagement plans. DAR coordinates DLNR's input on community management plan and regulatory recommendations. DAR monitors the group's community engagement efforts and participates in meetings with stakeholders.
4) **Proposal Review and Rule Package Development:** 6 month**s**
   - Community Group Responsibilities: Continue community consultations to build support for rules as necessary. Attend information meetings hosted by DAR.
   - DLNR Responsibilities: DAR reviews full proposal and decides how to adapt community regulatory recommendations into a Ramseyer format rule package. DAR hosts informational workshops at the community location. DAR may revise rules as needed and will coordinate review of finalized rule package by Division Administrators, the DLNR Chair and the Attorney General.
5) **Administrative Rule Making (Chapter 91):** 1-1.5 years
   - Community Group Responsibilities: provide input on the small business impact statement as needed and testimony at public hearings.
   - DLNR Responsibilities: DAR prepares small business impact statement and facilitates rule package progress through the Chapter 91 administrative rule making process.
6) **Implementation, Monitoring and Assessment** (post rule-adoption)
   - Community Group Responsibilities: implement non-regulatory elements of management plan including outreach and monitoring as agreed upon in planning process.
   - DLNR Responsibilities: implement and enforce rules and support implementation of non-regulatory management plan components including outreach and monitoring as agreed upon in planning process.