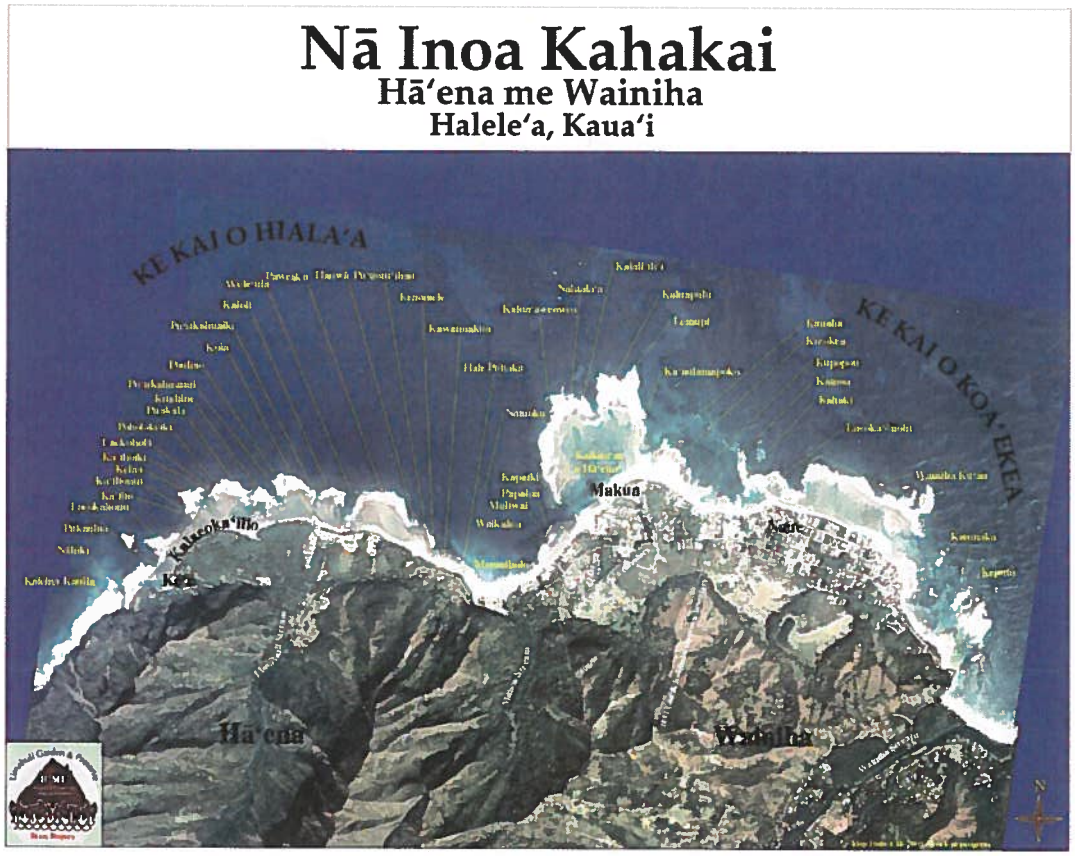
Proposed Management Plan and Fishing Regulations for the Hāʻena Community-Based Subsistence Fishing Area, Kauaʻi



Submitted by the Hāʻena Fisheries Committee,

A partnership between
Community members of Hāʻena, the Hui Makaʻāinana o Makana, and

Version: June 1, 2011

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Hawai'i Community Stewardship Network
Hui Maka'āinana o Makana
Limahuli Garden and Preserve of the National Tropical Botanical Gardens
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ABBREVIATIONS

CBSFA: Community-Based Subsistence Fishing Area
DAR: Division of Aquatic Resources
DLNR: Department of Land and Natural Resources
DOBOR: Division of Boating and Ocean Recreation
DOCARE: Division of Conservation and Resources Enforcement
HRS: Hawai'i Revised Statutes
NOAA: National Oceanic and Atmospheric Administration

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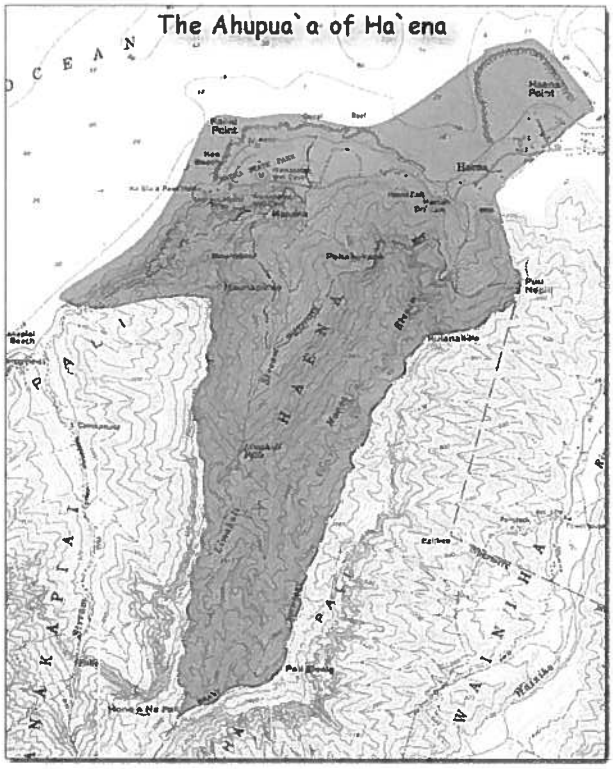
EXECUTIVE SUMMARY

Introduction



The *ahupua'a*[1] of Hā'ena is the westernmost land in the *moku* (district) of Halele'a on the northwest coast of Kaua'i. The public highway ends in this *ahupua'a,* a land filled with many *wahi pana* (stories places), sites that are sacred to native Hawaiians and important to the whole state. The *ahupua'a* extends approximately 3.5 miles from the center of Naue Bay north past Kē'ē Beach to the cliffs before Hanakapi'ai. The *ahupua'a* and its offshore waters, since time immemorial, have been an important subsistence fishery resource for native Hawaiians and local families. In interviews with cultural historian Kepa Maly, *kūpuna* (elders) from Hā'ena noted a decline in quality and abundance of fish ("Hana A Ka Lima, 'Ai Ka Waha: A Collection of Historical Accounts and Oral History Interviews with Kama'āina Residents and Fisher-People of Lands in the Halele'a-Nāpali Region on the Island of Kaua'i, Kepa and Onaona Maly, 2003). Many felt that the changes were caused by the loss of the *konohiki* (overseer) system and *kapu* (laws) that once governed the fishery, which has led to people taking more than they need, in addition to recreational overuse, coastal development, and pollution.

In 1999, members of traditional families of Hā'ena formed a 501(c)3 nonprofit organization. The nonprofit, Hui Maka'āinana o Makana, entered into a Memorandum of Understanding with the State Park system to manage a traditional *lo'i* (taro field) located within Hā'ena State Park boundaries. Since then, the community has broadened its activities to include community-based management of the natural and cultural resources of the *ahupua'a*. In 2006, the community successfully lobbied the Hawai'i State Legislature for designation of the ocean waters of the Hā'ena *ahupua'a* as a Community-Based Subsistence

[1] An ahupua'a is a traditional Hawaiian section of land typically running from the mountains to the sea that provided what residents needed to survive.

Fishing Area. This document proposes a management plan and regulations for the Hāʻena Community-Based Subsistence Fishing Area (CBSFA).

Basis for authority

Statutory authority to adopt fishing regulations rests with the Hawaiʻi Department of Land and Natural Resources (DLNR) and the Governor. The Hawaiʻi State Constitution provides for such authority in Article XI-1, titled "Conservation and Development of Resources." Chapter 91 of the Hawaiʻi Revised Statues, titled "Administrative Procedures," provides the required process. Under Chapter 188 of the Hawaiʻi Revised Statutes, titled "Fishing Rights and Regulations," Section 22.6 provides DLNR the authority to designate Community-Based Subsistence Fishing Areas using the process described under Chapter 91.

On June 26, 2006, Governor Linda Lingle signed into law SB2501 SD1 HD1 CD1: "A Bill for an Act Relating to Fishing" (Act 241), thus establishing, "a community-based subsistence fishing area for the ahupuaʻa of Hāʻena." Act 241 empowers the Hāʻena community, in consultation with DLNR and other interested parties, to recommend a management plan including fishery management rules to the DLNR. This proposed management plan and fishing regulations for the Hāʻena Community-Based Subsistence Fishing Area are hereby submitted by the Hāʻena Fisheries Committee—a group comprised of Hāʻena community members, other interested parties, the nonprofit Hui Makaʻāinana o Makana, and Limahuli Garden and Preserve of the National Tropical Botanical Gardens—to the DLNR's Division of Aquatic Resources (DAR) for its consideration. The proposal was developed in collaboration with DAR, and the submission of this proposal is supported by Kauaʻi County, the Kauaʻi Branch of the Division of Boating and Ocean Recreation, the Kauaʻi Branch of the Division of Conservation and Resources Enforcement, the Hanalei to Hāʻena Community Association, the Hawaiʻi Community Stewardship Network, and many individuals (see appendices 3-7),

Summary of process used since 2006 to develop the proposal

1. Background social and biological research
    a. 2006-2007: Interviews with *kamaʻāina* (long-time local) fishing families on perceived changes to near-shore marine resources, impacts, and strategies to ensure healthy resources over the long term.
    b. 2009 to present: The collection of data on the human use of the coastal areas of the Hāʻena ahupuaʻa to better assess what activities are taking place, when, where, and to what degree.
    c. 2009: A rapid baseline benthic habitat assessment to assess baseline coral reef conditions in the nearshore areas of the CBSFA.

d. 2009 to present: A catch-per-unit-effort survey of the CBSFA to provide baseline information about the biological and sociological importance and health of the Hāʻena fishery.

2. Community meetings to gather ideas and input
    a. 2006 to present: Meetings with the Hui Makaʻāinana o Makana, which led to the establishment of a Fisheries Committee composed of community members (both members and nonmembers of the Hui), which met regularly to develop the draft management plan. These meetings were advertised through word of mouth and email, and average attendance was 12 people, mainly from local households. The Fisheries Committee met regularly throughout the entire process to keep it moving forward, to make decisions, and to relay information to and from the community.
    b. 2008: Meeting with representatives of the commercial kayak operators who have commercial use permits for Hāʻena.
    c. 2008: Informal meetings and conversations with recreational users (surfers, kiteboarders, windsurfers).
    d. January 31, 2009: Meeting of the *kamaʻāina* families of Hāʻena, with approximately 80 in attendance.
    e. March 31, 2009: Meeting of the Hanalei-to-Hāʻena Community Association with a focus on the fisheries rules. This meeting was advertised through the radio, flyers, ads in the paper, and word of mouth. Roughly 20 people attended.
    f. April 24, 2009: Community meeting held at the Hanalei elementary school. The meeting was advertised through the paper, flyers, and word of mouth. Roughly 40 people attended, including local families and fishermen, recreational interests, and commercial interests.
    g. April 16, 19-20, 2011: Meetings with the Hui Maka'āinana o Makana, State and County representatives, permitted commercial operators, and recreational users to inform them of the proposed rules and next steps.
    h. April 29, 2011: Meeting with the *kamaʻāina* families, via the Hui Makaʻāinana o Makana, to inform them of the proposed rules and next steps.
    i. May 17, 2011: Community meeting via the Hanalei-to-Hāʻena Community Association to inform attendees of the proposed rules and next steps. Sixty-five people attended.
3. Meetings with State, Federal, and County agencies
    a. 2006 to present: Regular meetings and negotiations with the Division of Aquatic Resources.
    b. 2008 to present: Federal (National Oceanic and Atmospheric Administration)
    c. 2008 to present: State (Division of Boating and Ocean Recreation, Division of Conservation and Resources Enforcement, and State Parks)

   d. 2011: County
4. Late 2009-early 2011: Multiple attorney reviews of draft rules to develop the required legal format and language. Two attorneys, an HCSN Legal Fellow, and a DAR Legal Fellow all assisted with developing the appropriate legal language.

Summary of proposal

Act 241 designated the Hāʻena Community-Based Subsistence Fishing Area as the *ahupuaʻa* of Hāʻena from the shoreline to one mile out. The *ahupuaʻa* coastline is approximately 3.5 miles.

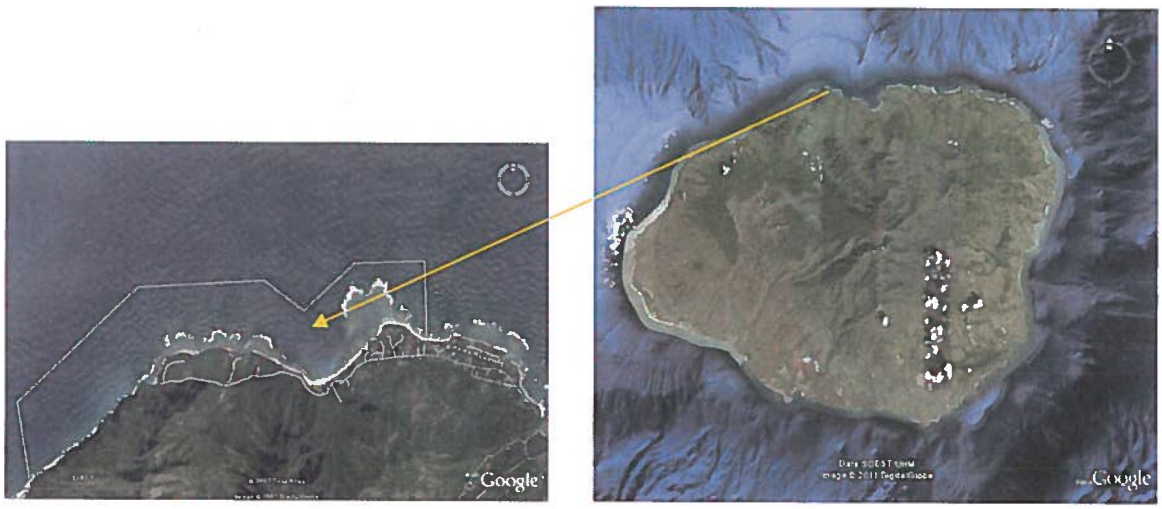
The goal of the Hāʻena Community-Based Subsistence Fishing Area is to sustainably support the consumptive needs of Hāʻena's people through culturally rooted, community-based management that recognizes and responds to the connection between land and sea and strives to restore the necessary balance of native species.

