

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.XX
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-60.XX, Hawaii Administrative Rules, entitled "Miloli'i Community-Based Subsistence Fishing Area, Hawai'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.XX

MILOLI'I COMMUNITY-BASED SUBSISTENCE FISHING AREA,
HAWAI'I

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§13-60.XX-2	Definitions
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§13-60.XX-7	Penalty
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§13-60.XX-1 Purpose. The purpose of this chapter regarding the Miloli'i Community-Based Subsistence Fishing Area is to:

- (1) Sustainably support the consumptive needs of communities along the southwest coast of Hawai'i Island through culturally-rooted, community-based fisheries 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) Recognize and protect customary and traditional native Hawaiian fishing practices that are exercised for subsistence, cultural, and religious purposes in the area;
- (4) Facilitate the substantive involvement of the community in fisheries resource management decisions for the area through dialogue with community residents and resource users;
- (5) Establish the Pu'uhonua Pāpā, Pu'uhonua Honomalino, Pu'uhonua Kapu'a, and Pu'uhonua Manukā to reduce fishing pressure in these areas in order to replenish populations of important fish species while also allowing for sustainable harvest;
- (6) Establish the Pāku'iku'i Rest Area for the preservation and protection of this nursery habitat for pāku'iku'i as an important food fish for community families;
- (7) Establish Puakai'a Miloli'i as an ocean classroom where the community can continue to impart intergenerational knowledge of traditional cultural ocean practices to future generations while maintaining crucial ocean entrypoints for the community; and

- (8) Establish the 'Ōpelu Traditional Management Zone to ensure local 'ōpelu fish stocks are maintained according to traditional practices as an essential resource for the Miloli'i community and to honor the rich heritage and generational practice of 'ōpelu fishing in Miloli'i. [Eff]
(Auth: HRS §§188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§188-22.6, 188-22.7 188-53, 190-3, Haw. Const. art. XI, §6)

§13-60.XX-2 Definitions. As used in this chapter, unless otherwise provided:

"A'ama crab" means a black, edible intertidal crab species that runs over shore rocks, known as *Grapsus tenuicrustatus* or any recognized synonym.

"Akule" means any fish identified as *Selar crumenophthalmus* or other recognized synonyms. This fish is also known as pā'ā'ā, halalū, hahalalū, and big-eyed scad.

"Ālinalina" means any limpet known as *Cellana sandwicensis* or any recognized synonym. 'Ālinalina are also known as yellow foot 'opihi.

"Aquarium fishing" means taking marine life for aquarium purposes.

"Aquarium purposes" means to hold marine life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes.

"Area" means the Miloli'i Community-Based Subsistence Fishing Area (Miloli'i CBSFA), as encompassed within the boundaries described in section 13-60.XX-3(a).

"Commercial purpose" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, landed, or transported for sale anywhere in the State.

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

"Diving" means any activity conducted in the water involving the use of a mask, goggles, or any other device that assists a person to see underwater while the person's face is submerged and can involve an underwater breathing apparatus. Diving includes both extractive and non-extractive activities, such as SCUBA diving, free diving, and snorkeling.

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

"Fishing" or "to fish" means catching, taking, or harvesting, or attempting to catch, take, or harvest, aquatic life. The use of a pole, line, hook, net, trap, spear, or other gear which is designed to catch, take, or harvest aquatic life, by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be caught, taken, or harvested, shall be deemed to be fishing.

"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.

"Initial-phase uhu" means any uhu characterized by a dull red, brown, or gray body coloration and the absence of bright green or blue markings.

"Kō'ele" means any limpet known as *Cellana talcosa* or any recognized synonym. Kō'ele are also known as giant 'opihi, talc limpet, or turtle limpet.

"Kole" means any fish known as *Ctenochaetus strigosus* or any recognized synonym. Kole are also known as goldring surgeonfish or goldring bristletooth.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Limu" means marine algae, including any alga in the intertidal zone, commonly known as seaweed.

"Makaiauli" means any limpet known as *Cellana exarata* or any recognized synonym. Makaiauli are also known as black foot 'opihi or Hawaiian blackfoot.

