

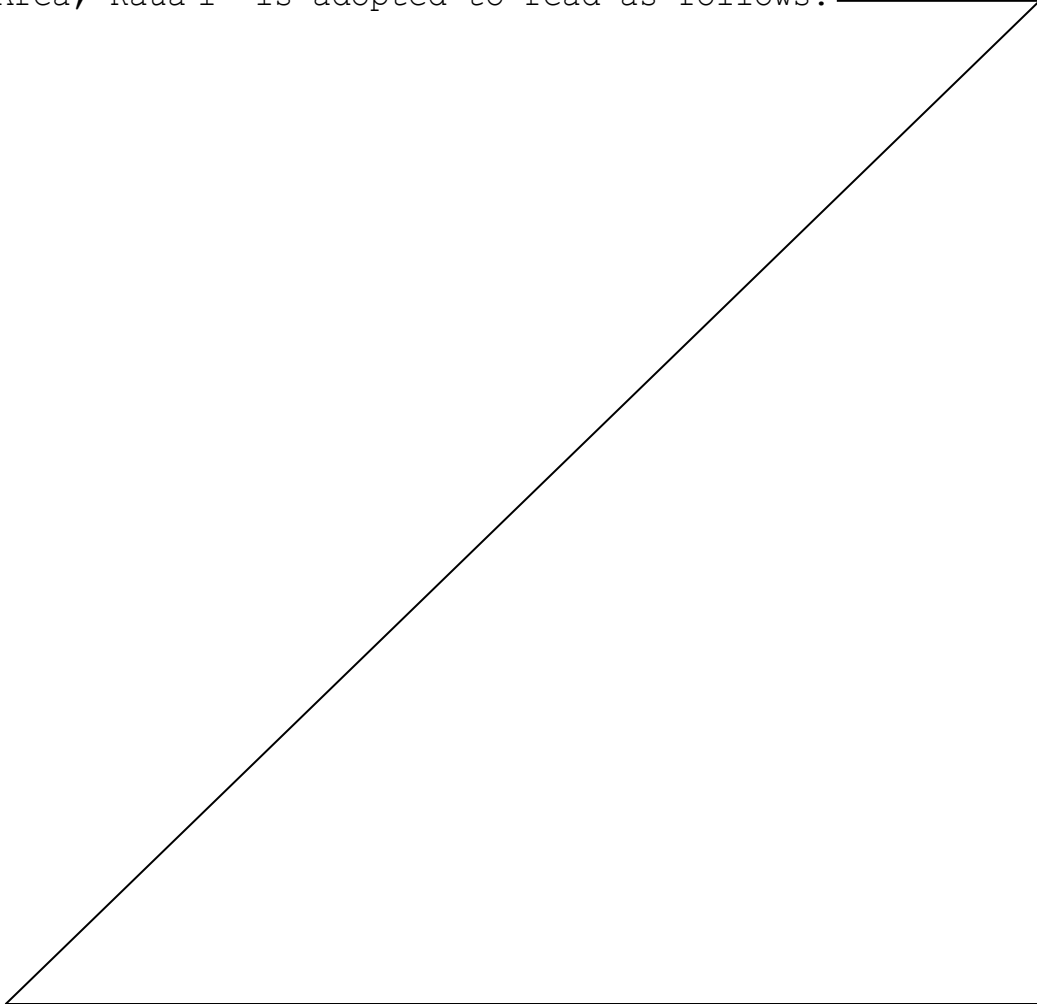
RAMSEYER FORMAT 4/16/14

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.8
Hawaii Administrative Rules

(Date of adoption)

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



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.8

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

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

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

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

practices that are exercised for subsistence, cultural, and religious purposes in the area; and

- (5) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users.
[Eff _____] (Auth: HRS §§188-22.9, 188-53, 190-3) (Imp: HRS §§188-22.9, 188-53, 190-3)

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

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

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

"Day" means a twenty-four hour period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§13-60.8-5 Permitted and prohibited activities.

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

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

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

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

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

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

no greater than eight feet in total length;

- (C) Possess and use a throw net;
 - (D) Use pa'ipa'i net or surround gill net fishing methods, provided that nets may only be deployed from the shore, or from a vessel less than fourteen feet long, and provided further that at least two people must be within five feet of the net at all times while it is deployed; and
 - (E) Possess and use a scoop net between 6:00 a.m. and 6:00 p.m., provided that a scoop net may not be used to take greater than three specimens of marine life per day; and
- (9) Possess any fishing gear while on a vessel in active transit seaward of the Vessel Transit Boundary, as described in section 13-60.8-3(b)(3) of this chapter.