Proposed rules for this area include additional gear restrictions, area restrictions, species restrictions, and bag limits to supplement existing DAR rules. Based on local and traditional ecological knowledge and practice, community perception, and scientific input, implementation of the management plan and new regulations should increase fishery abundance and biomass in addition to promoting Native Hawaiian traditional practices.

SITE DESCRIPTION

Location

The Hāʻena *ahupuaʻa* is located on the North Shore of Kauaʻi in the *moku* (district) of Haleleʻa. The *ahupuaʻa* begins approximately in the center of Naue Bay (22°13'28.00"N, 159°33'13.50"W) and extends north to the cliffs before Hanakapiʻai, an imaginary extension of the boundary between Hāʻena State Park and Na Pali State Park (22°12'42.50"N, 159°35'44.50"W).



Land zoning and ocean area designations

Zoning is the primary mechanism by which Kauaʻi County administers the use of land as classified by the State land use classification system. Hāʻena and its surrounding areas are primarily classified as Conservation. The National Tropical Botanical Garden owns and manages the Limahuli Garden and Preserve, which abuts the State-owned Hāʻena State Park. Kauaʻi County manages Hāʻena Beach Park and is responsible for the land along the shoreline to the high wash of the waves. The State of Hawaiʻi is responsible for ocean waters from the shoreline to three miles offshore. The Hawaiian Islands Humpback Whale National Marine Sanctuary, which is administered by the National Oceanic and Atmospheric Administration (NOAA) in partnership with the DLNR, is located from the shoreline to 100 fathoms along the North Shore of Kauaʻi, from Mokolea Point in Kilaue to Kailiu Point in Hāʻena. The Hāʻena Community-Based Subsistence Fishing Area, designated by the Legislature and Governor Lingle in 2006, extends from the shoreline of the Hāʻena ahupuaʻa to one mile seaward.

Historical description

The ahupua'a of Hā'ena has been settled since at least 500 AD. A healthy fishery, rich alluvial soil, abundant fresh water and proximity to forest resources made Hā'ena an ideal habitation site. Habitation and agriculture historically was centered along the alluvial plain. The lower valleys, or *kula,* were also used for agricultural production, and evidence indicates that even the upper valleys were used by Hawaiians for agriculture (from http://www.pacificworlds.com/haena/land/areas.cfm). In addition to kalo (taro), Hawaiians grew sweet potatoes, bananas, sugar cane, *'awa*, and coconut.

Hā'ena is filled with important cultural sites, some of which are so famous that they are known throughout the archipelago. Among the most famous are:

- **Kē'ē**: This was the home of Lohi'au, an *ali`i* who became a lover of the goddess Pele. One of the greatest epics which is still told recalls the journey that Pele's youngest sister, Hi'iaka, took to bring Lohi'au back to Pele on Hawai'i island.
- **Makana**: Atop this majestic peak the sacred *'oahi* (firebrand) ceremony was once performed, and *laua'e* of noted fragrance still grows.
- **Ke-ahu-a-laka**: A *heiau* (temple) dedicated to the art of hula is located directly above the *heiau* Ka-ulu-a-pā`oa, which was dedicated to the study of genealogy and history.

Western contact was slower to reach Hā'ena due to its remote nature. The 1900 Census recorded seven households in Hā'ena, all of which were comprised of Native Hawaiians. Ten years later, the census recorded fifteen residences—11 Native Hawaiian, two were Hawaiian with Asian boarders, and two were Asians who had introduced rice cultivation to the area.

Demographic changes were brought about by the construction in the early 1900s of what is now Hawai'i Route 560 (listed on the National Register of Historic Places) along what used to be a footpath used by Hawaiians, making it easier for immigrants to reach Hā'ena. By the 1930s, many areas once used for kalo production had been turned to pasture land for cattle. Two tsunamis, one in 1946 and one in 1957, have been said to precipitate additional demographic and environmental shifts in Hā'ena. These tsunamis flooded agricultural areas including *lo'i kalo* (taro fields) and fishponds, and they destroyed homes. Families were displaced, as were native plant species. Then in 1958, neighboring Hanalei was featured in the film version of *South Pacific*; tourism and the construction of vacation homes by wealthy people from elsewhere since then has further altered the demographic landscape of Hā'ena.

Today, Hāʻena is still home to several families who can trace their lineal ties to the area and who still practice the traditions of farming, hunting, and fishing. New residents (many part-time) have come from around the world and altered the demographic and architectural landscape of Hāʻena. As the area has received more and more attention for being beautiful, pristine, historic, and adventurous, thousands of tourists make their way to Hāʻena each month. According to a 2007 Hawaiʻi Tourism Authority State Park Visitor Survey, an estimated 708,400 people visit Hāʼena State Park at the end of the road in Hāʻena each year; 90% of those are from out of state.

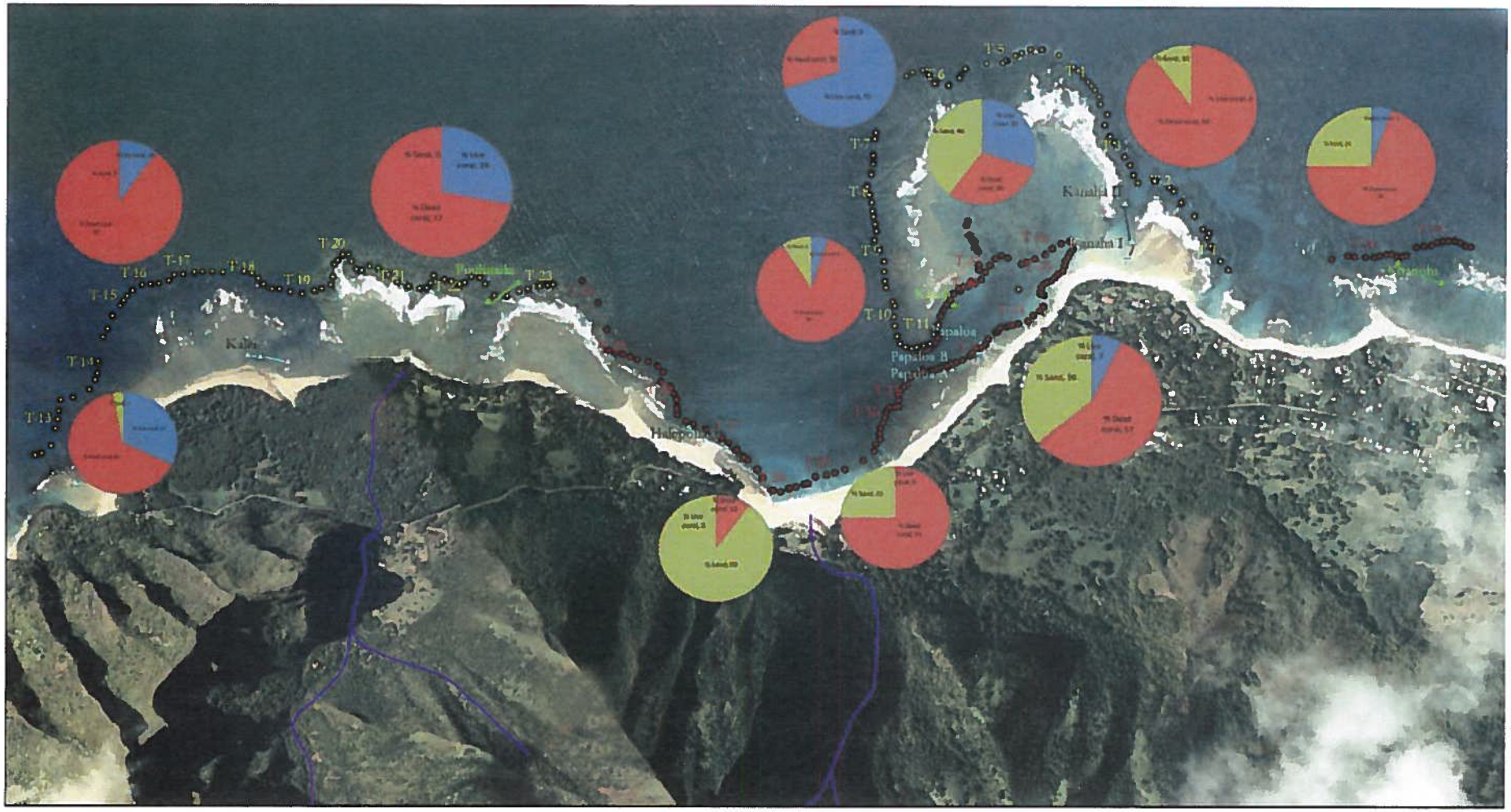
Physical environment

Hāʻena has been and continues to be shaped by environmental conditions in the mountains and in the ocean. Two valleys, each with a stream, comprise the *ahupuaʻa* of Hāʻena—Mānoa and Limahuli. The area receives about 80 to 100 inches of rain annually, and the rain and streams have carved the land since its formation. From the ocean, the circular shape of Kauaʻi and lack of any nearby islands results in a situation of extremely high wave energy on all shorelines—especially on the North Shore during the winter months.

Freshwater is an important component of the Hāʻena environment, including the ocean environment. Limahuli Stream, which drains through Limahuli Valley into the ocean, "is one of the few virtually pristine streams remaining in Hawaiʻi" and averages about five million gallons a day (Chipper Wichman, Director of the National Tropical Botanical Garden and descendant of Hāʻena, from http://www.pacificworlds.com/haena/land/water.cfm). All five species of native Hawaiian freshwater fish, the *ʻoʻopu*, inhabit Limahuli stream.

The dominant nearshore ecosystem is coral reef. Reefs along the Kauaʻi coast are dominated by the corals *Porites lobata* and *Pocillopora meandrina*, with other common species that include *Montipora patula, Montipora flabellata, Leptastrea purpurea* and *Montipora verrucosa.* Due to large winter swells, the North Shore supports hardy coral species; coral rubble is common.

In September 2008, Hāʻena community members, with technical assistance from the Hawaiʻi Community Stewardship Network (HCSN) and NOAA, conducted a rapid assessment of the general benthic composition of the nearshore area of the Hāʻena *ahupuaʻa*. The entire 3.5-mile length of the *ahupuaʻa* coastline was visually surveyed at a general depth of 10 to 20 feet. Results can be seen in the map on the following page.



Ocean Resource Assessment : 09/08

Manta Tow GPS 1
Manta Tow GPS 2
Streams
Transect Swim GPS 3
Transect Swim GPS 4

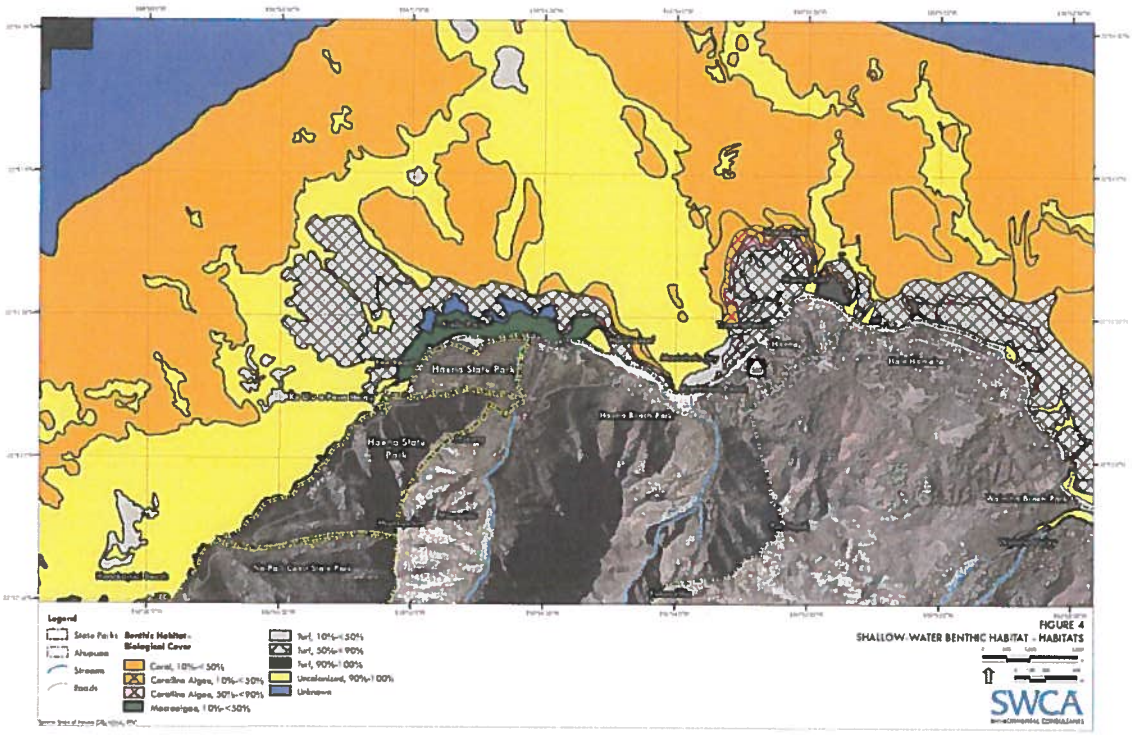
N

Ha'ena, Kauai

0 165 330 660 990 1,320 Meters

North American Datum 1983 Zone 4

Through a master planning process for Hāʻena State Park, the planning firm PBR Hawaiʻi contracted SWCA Environmental Consultants to compile a "Marine Natural Resources and Recreation Assessment" for Hāʻena State Park. The report contains a wealth of information more detailed than we will cover here. The report noted that the Center for Coastal Monitoring and Assessment of the National Ocean Service created maps of the reef and marine habitat, with results shown below:



The SWCA reports, "Sand and reef pavement comprise the dominant marine geomorphologic structures between Keʻe [sic] Beach and Maniniholo Bay to the east. From Maniniholo Beach west to Hāʻena Point the reef consists of aggregated reef, scattered coral and rock and rubble with small patches of reef pavement. The reef pavement is covered with macro-algae, coralline algae, and corals; however, the sandy lagoon floors and channels are uncolonized."