"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.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali, moano ukali ulua, moana kali, blue goatfish, or goldsaddle goatfish.

"Night" means the period between sunset and the following sunrise.

"'Opelu" means any fish of the genus *Decapterus*. 'Opelu are also known as mackerel scad.

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

"Pāku'iku'i" means any fish known as *Acanthurus achilles* or any recognized synonym. Pāku'iku'i are also known as Achilles tang.

"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 used to propel the spear remain attached when the spear is deployed. A pole spear is deployed solely by hand and without the aid of any trigger mechanism as characteristic of a speargun or hinge gun.

"Scoop net" means a 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. This gear is also known as a hand net.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears. A dive knife is not considered to be a spear.

"State" means the state of Hawai'i.

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

"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.

"Terminal-phase uhu" means any uhu characterized by the presence of bright green or blue markings or a predominantly green or blue body coloration, often with bright pink, orange, or yellow patches.

"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. This gear is also known as a cast net.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for fish with large scales and fused, beak-like teeth, known as parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is known as uhu uliuli.

"Uhu 'ele'ele" means any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālupaluka are known as redlip or ember parrotfish.

"Uhu pālupaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālupaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is known as uhu 'ele'ele.

"Uhu uliuli" means any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue green body with a dark band across the top of the

snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Ula" means a spiny lobster in the decapod crustacean family Palinuridae. These animals are also known as lobster, Hawaiian spiny lobster, red lobster, or green lobster.

"'Ū'ū" means any fish of the genus *Myripristis*. 'Ū'ū are also known as soldierfish or menpachi.

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

"Weke 'ula" means any fish known as *Mulloidichthys vanicolensis* or any recognized synonym. Weke 'ula are also known as yellowfin goatfish or red weke. [Eff] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

§13-60.XX-3 Boundaries. (a) The Miloli'i Community-Based Subsistence Fishing Area (Miloli'i CBSFA) includes that portion of the southwestern coast of Hawai'i Island consisting of all state waters and submerged lands bounded by a shoreline boundary consisting of a line drawn along the highwater mark at the shoreline between Pa'akai Point at Kīpāhoehoe in the north at 19.250944°N, -155.899417°W (Point A) to Kaunā in the south at 19.033639°N, -155.878791°W (Point M); a north boundary consisting of a straight line that extends seaward from the shoreline boundary at Pa'akai Point at Point A to a depth of 100 fathoms at 19.250943°N, -155.912689°W (Point AA); a seaward boundary consisting of a line that follows the 100-fathom depth contour along the southwest coast of Hawai'i Island from Point AA in the north to 19.027376°N, -155.883067°W (Point MM) in the south; and a south boundary consisting of a straight line that connects the shoreline boundary at Kaunā (Point M) to the seaward boundary at Point MM; as shown on

Exhibit A entitled "Map of the Miloli'i Community-Based Subsistence Fishing Area, Hawai'i", dated 3/9/22, located at the end of this chapter.

(b) The following sub-zones are established within the Miloli'i CBSFA:

- (1) The "'Ōpelu Traditional Management Zone", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Nāpōhakuloloa (also known as 2-Stone) in the north at 19.234444°N, -155.901000°W (Point B) to Kāki'o Point (also known as Kaupō) in the south at 19.134422°N, -155.917339°W (Point J); the seaward boundary of the Miloli'i CBSFA from 19.234176°N, -155.911939°W (Point BB) in the north to 19.134699°N, -155.929158°W (Point JJ) in the south; a straight line in the north from Nāpōhakuloloa at Point B to the seaward boundary of the Miloli'i CBSFA at Point BB; and a straight line in the south from Kāki'o Point at Point J to the seaward boundary of the Miloli'i CBSFA at Point JJ; as shown on Exhibit B entitled "Map of the 'Ōpelu Traditional Management Zone", dated 3/9/22, located at the end of this chapter.
- (2) The "Pu'uhonua Pāpā", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Lae o Kamimi in Pāpā Bay at 19.226028°N, -155.902694°W (Point C) in the north to Makahiki Point at 19.202940°N, -155.906161°W (Point D) in the south; the seaward boundary of the Miloli'i CBSFA from 19.226079°N, -155.911577°W (Point CC) in the north to 19.203068°N, -155.914627°W (Point DD) in the south; a straight line in the north from Lae o Kamimi at Point C to the seaward boundary of the Miloli'i CBSFA at Point CC; and a straight line in the south from Makahiki Point at Point D to the seaward boundary of the Miloli'i CBSFA at

Point DD; as shown on inset 2 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'u honua Areas", dated 3/9/22, located at the end of this chapter.