(e) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff

] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.9, 188-53, 190-3)

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

- (1) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (2) A person whose permit was revoked shall not be eligible to apply for another permit until one year after the date of revocation. [Eff _____] (Auth: HRS §§187A-6, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-6, 188-22.9, 188-53, 190-3)

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

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

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

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

§13-60.8-8 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the

invalid provision or application, and to this end the provisions of this chapter are severable." [Eff] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.9, 188-53, 190-3)

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

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

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

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

William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

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Deputy Attorney General

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

'Ōpihi Management Area – Kē'e Beach Boundary Coordinates

Point	Boundary	Latitude	Longitude
O1	'Ōpihi Kē'e shoreward	22°13'13.61"N	159°35'5.11"W
O2	'Ōpihi Kē'e seaward	22°13'15.75"N	159°35'7.34"W

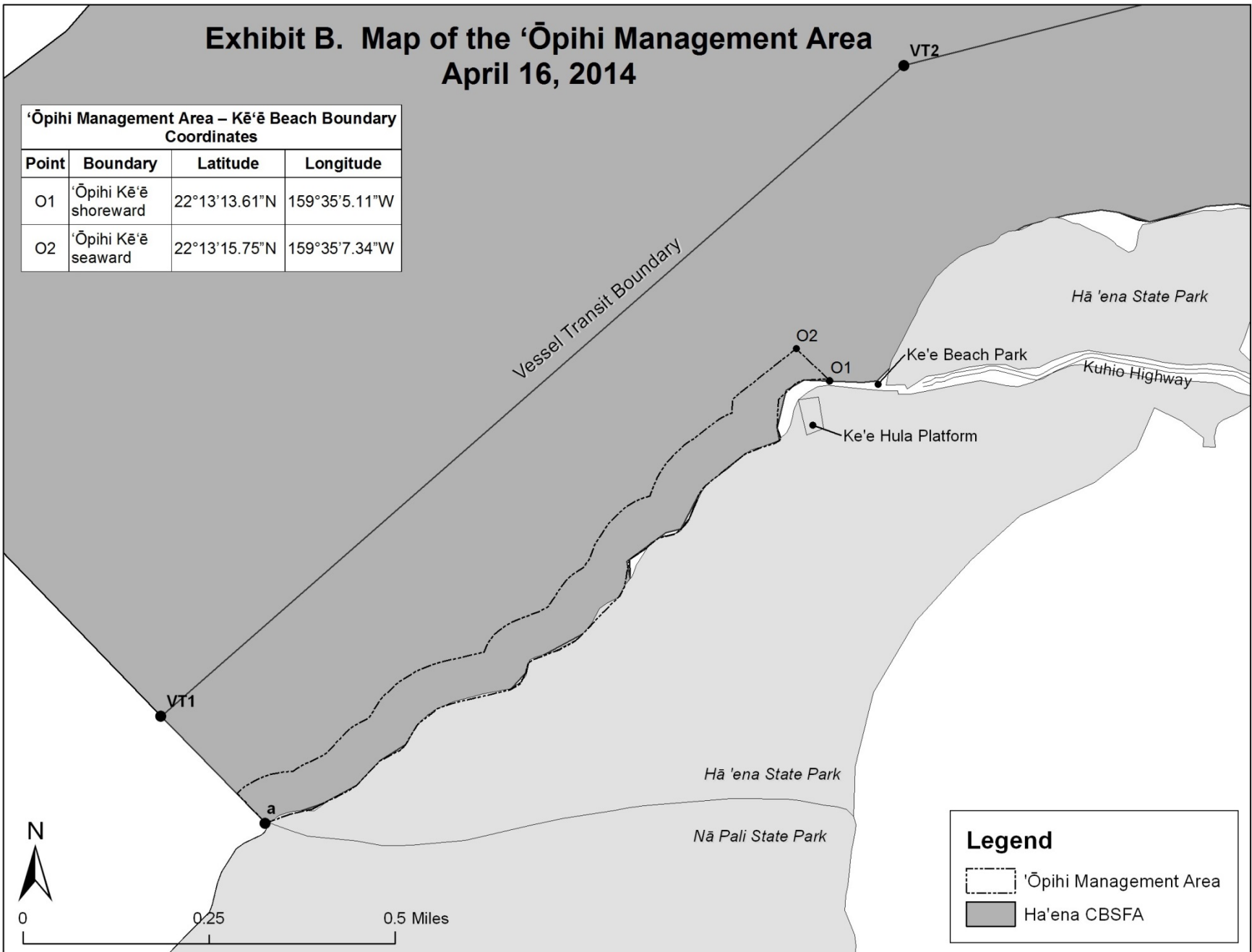
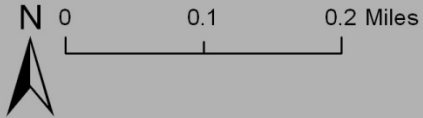
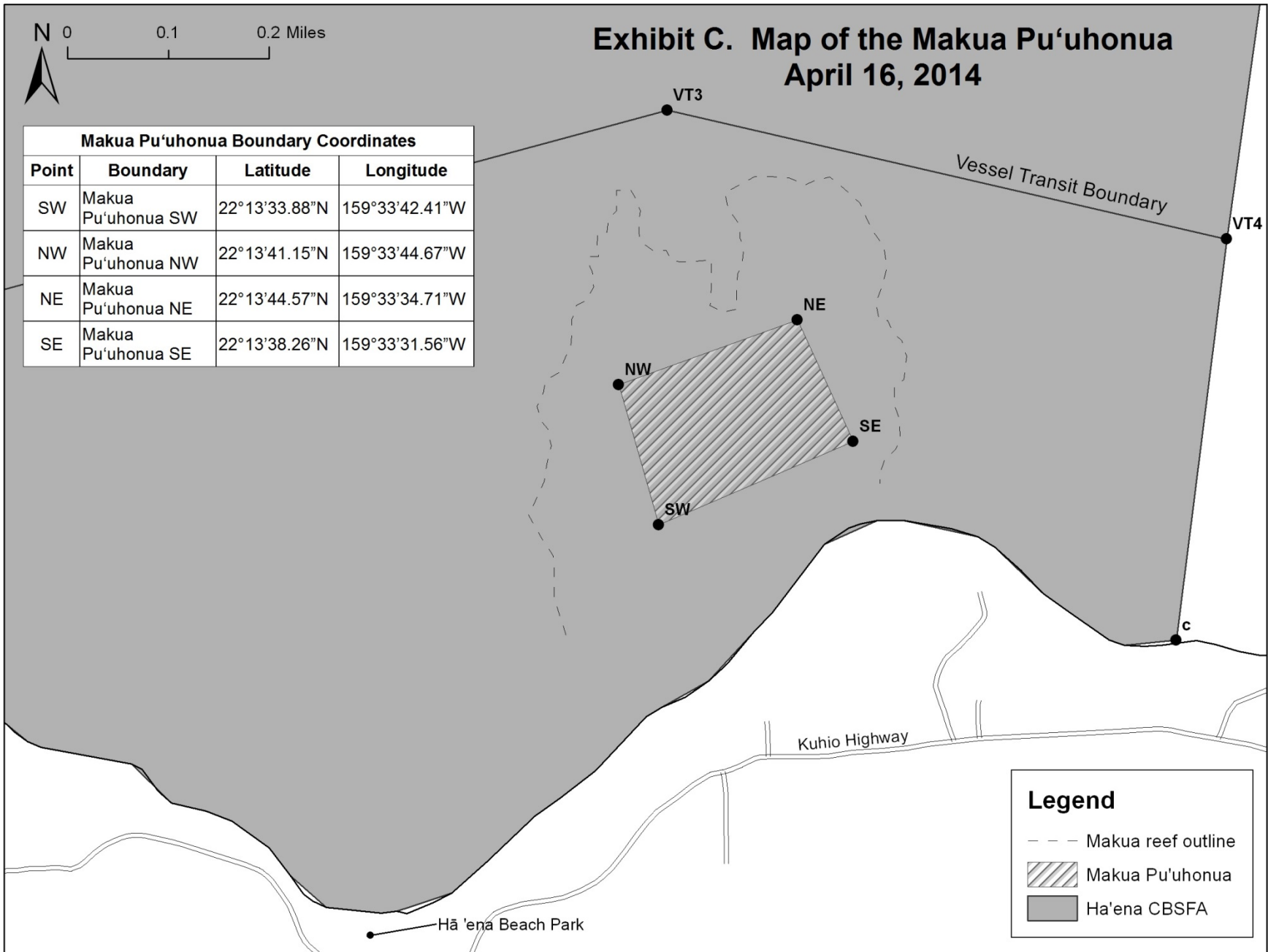


Exhibit C. Map of the Makua Pu'uhonua April 16, 2014



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



Legend

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