The marine waters off of Limahuli Stream were studied at depths of one meter and ten meters by the Coral Reef Assessment and Monitoring Program (CRAMP). In 2004, coral cover at one meter was found to be 17%, and at ten meters it was 28%. CRAMP scientists found a high percentage of crustose coralline algae and turf algae with a low percentage of fine sediments and a high wave energy environment. Surgeonfishes, triggerfishes, and parrotfishes were the most common at the 10-meter site, while wrasses and surgeonfishes were most common at the one-meter site.

From CRAMP and other past studies of fish populations in Hāʻena, 80 fish species have been found in the nearshore waters of the *ahupuaʻa,* with twice that many found seaward of the reef. Two lagoon areas—one at Kēʻē and one at Makua—have been cited by scientists and fishermen alike as providing excellent habitat for juvenile reef fishes.

The threatened sea turtle and the endangered monk seal and Humpback whale are all found in Hāʻena, as are dolphins.

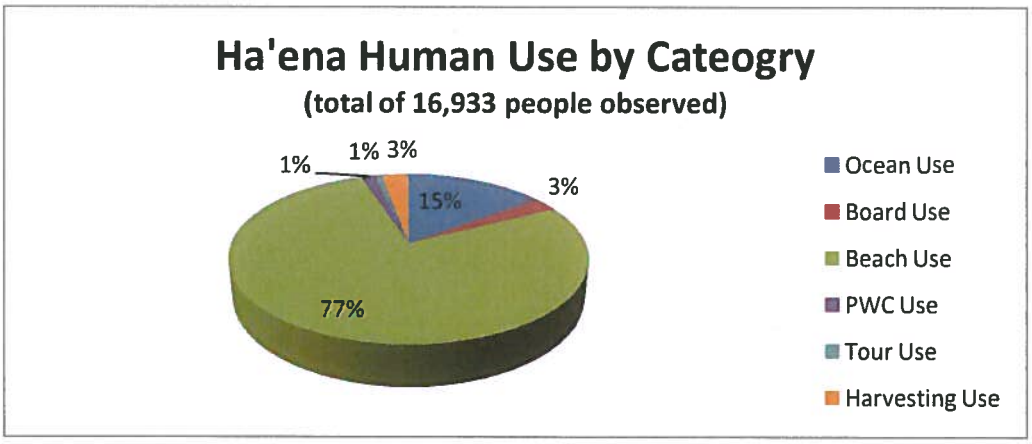
Use of the coastal area of Hāʻena

Community volunteers and staff from Limahuli Garden and Preserve have been and continue to monitor the human use of the Hāʻena *ahupuaʻa*. Volunteers use a data sheet that divides the area into different *ʻapana*, or areas, and they use a "point-in-time" methodology: They start at one *ʻapana* and count the number of people engaged in the listed activities occurring in that area. They then move to the next area and count all of the people engaged in the listed activities occurring in that area. They repeat this until they have recorded the number of people engaged in the listed activities for all areas.

Surveyors completed a total of 1025 surveys from August 2009 through December 2010. Surveyors collected data multiple days per month. Surveys were completed during day and night, with the vast majority completed between 7 a.m. and 10 p.m. The observation period for each survey varied, but most were completed in about 15 minutes. All of the data was compiled, and frequencies and averages were calculated for various categories.

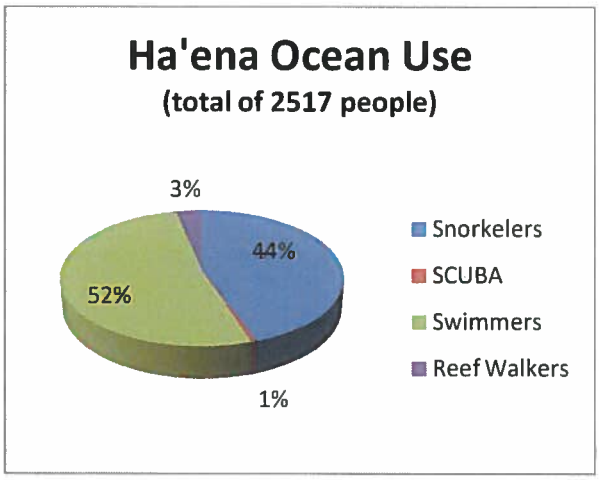
Summary of Human Use Results

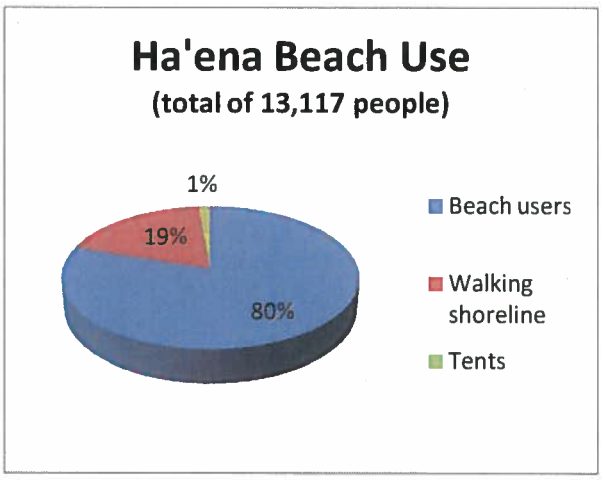
The vast majority of human use in Hāʻena stems from beach use, followed by ocean use such as swimming and snorkeling. Seventy-seven percent of all human use stemmed from beach use including sunbathing and walking the shoreline. The second heaviest use, at

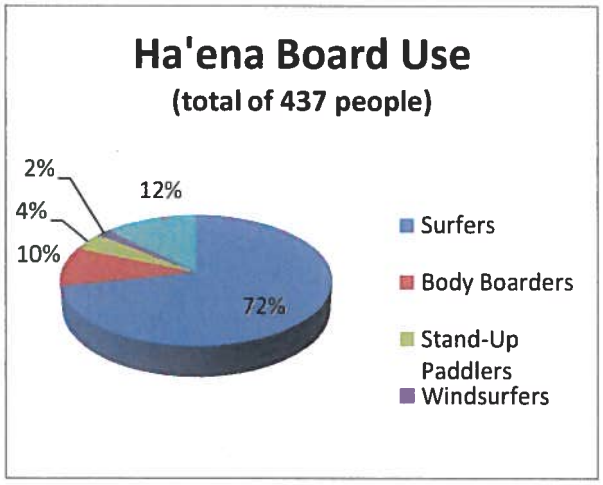


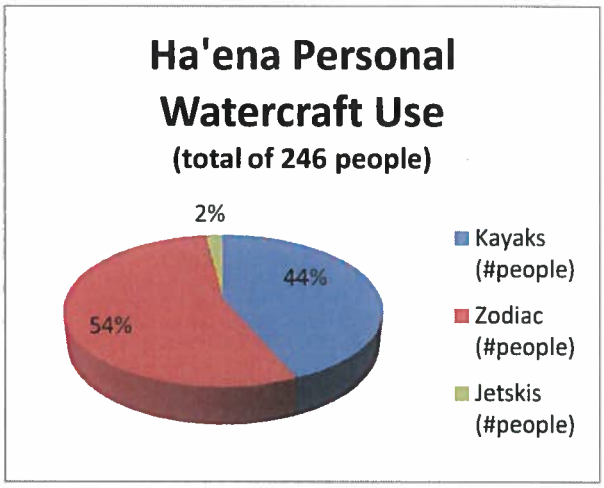
15%, came from swimming, snorkeling, and SCUBA diving. Board use such as surfing and harvesting activities such as fishing both comprised 3% of use, while personal watercraft such as kayaking and people on tours each comprised 1% of use.

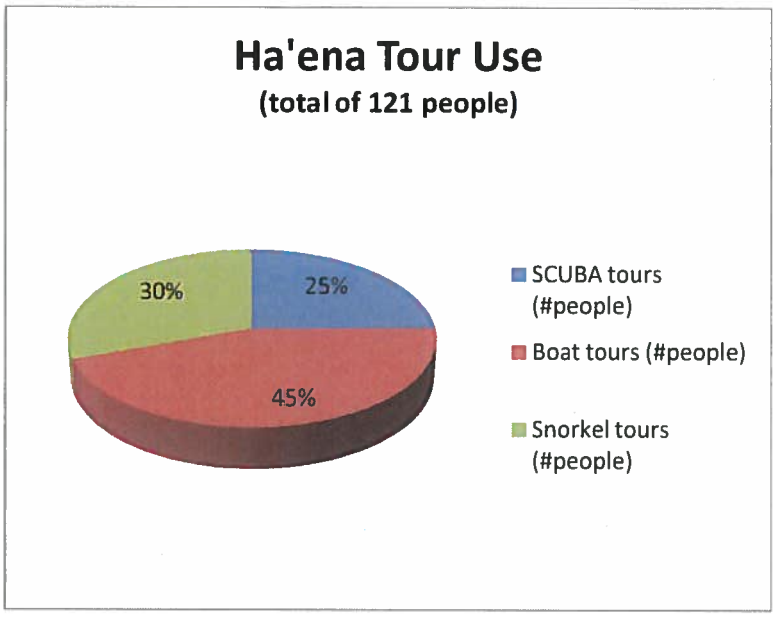
The following charts provide detail of the percentages of people engaged in the different activities:

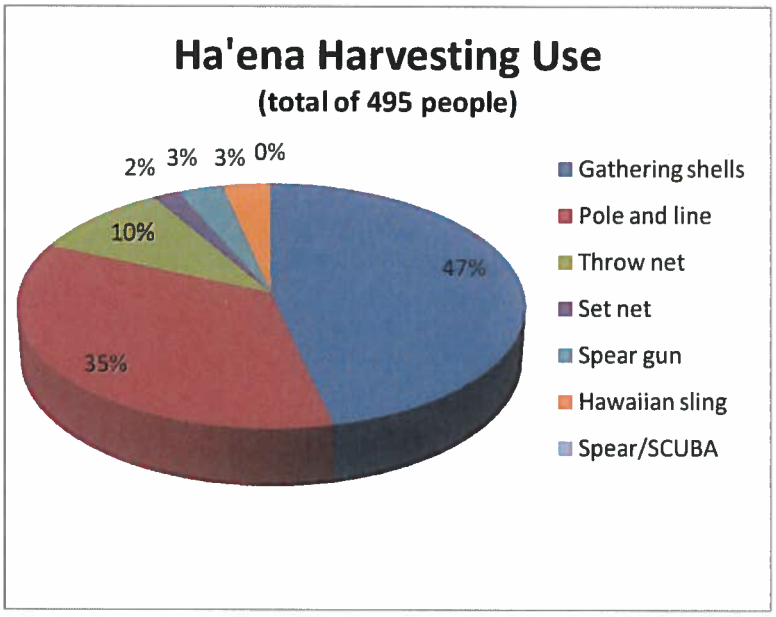






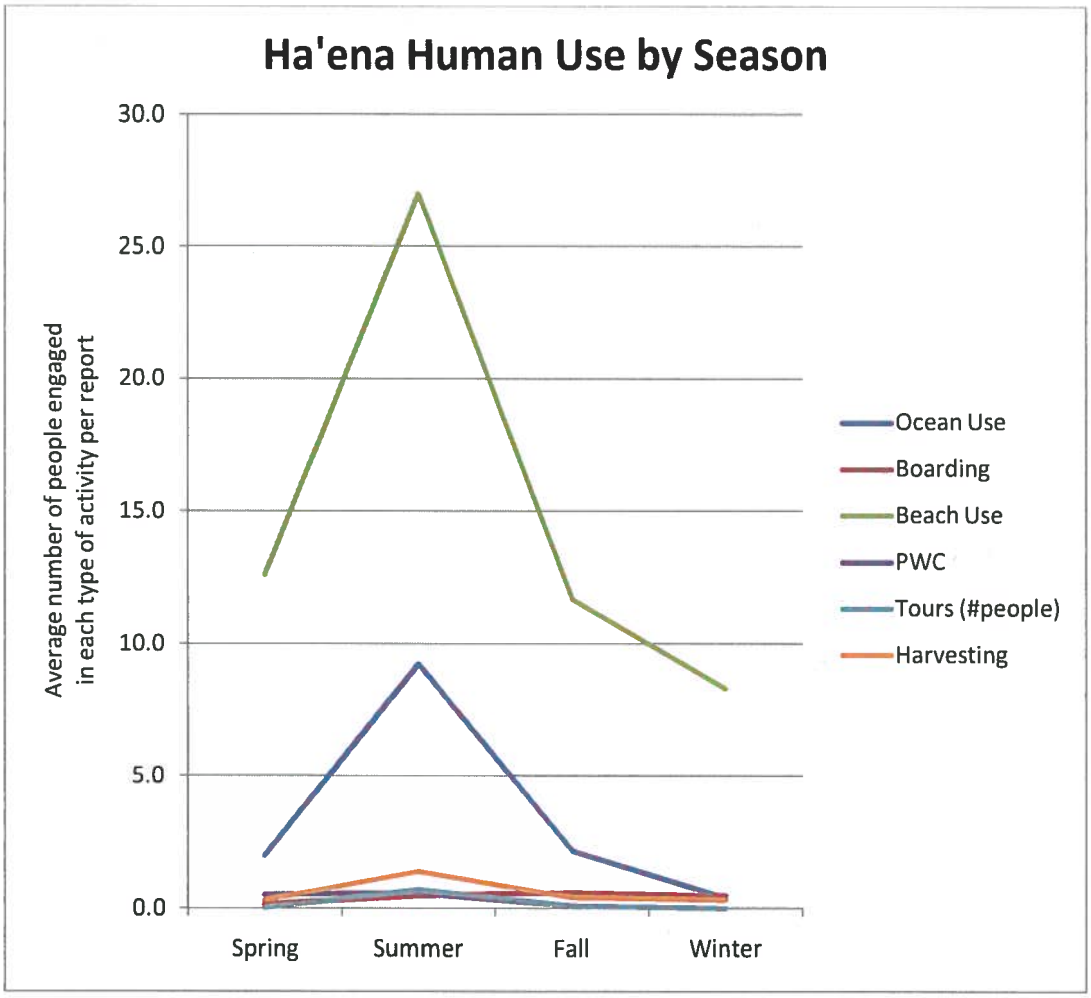



Ha'ena Tour Use
(total of 121 people)
30%
25%
45%
SCUBA tours (#people)
Boat tours (#people)
Snorkel tours (#people)


Ha'ena Harvesting Use
(total of 495 people)
2%
3%
3%
0%
10%
47%
35%
Gathering shells
Pole and line
Throw net
Set net
Spear gun
Hawaiian sling
Spear/SCUBA

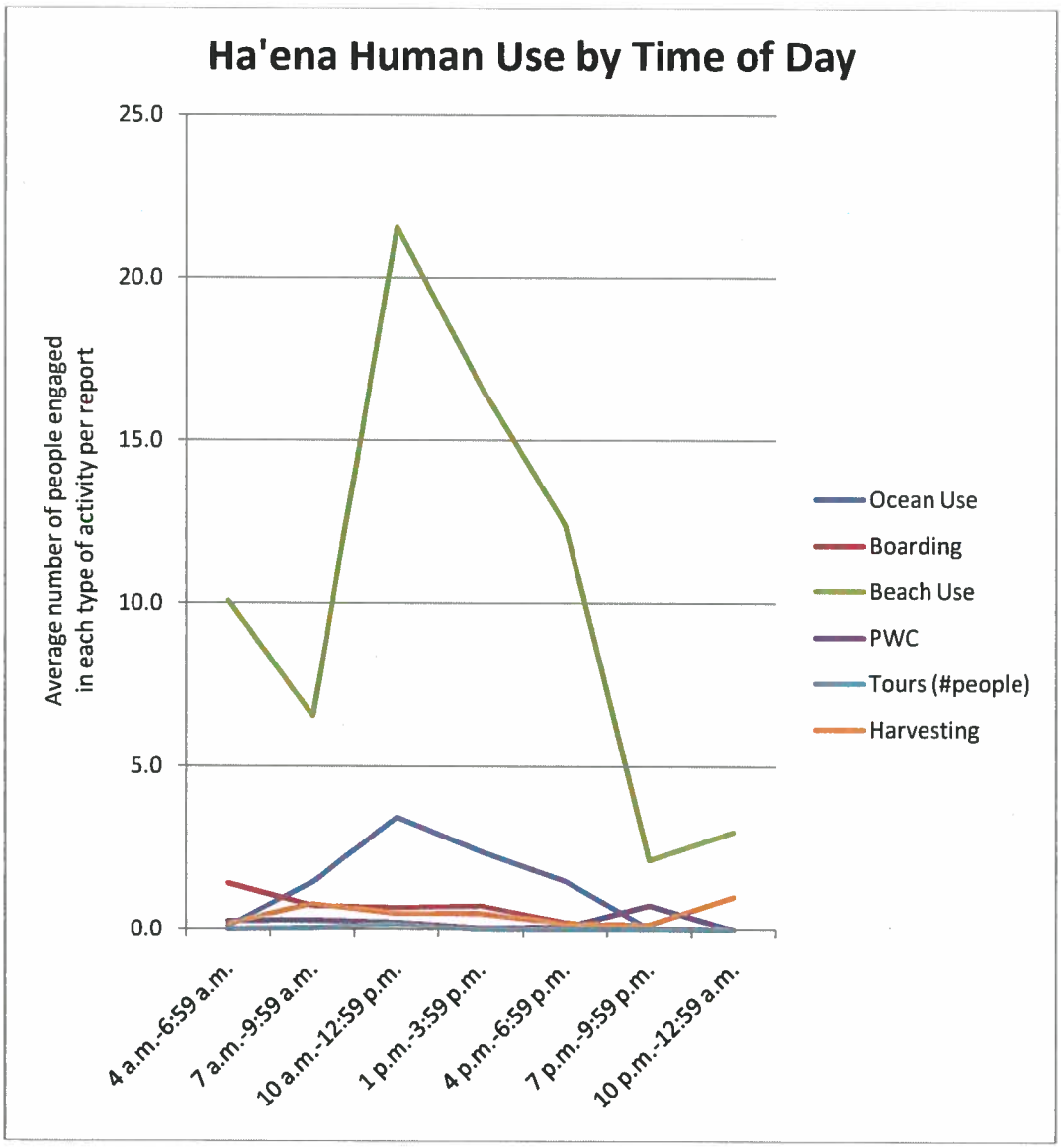
Seasonal Changes in Human Use at Hāʻena

Human use varied from one season to the next. The following chart illustrates the rise in human use at Hāʻena during the spring, the height of human use during summertime, and the decrease through winter. The chart records the average number of people observed engaging in each activity category during each survey period, by season (PWC=personal watercraft).

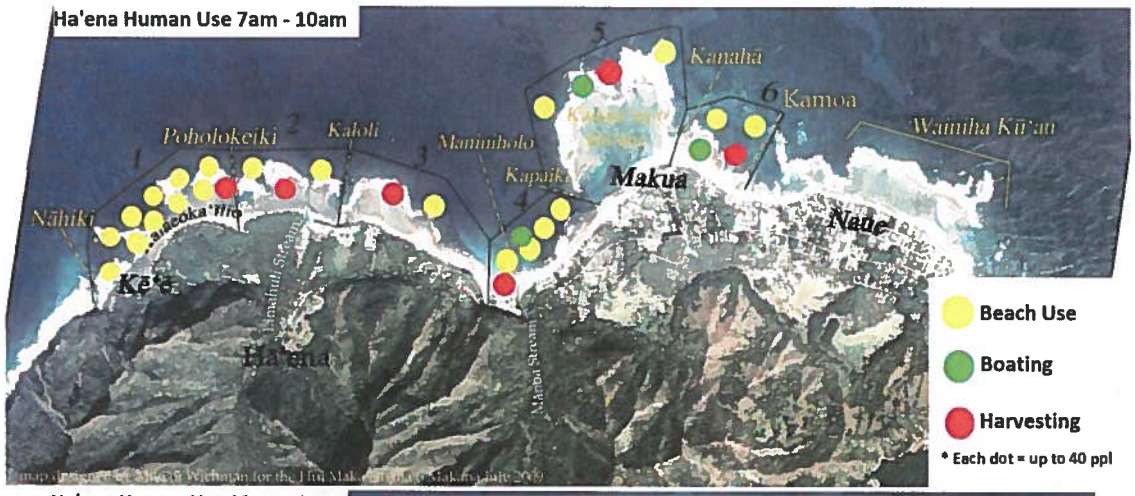


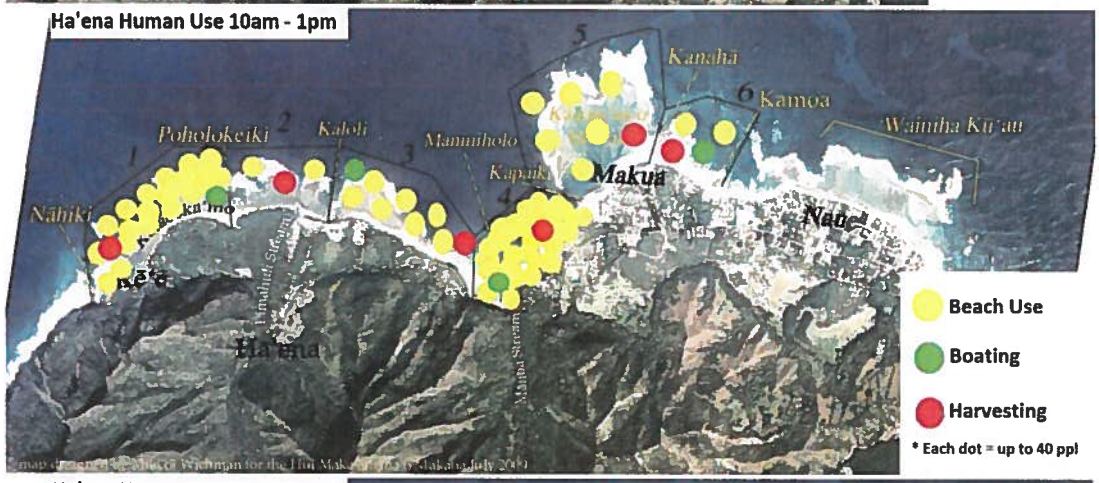
Changes in Hāʻena Human Use by Time of Day

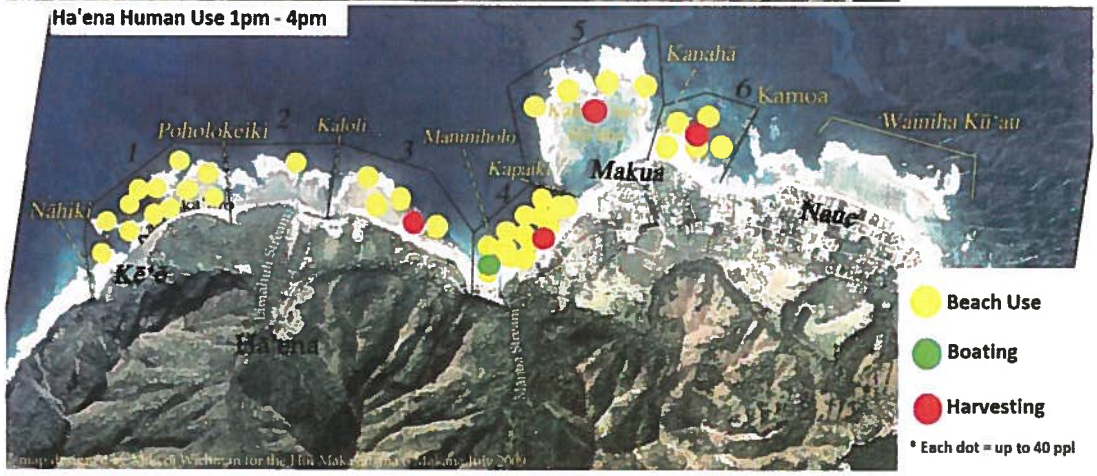
As might be expected, the number of people utilizing Hāʻena varies by the time of day. Surveys at Hāʻena were collected at all times of day, enabling tracking throughout the 24-hour daily cycle. This chart illustrates the typical daily schedule throughout Hāʻena: People begin arriving in the early morning hours, with the largest crowds between 10 a.m. and 7 p.m. The following chart reflects the average number of people observed during each survey, by time of day.

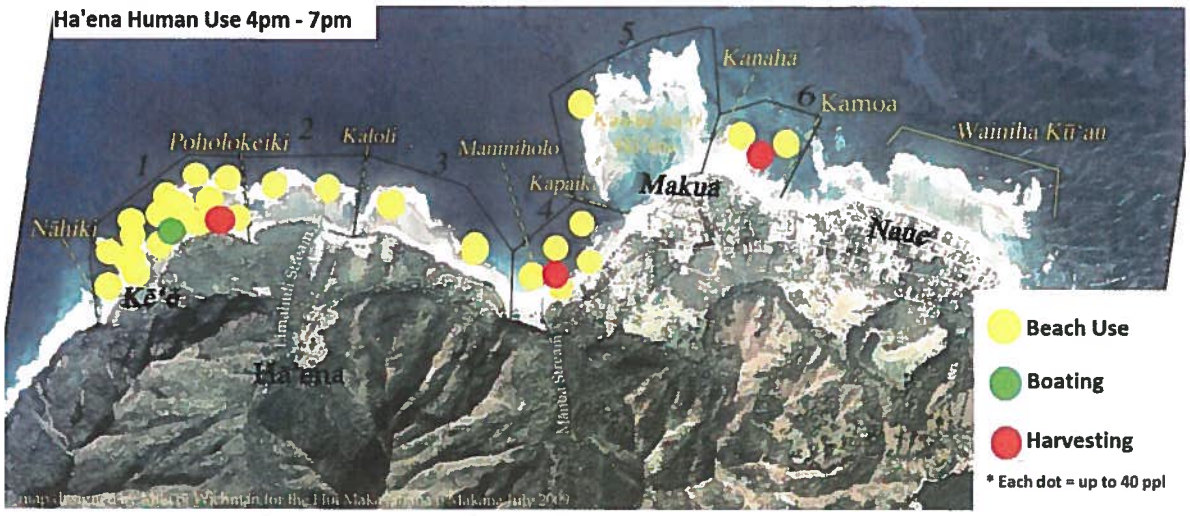


Below is illustrated the human use of Hāʻena throughout the six *apana*, or zones, throughout the day. For simplicity, "beach use" combines ocean use, boarding use, and beach use. To summarize, *apana* 1 and 4 are the most popular areas of Hāʻena throughout the day.



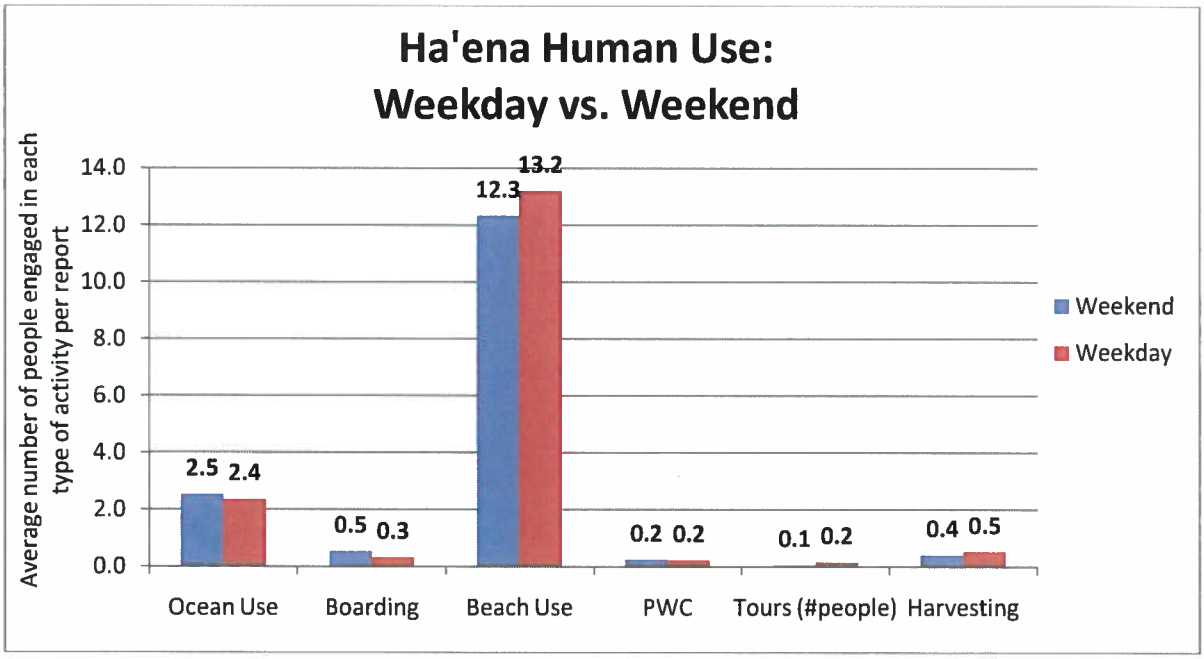






Changes in Hā'ena Human Use by Day of Week

Finally, differences in human use between weekdays and weekends were analyzed. Very few differences were noted; perhaps surprisingly, weekdays showed slightly higher levels of human use than weekends, as illustrated below in the chart showing the average number of people engaged in each category of activity during each report period.



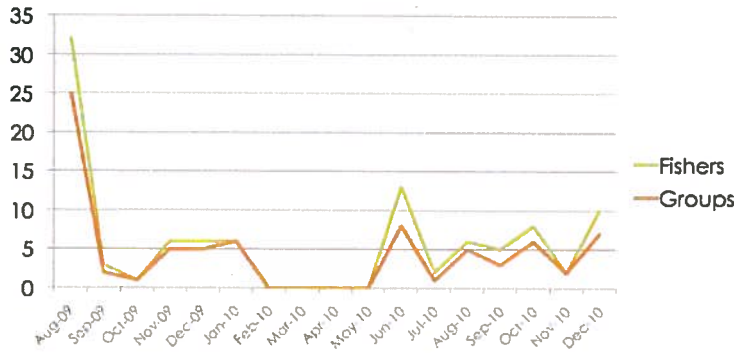
Catch-Per-Unit-Effort

In addition to monitoring human use, Limahuli Garden and Preserve staff members collected information on the fishing activity in the Hāʻena Community-Based Subsistence Fishing Area. Four different basic types of data were collected:

1. **Events**: Data collected about the sampling day, or "event." Includes start/end time, date, tides, weather information.
2. **Observations**: Data collected about persons observed fishing. Enumerators observed fishing activity from the shoreline using binoculars. Includes number of persons, gear used, and fishing location/zone.
3. **Intercept Interviews**: Data collected during in-person interviews with anglers. Includes number interviewed, zip code of residence, gear used, number of persons, and intended disposition of catch.
4. **Catch Recording**: If anglers intercepted with catch, enumerators attempted to collect data on catch. Includes number, size, weight, and disposition.

There were 64 sampling events of approximately three hours each, representing a total of about 160 hours of sampling. Of these, 32 fell on a weekend day (Saturday or Sunday), and 32 fell on a weekday (Monday through Friday). The goal was for enumerators to complete a survey eight times during one month—four times during the day (two weekend days and two weekdays) and four times during the night (two weekend days and two weekdays). Dates were randomly selected using random number assignment.

Eighty-six groups of fishers were observed. Thirty, or approximately 35%, of these groups were approached for an interview. Three groups representing six individuals refused to be interviewed, an 8.6% refusal rate. Of those who agreed to be interviewed, one group refused to show its catch, a refusal rate of 3.7%. Because fishers could be interviewed more than once (sampled with replacement), the sum of the number of fishers/group is interpreted to represent the number of "fishing days"—not individual fishers—captured during the 16-month study period. Over the course of the study period, there were 100 individual fishing days observed.

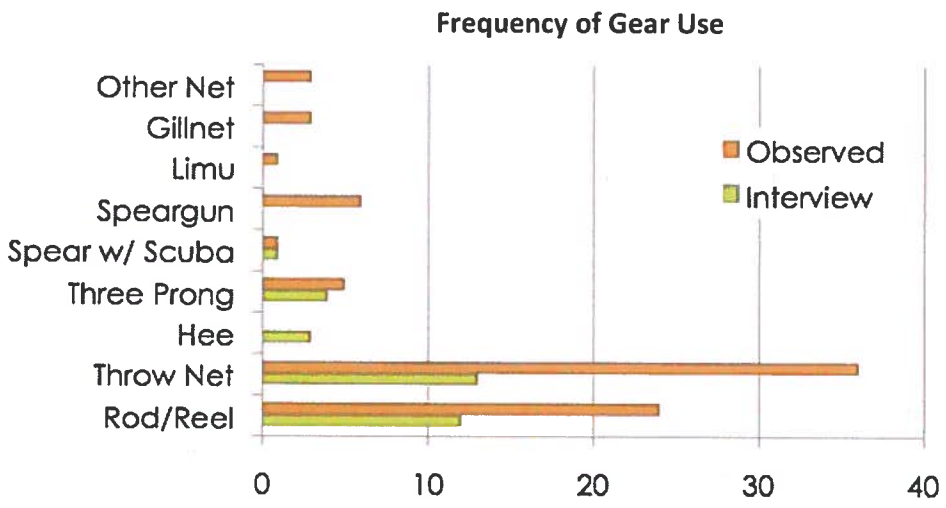


To summarize, fishing effort occurs more heavily on the weekend than during weekdays. Most fishers are from Hāʻena and Kauaʻi, and throw nets are the most common gear used, followed by pole and line. Not surprisingly given the types of gear used, the inner reef experiences the greatest effort, followed closely by the shoreline.

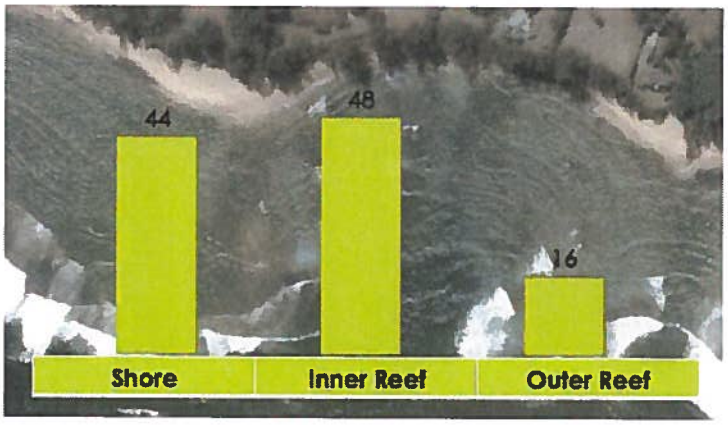
A higher degree of fishing was recorded on weekends (71) when compared with weekdays (29), indicating more intense fishing effort on weekends.

Eight interviewees identified themselves as Hāʻena residents. Other fishers came from Hanalei (9), Kilauea (3), Kapaʻa (2), Wailuā (1), Līhuʻe (2), and California (1).

Throw nets were the most popular type of fishing gear utilized, followed by rod and reel.



Of the 100 fishers observed over the 16-month study, 44 were observed fishing from shore, 48 in the inner reef, and 16 in the outer reef.



Reported species and fish types were consolidated into species groups developed by the Pacific Islands Fisheries Science Center (PIFSC). These categories were created to consolidate the 150 marine species reported on by the Hawai'i Division of Aquatic Resoures (DAR) in order to simplify the reporting of landings. In all, catch was recorded for 18 different types of fish/marine inverts: 'Oama, Nenue, He'e, Manini, Pāpio, Limu, Mullet, Toau, Hinalea, Kole, Āholehole, Lobsters, Perch, Weke, 'Ama'ama, 'Āweoweo, Mamo, and Taape. 176 identified individuals were recorded as caught over study period.

The vast majority of fishers interviewed intended to eat their catch (26), followed by giving part or all of the catch to others (11). Of those planning to give or share, nine intended to give to family members on Kaua'i (two declined to disclose). No one interviewed said they planned to sell their catch, one person intended to use the catch as bait, and four interviewees said they planned to throw back whatever they caught.

The catch-per-unit-effort, where catch equals the number of fish caught and effort is measured in hours, was 1.54 individuals per hour for those interviewed. In addition, several expert fishermen of Hā'ena tracked their catch and effort over the course of the study, and their catch-per-unit-effort was significantly higher at 9.11 individuals per hour.

The study indicated that expert fishers were significantly more efficient than the average fisher and that Hā'ena is utilized primarily as a subsistence fishery, with the majority of fishers coming from Hā'ena and nearby Kaua'i communities. Most of the fish is consumed on-island by the fishers themselves and their family members and friends.

Critical resources and threats

Interviews with fishermen, conducted by cultural historian Kepa Maly in 2003 and by Hā'ena community members Lahela Chandler Correa and Megan Juran in 2007 and 2008, indicated that the following nearshore fish species are important food fishes for the Hā'ena community: akule (bigeye scad), moi (Pacific threadfin), 'ama 'ama (mullet), 'oio (bonefish), nenue (rudderfish), aholehole (flagtail), aweoweo (Hawaiian bigeye), manini (convict tang), kala (bluespine unicornfish), oama (juvenile goatfish), kumu (whitesaddle goatfish), papio and ulua, he'e (octopus), ula (lobsters), 'a'ama (crab), and several kinds of limu (seaweed).

The Hā'ena Fisheries Committee, composed mainly of representatives of Hā'ena's traditional families—most of whom fish—identified resources critical to cultural and subsistence use. They also rated the condition of those resources. The resources cited and their perceived condition are as follows:

1 = Excellent, like the 1940s and 1950s	2 = Good	3 = Fair: Stressed and in decline	4 = Poor: Degraded	5 = Bad: Severe decline	6 = Pau: No/very limited production
Enenue	Near-shore coral reef ecosystem	Near-shore fishery	Shells	Hinana	
Turtles	Limu kohu	Aweoweo	Akule	'Opihi	
Monk seals	Manini	O'i'o	Moi	Lobster	
	'Oama	Aholehole	Kala		
	Maiko	Kawakawa	'Omilu		
	Uhu	Ulua	Ama'ama		
	Palani	Kahala			
		He'e			
		Wana			
		Sharks			
		Nai'a			

Fishermen interviewed shared that they had seen a change in the fishery, noting a decline in quality and abundance of fish. They believed the changes were caused by the following:

- Loss of the *konohiki* system including *kapu*.
- Disrespect for the ocean and land, demonstrated through taking more than one needs without thought or consideration for the future.
- Traditional access points blocked by new development and gates, putting greater pressure on fewer sites.
- Environmental changes such as changes to freshwater flows and an increase in pollution.
- An increase in visitors, house construction, tour boats, and other human pressures that causes physical damage to the reef, pollution from garbage and sunscreen, and runoff and pollution from coastal development including cesspools.

The Hāʻena Fisheries Committee also reviewed threats to critical resources and prioritized those threats according to the following criteria:

A. Target threatened: Number of resource targets threatened by the threat
B. Area threatened: Physical space threatened by the threat
    1 = small amount
    2 = moderate
    3 = all
C. Intensity of impact: Threat's impact
    1 = minor impact/damage

2 = medium
3 = high

D. Urgency: When will the threat have an impact?
3 = now
2 = few months to two years from now
3 = over two years from now

The threats, presented in order of highest score (perceived to be the most threatening) to the lowest score (perceived to be least threatening) are as follows:

Threat	Targets Threatened	Area Threatened	Intensity of Impact	Urgency	Total Score
Coastal development	59	3	3	3	68
Overuse by tourism	59	3	3	3	68
Traditional practices/knowledge not being passed on	58	3	3	3	67
Fishers from outside the ahupua'a taking inappropriately	58	3	3	3	67
Lack of enforcement	58	3	3	3	67
Super Ferry	58	3	3	2	66
Bad policy/legislation	59	3	2	2	66
Pollution/litter	50	3	2	3	58
Drug use (selling fish for drug money)	48	3	3	3	57
Global warming	47	2.5	3	1	53.5
Inappropriate recreational use	42	2.5	3	3	50.5
Seepage	42	3	2	3	50
Sedimentation/runoff[2]	37	3	2.5	3	45.5
Pigs[3]	37	3	2	3	45
Overharvesting	33	3	2	3	41
Taking shells, rock, coral	32	3	2	3	40
Jet skis	33	2	2	3	40
Commercial fishing	28	3	2.5	3	36.5
Illegal fishing methods (chlorine, batteries, etc.)[4]	31	1	3	1	36
Tour boats	28	3	2	3	36

[2] Alien plants contribute to this, and so do pigs.
[3] Spread invasives, contribute bacteria, eat natives, contribute sediment
[4] Chlorine fishing used to occur and killed a section of reef; it hasn't occurred in several years.

Lay net/moemoe	27	3	3	3	36
Invasive fish[5]	26	3	3	3	35
Suntan oil	27	2	1.5	3	33.5
Taking freshwater[6]	26	3	3	1	33
Invasive limu	30	0	0 (for now)	2	32
Arbulet	21	3	2.5	3	29.5
Spear on SCUBA	22	2	2.5	3	29.5
Invasive land plants[7]	19	2	2	3	26
Spear at night	17	3	2	3	25
Surfers	15	2	2	3	22
Kayaking	14	3	2	3	22
Dive/snorkel/scuba	13	3	2	3	21
Honu	11	2.5	2	3	18.5
Driving on the beach	10	1	2	3	16
Seals	9	1.5	1.5	3	15

To restore the fishery, fishermen interviewed remembered and recommended a return to traditional ethics and practices such as these:

- Don't disturb the fish in their home: Fish return to certain areas on certain tides to eat. Fishermen should recognize these patterns and avoid disturbing them. Places of feeding, resting, and spawning need should be disrupted as little as possible so the fish will continue to come and to feel at home.
- What happens on the land affects what happens in the ocean. The entire watershed, from the mountains to the sea, need to be managed as one.
- Fish have ears, so one shouldn't talk about going fishing. One should not take too much fish, or the fish will stop coming to your nets. The first fish should be thrown back or given as an offering of thanks.
- Fish only without your *ahupua'a.* People fished only in their own *ahupua'a,* or in neighboring *ahupua'a* if they had familial ties there. You could fish in a different *ahupua'a* if you went with someone from there or received direct permission to do so.
- Don't take more than you need.
- Share what you catch with others.
- Impose and enforce strict laws. Breaking the *kapu* had severe consequences.

[5] Ta'ape and roi
[6] This is a future threat, so it's analyzed for its potential threat rather than its current threat
[7] Ironwoods in the dunes, false kamani, leaf litter (does this affect the resources?)

They also believed that educating tourists and commercial operators about cultural perspectives and values would help. A majority interviewees wanted to see tourism, some recreational activities, and commercial fishing regulated.

MANAGEMENT APPROACH

Goal for the Hāʻena Community-Based Subsistence Fishing Area

The goal of the Hāʻena Community-Based Subsistence Fishing Area is to sustainably support the consumptive needs of Hāʻena's people through culturally rooted, community-based management that recognizes and responds to the connection between land and sea and strives to restore the necessary balance of native species.

Objectives for the Hāʻena Community-Based Subsistence Fishing Area

1. To maintain the health of the coral reef ecosystem.
2. To increase the biomass of native fish (larger native fish in greater numbers).
3. To increase the biomass of limu kohu, ʻōpihi, heʻe, urchins, and shells.
4. To reduce the impact on coral reef resources from
    a. Inadequate enforcement of resource regulations
    b. Pollution from boats and littering
    c. Recreational overuse and inappropriate use including
        i. Trampling of coral
        ii. Sunscreen
        iii. Harassment of marine life
        iv. Disturbance of schools of fish
    d. A lack of awareness and understanding about biological and cultural impacts and how to reduce them
    e. Land-based sources of sedimentation and pollution caused by erosion, development, seepage, and inadequate freshwater flow.
5. To reduce user conflict and impacts to subsistence fishermen from tourism and recreational activities
6. To perpetuate Hawaiian cultural resource management practices

Management strategies

- Ahupuaʻa management that addresses key impacts mauka to makai and capitalizes on key ecosystem functions.
- Development of new fisheries regulations that allow sound practices of Hāʻena fishermen but restrict practices not traditional or appropriate for Hāʻena.
    - Gear restrictions
    - Area closures
    - Bag limits
- Makai Watch

    - Education and outreach: Outreach and awareness-raising through educational programs, signage, brochures, presentations, and volunteers providing information to visitors and local residents.
    - Community assistance with enforcement: Community collaboration with DOCARE in observation and incident-reporting.
- Cultural and historical transmission: Educational programs for youth and community members and that involve *kūpuna* and knowledgeable *makua*.
- Community engagement in monitoring and evaluation of the Community-Based Subsistence Fishing Area.

Monitoring plan

The proposed rules for the Hāʻena Community-Based Subsistence Fishing Area includes the formation of a Fisheries Council similar to the West Hawaiʻi Fisheries Council, which would be responsible for conducting a five-year review with community input. The following monitoring activities will contribute critical information to this review:

1. Baseline monitoring before the rules go into effect, using community volunteers and donated time from technical assistance providers.
    a. Comparison of fish populations between the inside and outside of the Makua Puʻuhonua Area
    b. ʻŌpihi monitoring in the ʻŌpihi Restoration Area
    c. Limu monitoring
2. Annual fish monitoring (fish, he'e, urchins, shells, lobster), including monitoring of the inside and outside of the Makua Pu'uhonua Area, 'opihi monitoring, and limu monitoring) conducted by community volunteers with in-kind technical assistance
3. ʻŌpihi Restoration Area monitoring just before the end of the three-year closure, then six months and one year after the end of the closure and the institution of the bag limit conducted by community volunteers with in-kind technical assistance
4. Four years from rules inception:
    a. Follow-up monitoring comparing the inside and outside of the Makua Puʻuhonua Area
    b. Follow-up catch-per-unit-effort monitoring
    c. Follow-up rapid benthic habitat assessment

Parameters

Do the proposed rules...

- Fall under the jurisdiction of the Division of Aquatic Resources?
- Seem to be able to pass the DLNR rule process as mandated by the Legislature in Chapter 91?
- Adhere to U.S. and State constitutional law?

- Strengthen, but not weaken, current State regulations?
- Seem simple to obey?
- Seem enforceable?

Putting it all together: Rationale behind the proposed DAR rules

Objective	Threat	Strategy	Proposed DAR Rules
To maintain the health of the coral reef ecosystem.	- Loss of the *konohiki* system including *kapu* -Coastal development - Overuse by tourism - Inappropriate recreational use - Seepage, sedimentation/runoff - Overharvesting/commercial fishing/too-effective fishing methods - Illegal fishing methods (chlorine, batteries, etc.) - Suntan oil - Taking freshwater	- Ahupuaʻa management that addresses key impacts mauka to makai and capitalizes on key ecosystem functions. - Development of new fisheries regulations. - Makai Watch	- Restrict commercial activities - Gear restrictions - Bag limits - Ban on fish feeding - No walking on the reef
To increase the biomass of native fish (larger native fish in greater numbers).	- Loss of the *konohiki* system including *kapu* - Taking more than one needs - Traditional practices/knowledge not being passed on - Seepage, sedimentation/runoff - Overharvesting/commercial fishing/too-effective fishing methods - Illegal fishing methods (chlorine, batteries, etc.)	- Ahupuaʻa management that addresses key impacts mauka to makai and capitalizes on key ecosystem functions. - Development of new fisheries regulations. - Makai Watch - Cultural and historical transmission	- Puʻuhonua area - Restrict commercial activities - Gear restrictions - Bag limits
To increase the biomass of limu kohu, ʻōpihi, heʻe, urchins, and shells.	Loss of the *konohiki* system including *kapu* - Taking more than one needs - Traditional practices/knowledge not being passed on - Seepage,	- Ahupuaʻa management that addresses key impacts mauka to makai and capitalizes on key ecosystem functions. - Development of new fisheries regulations. - Makai Watch	- ʻŌpihi restoration area and bag limit - Puʻuhonua area - Restrict commercial activities - Gear restrictions - No walking on the reef - Bag limits

	sedimentation/runoff - Overharvesting/commercial fishing/too-effective fishing methods - Illegal fishing methods (chlorine, batteries, etc.) - Suntan oil - Taking freshwater	- Cultural and historical transmission	
To reduce the impact on coral reef resources from: (a) inadequate enforcement of resources regulations; (b) pollution from boats and littering; (c) recreational overuse and inappropriate use including trampling of coral, sunscreen, harassment of marine life, and disturbance of schools of fish; (d) a lack of awareness and understanding about biological and cultural impacts and how to reduce them; and (e) land-based sources of sedimentation and pollution caused by erosion, development, seepage, and inadequate freshwater flow.	-Coastal development - Overuse by tourism - Traditional practices/knowledge not being passed on - Lack of enforcement - Pollution/litter - Inappropriate recreational use - Seepage, sedimentation/runoff	- Ahupuaʻa management that addresses key impacts mauka to makai and capitalizes on key ecosystem functions. - Development of new fisheries regulations. - Makai Watch - Cultural and historical transmission - Community engagement in monitoring	- Puʻuhonua area - No walking on the reef - Ban on fish feeding
To reduce user conflict and impacts to subsistence fishermen from tourism and recreational activities.	- Access points blocked - Overuse by tourism - Inappropriate recreational use	- Development of new fisheries regulations. - Makai Watch - Community engagement in monitoring	- Restrict commercial activities - No walking on the reef

PROPOSED REGULATIONS AND ZONES

Purpose. The goal of the Hā 'ena Community-Based Subsistence Fishing Area is to sustainably support the consumptive needs of Hā 'ena's people through culturally rooted community-based management that recognizes and responds to the connection between land and sea and strives to restore the necessary balance of native species.

Boundaries. The Hā'ena Community-Based Subsistence Fishing Area (the Area) shall include that portion on the northwestern coast of Kaua'i consisting of all State waters and submerged lands bounded by the highwater mark on the shore of the Hā'ena district as specified in the tax map of the county of Kaua'i; a line that follows an imaginary extension of the boundary between Hā'ena State Park and Na Pali State Park (22°12'42.50"N, 159°35'44.50"W) that extends seaward for one mile from the shoreline (22°13'21.62"N, 159°36'22.27"W); an irregular line one mile offshore that is parallel to the contours of the shoreline, terminating at 22°14'19.91"N, 159°33'6.21"W; and a line that follows an imaginary extension of the boundary between Hā'ena and Wainiha (22°13'28.00"N, 159°33'13.50"W), as identified in a map located at the end of this chapter titled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i" dated Xxx and made part of this chapter. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the highwater marks on either side of the stream or river, as if the stream or river was not there.

Special subzones. Within the Hā'ena Community-Based Subsistence Fishing Area as defined in the preceding section, there are established the following special subzones:

(1) 'Ōpihi restoration area, which shall include all State waters and submerged lands bounded by the highwater mark on the shore, bounded to the west by the western boundary of the Hā'ena ahupua'a (22°12'42.50"N, 159°35'44.50"W), extending seaward 300 feet from the shoreline, an imaginary line offshore terminating 300 feet seaward of the western edge of Kē'ē Beach (22°13'15.75"N, 159°35'7.34"W), extending to land at the western edge of Kē'ē Beach (22°13'13.61"N, 159°35'5.11"W), as identified in a map located at the end of this chapter titled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i" dated Xxx and made part of this chapter.

(2) Makua pu'uhonua area, which shall include the all State waters and submerged lands within the Makua lagoon as indicated by the break of whitewater on the reef, or bounded to the northeast at 22°13'44.29"N, 159°33'32.98"W, to the southeast at 22°13'35.18"N, 159°33'31.68"W, to the southwest at 22°13'32.15"N, 159°33'41.71"W, and to the northwest at 22°13'41.16"N, 159°33'44.66"W), as identified in a map located at the end of this chapter titled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i" dated Xxx and made part of this

chapter.

(3) Vessel transit boundary, for vessels transiting through the Area carrying fishing gear restricted by the prohibited activities listed in section xx below, a line that follows an imaginary extension of the boundary between Hāʻena State Park and Na Pali State Park (22°12'42.50"N, 159°35'44.50"W) that extends seaward for 1000 feet from the shoreline to 22°12'49.98"N, 159°35'51.79"W, then extends eastward to a point 1300 feet from the shoreline at 22°13'35.57"N, 159°34'59.73"W, then extends eastward to a point seaward of the Makua reef and lagoon and 2300 feet from the shoreline at 22°13'55.42"N, 159°33'42.00"W, then extends eastward to an imaginary extension of the boundary between Hāʻena and Wainiha that is 2100 feet from the shoreline at 22°13'48.84"N, 159°33'10.76"W, as identified in a map located at the end of this chapter titled "Map of the Hāʻena Community-Based Subsistence Fishing Area, Kauaʻi" dated Xxx and made part of this chapter.

General conditions. (a) Nothing in this chapter shall be construed as allowing within the Community-Based Subsistence Fishing Area any activity otherwise prohibited by law or rules adopted by another department of the state. (b) A table of designated subzones with their corresponding latitude and longitude coordinates is provided at the end of this chapter, entitled "Subzone Boundaries," dated xxx. (c) Nothing in these rules shall be interpreted to limit or restrict Native Hawaiian customary and traditional rights, including, but not limited to, access for spiritual, religious, cultural, and subsistence purposes.

Penalty. Any person found violating the provisions of this chapter, or the terms and conditions of any permit issued as provided by this chapter, shall be punished as provided by sections 187A-12.5 and 188-70, Hawaii Revised Statues, or may be otherwise provided by law.

Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, or the terms and conditions of any permit issued as provided by this chapter, may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter 712A.

Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Definitions. As used in this chapter unless otherwise provided:

"Commercial activity" means any activity including ocean recreation or that which involves

the taking of marine life for which compensation of any kind is received by any person; or any action, service, or goods that are provided, in exchange for compensation of any kind, regardless of whether the exchange occurs inside or outside of the Hāʻena Community-Based Subsistence Fishing Area. Display of merchandise or demanding or requesting gifts, money, or services shall be considered commercial activity, including trade of such merchandise, gifts or services.[8]

"Daily bag limit" means the maximum number of an indicated animal allowed to be caught, taken, or kept per person per day.

"Day" means a 24-hour period.

"Department" means the Department of Land and Natural Resources.

"Finfish" means any of various species of marine life that uses fins to swim, not including marine mammals or sea turtles.

"Fish feeding" means deliberately introducing any food material, substance device, or chemical directly to or in the vicinity of any marine life, by any means for any purpose.

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

"Hook-and-line" means a type of fishing gear consisting of a length of fishing line, to which is attached one or more hooks or other device for capturing marine life. A weight and a pole may also be used to aid in the placement of the fishing line in the water.

"Kupeʻe" means an edible marine snail (Nerita polita) also known as ānuenue, ʻeleʻele, kāniʻo, mahiole, palaoa, puna, ʻula.

"Lay net" means a panel or panels of net mesh made of various materials that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upwards towards the water surface and opposite to a lead line that keeps the bottom edge of the net downward towards the ocean floor.

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

"Live rock" means any rock or coral to which marine life is visibly attached or affixed.

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[8] From Section 13-230-8, HAR, Definitions

"Lobster" means any crustacean in the family Scyllaridae or the family Panulirus. This includes spiny lobster, slipper lobster, or other recognized synonyms.

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

" 'Ōpihi" means any mollusk of the genus Cellana or a recognized synonym. The animal is also known as kō'ele, 'ālinalina, maka-ia-uli, and limpets.

"Pipipi" means a small mollusk including Theodoxus neglectus.

"Pole-and-line" means a type of fishing gear consisting primarily of a pole and a length of fishing line.

"Pūpū" means a general name for marine and land shells.

"Purse seine net" means a type of fishing net made to hang vertically in the water with weights attached along the bottom of the net, floats attached along the top of the net, and a purse cable which acts as a drawstring to close the bottom of the net, used to encircle a school of fish.

"Recreation" means a diversion such as a hobby or other leisure time activities[9].

"Reef" means any submerged fixed, natural object or structure that modifies ocean currents.

"Scoop net" means a type of hand net consisting of a bag of mesh material attached to a frame to hold the bag open, and a handle. The net is small enough to use with one hand by one person.

"Sea urchin" means invertebrate marine animals of the class Echinoidea, variously referred to as, but not limited to, wana, hālula, hā'uke'uke, hāwa'e or 'ina.

"Sea shells" means the hard, protective outer layer grown by a mollusk.

"Slurp gun" means a device with a plunger that sucks fish into a tube to capture them.

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[9] §13-250-5

"Snorkel" means a breathing apparatus consisting of a tube no more than two feet in length that is held in the mouth.

"Spear" means any device or implement either hand held, released completely by the user (i.e., a projectile), or attached by a line to another device, which is used to impale marine life by means of a pointed or sharpened tip(s), including but not limited to trigger-style spear guns, arbalettes (arbalete), bow and arrow, Hawaiian slings, or three-prong spears.

"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, marine life. The use of any gear, equipment, tool, or any means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to fish for, catch, capture, injure, kill, remove, confine, or harvest, marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where marine life can be fished for, caught, injured, killed, removed, captured, confined, or harvested, shall be construed as taking.

"Three-prong spear" means a device with a straight shaft ending in a prong which is used to impale marine life, which is manually cocked, which has no more than two rubbers attached, and which is no longer than eight feet in length from the tip of the prong to the end of the spear.

"Underwater breathing apparatus" means any apparatus that provides a person with the means to breathe underwater.

"Vessel" means any watercraft, used or capable of being used as a means of transportation on or in the water.

<u>Prohibited activities.</u> It is unlawful for any person to engage in or attempt to engage in the following activities within the Area, except as may be allowed under sections xxx and xxx, or other applicable law:

(1) Conduct any commercial activity involving any form of ocean recreation or involving the take of marine life in the Hāʻena Community-Based Subsistence Fishing Area, including but not limited to commercial tours, dive groups, sightseeing tours, hikes, guided services, or commercial fishing, with the exception of the three existing commercial use permits for Hāʻena. (Auth: HRS §190-2, 190-3, 190-4.5) (Imp: HRS § 190-2, 190-3, 190-4.5)
(2) Fish for, catch, take, injure, kill, possess, or remove any live sea shell.
(3) Use or possess a slurp gun to take any marine life, with the exception that a person may possess a slurp gun on a vessel transiting through the Area as long as the vessel

is north of the vessel transit boundary described in section xx above.

(4) Use or possess a spear to take any marine life with the exception that take with a three-prong or Hawaiian sling spear is allowed, and with the exception that a person may possess a spear on a vessel transiting through the Area as long as the vessel is north of the vessel transit boundary described in section xx above.

(5) Use or possess a spear and underwater breathing apparatus while in the water or on a vessel, with the exception that a snorkel may be possessed or used, and with the exception that a person may possess a spear and underwater breathing apparatus on a vessel transiting through the Area as long as the vessel is north of the vessel transit boundary described in section xx above.

(6) Use or possess a spear while in the water or on a vessel during any time between sunset and sunrise, with the exception that a person may possess a spear between sunset and sunrise on a vessel transiting through the Area as long as the vessel is north of the vessel transit boundary described in section xx above.

(7) Use or possess underwater breathing apparatus to take sea shells, with the exception that take of empty shells while using a snorkel is allowed.

(8) Use or possess a scoop net, with the exception that a daily maximum of three individuals of any one species of marine life may be possessed or taken with a scoop net, and with the exception that people age 12 and under may use and possess a scoop net without this restriction.

(9) Use or possess a purse seine net, with the exception that a person may possess a purse seine net on a vessel transiting through the Area as long as the vessel is north of the vessel transit boundary described in section xx above.

(10) Use a lay net, except that lay nets may be used where at least two people are in the ocean and touching the net or are within five feet of the net as in the fishing practices commonly referred to as bang-bang or pa'ipa'i, or surround or ho'opuni. Practices that use lay nets which do not require at least two people immersed in the ocean and touching the net or within five feet of the net at all times, such as in the practices known as lay/set/soak or moemoe, are not allowed.

   a. All vessels used in surround net fishing must be 14 feet or smaller and launched from the beach in the Hā'ena CBSFA.
   b. It is unlawful for any person using a lay net to leave a lay net unattended at any time.

(11) Engage in or attempt to engage in fish feeding, with the exception that feeding fish for Native Hawaiian traditional and customary practices is allowed.

(12) Set foot on the reef or live rock, with the exception that a person engaged in harvesting, as evidenced by possession of a throw net, three-prong spear, or bag constructed of cotton or mesh; with the exception that a person may set foot on the reef or live rock only in the case of an emergency.

Permitted activities. A person may:

(1) Take or possess limu; provided that limu may be taken by hand harvesting only, including by any person possessing a commercial fishing license.

(2) Take or possess any sea urchin with a daily bag limit of not more than five sea urchins per person per day, including any person possessing a commercial fishing license.

(3) Take or possess any lobster; provided that no more than two lobsters per person per day may be taken or possessed by hand harvesting only, including by any person possessing a commercial fishing license.

(4) Take or possess any he'e; provided that no more than two he'e per person per day may be taken or possessed by hand harvesting or stick harvesting only, including by any person possessing a commercial fishing license.

(5) Take, possess, or remove any finfish by hook-and-line or pole-and-line from the shoreline only; provided that no person may use more than two poles with one line per pole and with no more than two hooks per line.

'Ōpihi restoration area activities. Beginning on _____ for a period of three years, no person shall take 'ōpihi, pipipi, kupe'e, or pupu in the 'ōpihi restoration area. After three years, a person may take 'opihi, pipipi, kupe'e, or pūpū in the 'ōpihi restoration area with a daily bag limit of 20 legal-size animals.

Makua pu'uhonua area activities. No person shall engage in the following activities in the Makua pu'uhonua area:

a. Fish for, catch, take, injure, kill, possess, or remove any finfish, crustacean, mollusk including sea shell and 'ōpihi, live coral, algae or limu, or other marine animal, or other marine life, or eggs thereof;

b. Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature or specimen; or

c. Have or possess any fishing gear or device that may be used for the taking, injuring, or killing or marine life, or the altering of geological feature or specimen, the possession of which shall be considered prima facie evidence in violation of this rule.

d. Engage in any activity in the area, including recreation which includes but is not limited to surfing, kitesurfing, windsurfing, paddle boarding, stand-up paddle-boarding, swimming, snorkeling, and SCUBA diving.

Review. A review of the effectiveness of the Hā'ena Community-Based Subsistence Fishing Area rules and management plan shall be conducted every five years by a Hā'ena Fisheries Council composed of representatives of the Department of Land and Natural Resources, the Hui Maka'āinana o Makana, the Hanalei-to-Hā'ena Community Association, Limahuli

Garden and Preserve, and a representative of the permitted commercial users. As part of the review, the Council shall hold one public meeting to gather input on the rules, and make recommendations as needed, including recommendations to revise the rules for the Area, to the Department of Land and Natural Resources. Any revisions, additions, or repeals of rules for the Hāʻena Community-Based Subsistence Fishing Area shall be handled by the Council. The Council shall be included in decisions regarding any revisions, additions, or repeals of rules or permitting by the Department of Land and Natural Resources within the Hāʻena Community-Based Subsistence Fishing Area.

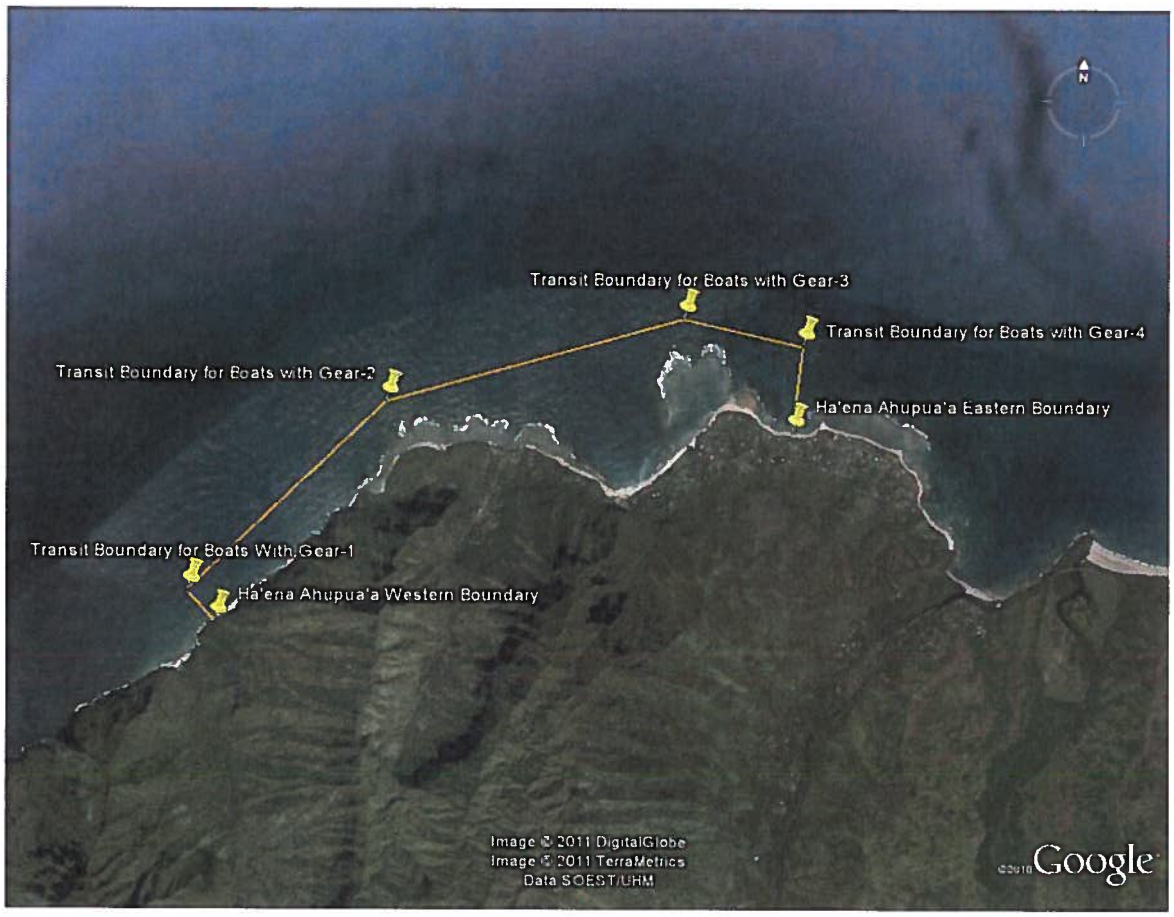
Map of the Hāʻena Community-Based Subsistence Fishing Area, Kauaʻi

Hāʻena Community-Based Subsistence Fishing Area Eastern and Western Boundaries

Hāʻena Community-Based Subsistence Fishing Area ʻŌpihi Restoration Area

Hāʻena Community-Based Subsistence Fishing Area Makua Puʻuhonua Area

Transit Boundary for Vessels Carrying Restricted Fishing Gear



Subzone Boundaries

Boundary Description	Latitude	Longitude	Length from Shoreline, as Applicable
Ha'ena Ahupua'a Western Boundary	22°12'42.50"N	159°35'44.50"W	
Ha'ena CBSFA Seaward Bound (West)	22°13'21.62"N	159°36'22.27"W	One mile from the shoreline
Ha'ena CBSFA Seaward Bound (East)	22°14'19.91"N	159°33'6.21"W	One mile from the shoreline
Ha'ena Ahupua'a Eastern Boundary	22°13'28.00"N	159°33'13.50"W	
'Ōpihi Restoration Area Seaward Boundary (Kē'ē)	22°13'15.75"N	159°35'7.34"W	300 feet from the shoreline
'Ōpihi Restoration Area Land Boundary (Kē'ē)	22°13'13.61"N	159°35'5.11"W	300 feet from the shoreline
Makua Pu'uhonua NE	22°13'44.29"N	159°33'32.98"W	
Makua Pu'uhonua SE	22°13'35.18"N	159°33'31.68"W	
Makua Pu'uhonua SW	22°13'32.15"N	159°33'41.71"W	
Makua Pu'uhonua NW	22°13'41.16"N	159°33'44.66"W	
Transit Boundary for Boats With Gear-1	22°12'49.98"N	159°35'51.79"W	1000 feet from the shoreline
Transit Boundary for Boats with Gear-2	22°13'35.57"N	159°34'59.73"W	1300 feet from the shoreline
Transit Boundary for Boats with Gear-3	22°13'55.42"N	159°33'42.00"W	2300 feet from the shoreline
Transit Boundary for Boats with Gear-4	22°13'48.84"N	159°33'10.76"W	2100 feet from the shoreline

APPENDIX 1: Text of HRS Chapter 188 Section 22.6 "Designation of community based subsistence fishing area

PART II. FISHING REGULATIONS, GENERALLY

[§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 2: ACT 241 Creating the Hā'ena CBSFA

Approved by the Governor
on JUN 26 2006

ACT 24

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 2501 S.D. 1 H.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO FISHING.

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

SECTION 1. The purpose of this Act is to create and amend fishing provisions that affect the communities of Ha`ena, Kauai and Kahului, Maui. Specifically, part I of this Act establishes a community-based subsistence fishing area for the ahupua`a of Ha`ena to protect the fish stocks and coral reef habitats. Part II of this Act extends the effective date of Act 218, Session Laws of Hawaii 2005, to allow the department of land and natural resources time to adopt necessary rules regulating user conflicts in Kahului harbor.

PART I

SECTION 2. The ahupua`a of Ha`ena is the westernmost land in the moku of Halele`a on the northwest coast of Kauai. The public highway ends in this ahupua`a, a land filled with many wahi pana or storied places, sites that are sacred to native Hawaiians and important to the whole state. The ahupua`a of Ha`ena and its offshore waters, since time immemorial, have been an important subsistence fishery resource for native Hawaiians and local families of the ahupua`a. However, the beauty of the

2006-2866 SB2501 CD1 SMA.doc

land and sea and the proximity to the end of the public highway in the ahupua'a of Ha'ena attract hundreds of thousands of visitors to the area every year. As a result of this influx of visitors and a growing problem of indiscriminate fishing practices, there has been an adverse impact to the fish stocks and the integrity of the coral reef habitats in the area.

The legislature finds that a traditionally managed fishery wherein the inhabitants of the ahupua'a develop and assist in development and enforcement of traditional regulations for the maintenance of the fishery is needed for the ahupua'a of Ha'ena.

The purpose of this Act is to establish a community-based subsistence fishing area in the ahupua'a of Ha'ena.

SECTION 3. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"**§188- Ha'ena community-based subsistence fishing area; restrictions; regulations.** (a) There is designated the Ha'ena community-based subsistence fishing area on the northwestern coast of Kauai, which shall consist of all state waters and submerged lands bounded by:

(1) The shoreline of the Haena district;

(2) A line that follows an imaginary extension of the boundary between Hae'na state park and Na Pali state park that extends seaward for one mile from the shoreline;

(3) An irregular line one mile offshore that is parallel to the contours of the shoreline; and

(4) A line that follows an imaginary extension of the boundary between Hae'na and Wainiha, as specified in the tax map of the county of Kauai, that extends seaward for one mile from the shoreline.

(b) In addition to the provisions of this chapter, the following uses or activities shall be regulated in the Ha'ena community-based subsistence fishing area:

(1) Any activities with a commercial purpose, as defined in section 187A-1;

(2) The issuance of any commercial marine license, as defined in section 187A-1;

(3) The issuance of any aquarium fish permits, pursuant to section 188-31;

(4) Fishing with the use of gill nets;

(5) Fishing with self-contained underwater breathing apparatus and spears; and

(6) Any other use or activity that the department of land and natural resources, in consultation with the inhabitants of the ahupua'a of Ha'ena and other interested parties, deems appropriate.

(c) The department of land and natural resources, as soon as practical, shall consult with as broad a base as possible, group of inhabitants of the ahupua'a of Ha'ena and other interested parties to establish rules for the Ha'ena community-based subsistence fishing area, to include but not be limited to:

(1) A determination of fishing practices that are customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion in the fishing area;

(2) A management plan recognizing existing marine activities permitted by the department of land and natural resources and containing a description of specific activities to be conducted in the fishing area, including evaluation and monitoring processes and methods of funding and enforcement;

(3) Limits on the harvest of aquatic life, as those terms are defined in section 187A-1, in the fishing area;

(4) The establishment of no harvesting zones within the fishing area without depriving ahupua'a inhabitants of access to traditional sources of subsistence; and

(5) A process for the expansion of the fishing area to include other ahupua'a.

The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purpose of this section."

APPENDIX 3: Letter from Kaua'i Mayor Bernard P. Carvalho Jr.

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Managing Director

OFFICE OF THE MAYOR
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 235, Līhu'e, Hawai'i 96766
TEL (808) 241-4900 FAX (808) 241-6877

May 24, 2011

Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl St.
Honolulu, Hawai'i 96813

Aloha Honorable Board Members,

As Mayor of the County of Kaua'i I would like to submit the following testimony in support of the proposed administrative rules that would govern the Hā'ena community-based subsistence fishing area established pursuant to Hawai'i Revised Statutes ("HRS") §188-22.9.

The County of Kaua'i has been informed that these rules are a product of a prolonged process that originated in the Hā'ena community and are an important step in that community taking more responsibility for their environment and better maintaining their resources. I support this type of local action and am pleased that the Hā'ena community recognizes that ultimately it is their kuleana to care for their place.

Although this is the first time that something like this has occurred in Hawai'i I am optimistic that the outcome will be successful. It is in this spirit of hope that I support these rules and ask you to support them as well.

Mahalo Nui Loa,

Bernard P. Carvalho Jr.
Mayor, County of Kaua'i

APPENDIX 4: Letter from DOBOR's Kaua'i Branch Chief

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

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

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4370 KUKUI GROVE ST. STE. 109
LIHUE, HAWAII 96766

May 19, 2011

Aloha,

The Division of Boating and Ocean Recreation Kauai District, has no objections regarding the Bill for an Act Relating to Fishing" (Act 241), establishing, "a community-based subsistence fishing area for the ahupua'a of Hā'ena." This law is the culmination of a longstanding collaborative endeavor between the Hā'ena Ahupua'a Project of Limahuli Garden and Preserve (NTBG), the Hui Maka'āinana o Makana, and, more recently, the Hawai'i Community Stewardship Network (HCSN).

Regards,

Joseph V. Borden
Kauai District Manager

Appendix 5: Letter from DOCARE's Kaua'i Branch Chief

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

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

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF CONSERVATION & RESOURCES ENFORCEMENT
3060 EIWA STREET, ROOM 205
LIHUE, HAWAII 96766

May 31, 2011

Aloha,

The Division of Conservation and Resources Enforcement have met with members of the Ha'ena Ahupua'a Project of Limahuli Garden and Preserve (NTGB) (Kawika Winters), the Hui Maka'ainana o Makana, (Maka'ala Kaa'umoana) and the Hawaii Community Stewardship Network (Debbie Gowensmith) several times. The meetings were to discuss the proposed rules that would apply to the "Ha'ena Community-Based Subsistence Fishing Area."

At this time the Division of Conservation and Resources Enforcement supports the present rule package and has no objections regarding the "Bill for an Act Relating to Fishing" (Act 241), establishing, "a community-based subsistence fishing area for the ahupua'a of Ha'ena."

We will continue to offer our support in the enforcement arena, in sharing our knowledge of fishing and other rules that could apply to the HCBSFA.

I am happy to see the Ha'ena community in collaboration with the NTBG, Hui Maka'ainana o Makana and HCSN come together to implement such a program, for the betterment and sustainability of our oceans natural resources.

Regards,

Francis P. Mission
Kauai Branch Chief, DOCARE

APPENDIX 6: Letter from the Hanalei to Hā'ena Community Association

Hanalei-to-Ha'ena Community Association
Post Office Box 789
Hanalei, Hawaii 96714

June 1, 2011

To: Department of Land and Natural Resources
1151 Punchbowl St # 330
Honolulu, HI 96813-3088

Aloha DLNR fisheries department,

The Hanalei-to-Ha'ena Community Association is writing to express its support of the proposed management plan and new rules for the Ha'ena Community-Based Subsistence Fishing Area.

The Association was involved in three constituent meetings over the past three years (two in 2009 and one in 2011) to gather input from the community and to inform the community of progress and results. We also helped to coordinate meetings between specific constituent groups and the Ha'ena Fisheries Committee, again to provide opportunities for input and to inform groups about results. Because of the open process used to develop these proposed rules and because of their potential for positive long-term impact, the Association encourages the Department of Land and Natural Resources to adopt these rules.

If you have any questions please feel free to call me at (808) 635-2074.

Thank you,

Joel Guy
President, Hanalei-to-Ha'ena Community Association
P.O. Box 789
Hanalei HI 96714
808 635-2074

APPENDIX 7: Community Support

Hawai'inuiākea School of Hawaiian Knowledge
Kamakakūokalani Center for Hawaiian Studies

UNIVERSITY of HAWAI'I
MĀNOA

May 25, 2011

Aloha kakou,

I would like to submit a letter of support for the establishment of a community-based subsistence fishing area for the ahupua'a of Hā'ena (Bill for an Act Relating to Fishing [Act 241]).

The effort towards developing agreement between sectors of the community, business interests and government agencies has been often times difficult but the community in Hā'ena and Halele'a has labored for many hours, many days, weeks and months to develop the proposed management plan and set of rules it hopes will assist in guiding activities within the area concerned.

This plan and rules are designed in order to enlist community and governmental agency to partner in preserving and protecting not only the natural resources that exist in Hā'ena but also to support the relevant State agencies in their duty to "affirm and protect all rights, customarily and traditionally exercised for subsistence ..." as stated in the Hawai'i State Constitution (Article XII, section 7).

This effort by community to be recognized and be an active and integral part of caring for the unique resources that we have in Hawai'i should be commended and will have beneficial and long reaching effect on the effectiveness of both government and community in the efforts to "Mālama" our precious resources both human and natural.

Mahalo for your consideration and support of this effort.

Carlos Andrade

Carlos Andrade, Ph. D.
Director
Kamakakūokalani Center for Hawaiian Studies

2645 Dole Street, Kamakakūokalani Building, Rm 209A Honolulu, Hawai'i 96822
Telephone: (808) 973-0989 Fax: (808) 973-0988
Email: chsuhm@hawaii.edu
An Equal Opportunity/Affirmative Action Institution

We, the undersigned, support the proposed rules for the Hā'ena Community-Based Subsistence Fishing Area, hereby submitted to the Departm
Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i

PRINTED NAME	SIGNATURE
[redacted]	[redacted]

By Cathy Hai Young Boyd

We, the undersigned, support the proposed rules for the Hā'ena Community-Based Subsistence Fishing Area, hereby submitted to the Departm Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i.

PRINTED NAME	SIGNATURE	
[redacted]		

We, the undersigned, support the proposed rules for the Hā'ena Community-Based Subsistence Fishing Area, hereby submitted to the Departm
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PRINTED NAME	SIGNATURE
[redacted]	

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Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i.

PRINTED NAME	SIGNATURE
[redacted]	[redacted]

We, the undersigned, support the proposed rules for the Hā'ena Community-Based Subsistence Fishing Area, hereby submitted to the Departm
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PRINTED NAME	SIGNATURE	ADDRESS
[redacted]		

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PRINTED NAME	SIGNATURE	ADDRESS
[redacted]		

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Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i.

PRINTED NAME	SIGNATURE	
[redacted]		

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Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i.

PRINTED NAME	SIGNATURE	ADDRESS
[redacted]		

We, the undersigned, support the proposed rules for the Hā'ena Community-Based Subsistence Fishing Area, hereby submitted to the Department of Land and Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i.

PRINTED NAME	SIGNATURE	ADDRESS
[redacted]		

We, the undersigned, support the proposed rules for the Hā'ena Community-Based Subsistence Fishing Area, hereby submitted to the Department of Land and Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i.

[redacted]

We, the undersigned, support the proposed rules for the Hā'erīā Community-Based Subsistence Fishing Area, hereby submitted to the Department of Land a
Natural Resources, May 2011. We urge the DLNR to approve these for a public hearing to be held on the North Shore of Kaua'i.

PRINTED NAME	SIGNATURE	ADDRESS
[redacted]		

APPENDIX 8: Draft Budget

	Start-Up Costs	Start-Up In-Kind	Annual Costs	Annual In-Kind	Intermittent Costs	Intermittent In-Kind
OUTREACH						
Installation of seasonal buoys for the Makua Pu'uhonua Area						
Supplies	$1,000.00					
Manual installation, removal, and maintenance		$800.00				
Replacement buoys as needed						
Supplies			$500.00			
Manual installation, removal, and maintenance				$800.00		
Development of interpretive signage about the CBSFA						
Graphic design	$2,500.00					
Printing and materials	$5,500.00					
Manual installation		$600.00				
Printing and reproduction: Letters in vacation rentals, brochures, outreach materials						
Content development		$1,000.00		$500.00		
Graphic design	$1,500.00			$750.00		
Printing and reproduction	$2,000.00		$750.00			
Advertising, press releases, articles		$1,000.00		$750.00		
Radio interviews		$500.00		$500.00		
Ho'ike broadcast		$3,500.00		$3,500.00		
Public service announcements						
Content development		$500.00				
Filming and editing		$3,000.00				
Airing	$5,000.00		$5,000.00			
Speaking engagements		$150.00		$150.00		
Volunteer outreach and compliance program (Makai Watch)						
Program coordination			$10,000.00			
Compliance monitoring				$7,800.00		

Public outreach				$7,800.00		
Data entry and analysis			$920.00			
Supplies	$2,000.00		$1,000.00			
Youth education programs						
Program coordination			$7,200.00			
Stipends			$3,000.00			
Supplies			$5,000.00			
Transportation			$1,200.00			
BIOLOGICAL MONITORING						
Baseline fish monitoring comparing the inside and outside of the Makua Pu'uhonua Area						
Baseline 'opihi monitoring						
Baseline limu monitoring						
Monitoring personnel		$16,000.00				
Technical assistance		$6,000.00				
Data entry and analysis	$800.00					
Supplies	$7,000.00					
Annual fish monitoring (fish, he'e, urchins, shells, lobster), including monitoring of the inside and outside of the Makua Pu'uhonua Area, 'opihi monitoring, and limu monitoring						
Monitoring personnel				$2,400.00		
Technical assistance				$3,000.00		
Data entry and analysis			$800.00			
Supplies			$1,000.00			
Opihi monitoring just before the end of the three-year closure						
Opihi monitoring 6 months and 1 year after the end of the three-year closure and the institution of the bag limit						
Monitoring personnel						$2,400.00
Technical assistance						$3,000.00
Data entry and analysis					$800.00	

Supplies					$1,000.00	
4 years from rules inception: Follow up monitoring comparing the inside and outside of the Makua Pu'uhonua Area						
4 years from rules inception: CPUE follow-up						
4 years from rules inception: Rapid benthic habitat follow-up						
Monitoring personnel						$2,400.00
Technical assistance						$3,000.00
Data entry and analysis					$800.00	
Supplies					$1,000.00	
COUNCIL MEETINGS						
Quarterly meetings						
Five-year review						
Community meetings						
Council coordination			$640.00			
Printing and reproduction			$250.00			
Meeting venues				$800.00		
TOTALS	**$27,300.00**	**$33,050.00**	**$37,260.00**	**$28,750.00**	**$3,600.00**	**$10,800.00**