- (3) The "Pāku'iku'i Rest Area", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Makahiki Point at Point D in the north to Pūke'oke'o (also known as Pōhaku Ke'oke'o) at 19.161944°N, -155.912903°W (Point H) in the south; the seaward boundary of the Miloli'i CBSFA from Point DD in the north to 19.163768°N, -155.929541°W (Point HH) in the south; a straight line in the north from Makahiki Point at Point D to the seaward boundary of the Miloli'i CBSFA at Point DD; and a straight line in the south from Pūke'oke'o at Point H to the seaward boundary of the Miloli'i CBSFA at Point HH; as shown on Exhibit D entitled "Map of Pāku'iku'i Rest Area", dated 3/9/22, located at the end of this chapter.
- (4) "Puakai'a Miloli'i", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Kapukawa'aiki (also known as the Miloli'i Lighthouse) at 19.187033°N, -155.908020°W (Point E) in the north to Lae Loa at 19.181003°N, -155.908853°W (Point F) in the south; the seaward boundary of the Miloli'i CBSFA from 19.187989°N, -155.918099°W (Point EE) in the north to 19.183264°N, -155.920992°W (Point FF) in the south; a straight line in the north from Kapukawa'aiki at Point E to the seaward boundary of the Miloli'i CBSFA at Point EE; and a straight line in the south from Lae Loa Point at Point F to the seaward boundary of the Miloli'i CBSFA at Point FF; as shown on Exhibit E entitled "Map of Puakai'a Miloli'i", dated 3/9/22, located at the end of this chapter.

- (5) The "Pu'uhonua Honomalino", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Kapulau (also known as Honomalino Point) at Point G in the north to Pūke'oke'o (also known as Pōhaku Ke'oke'o) at 19.161944°N, -155.912903°W (Point H) in the south; the seaward boundary of the Miloli'i CBSFA from Point GG in the north to 19.163768°N, -155.929541°W (Point HH) in the south; a straight line in the north from Kapulau at Point G to the seaward boundary of the Miloli'i CBSFA at Point GG; and a straight line in the south from Pūke'oke'o at Point H to the seaward boundary of the Miloli'i CBSFA at Point HH; as shown on inset 1 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'uhonua Areas", dated 3/9/22, located at the end of this chapter.
- (6) The "Pu'uhonua Kapu'a", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Kalapili (Okoe Bay) at 19.147823°N, -155.910996°W (Point I) in the north to Kāki'o Point (also known as Kaupō) at Point J in the south; the seaward boundary of the Miloli'i CBSFA from 19.149582°N, -155.929769°W (Point II) in the north to Point JJ in the south; a straight line in the north from Kalapili at Point I to the seaward boundary of the Miloli'i CBSFA at Point II; and a straight line in the south from Kāki'o Point at Point J to the seaward boundary of the Miloli'i CBSFA at Point JJ; as shown on inset 1 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'uhonua Areas", dated 3/9/22, located at the end of this chapter.
- (7) The "Pu'uhonua Manukā", which includes all state waters and submerged lands bounded by the shoreline boundary of the Miloli'i CBSFA from Kamoi Point (north point of Manukā Bay)

at 19.078090°N, -155.905953°W (Point K) to the south point of Manukā Bay at 19.075940°N, -155.900410°W (Point L); the seaward boundary of the Miloli'i CBSFA from 19.074411°N, -155.912682°W (Point KK) in the north to 19.069717°N, -155.909436°W (Point LL) in the south; a straight line from Kamoi Point at Point K to the seaward boundary of the Miloli'i CBSFA at Point KK; and a straight line from the south point of Manukā Bay at Point L to the seaward boundary of the Miloli'i CBSFA at Point LL; as shown on inset 3 of Exhibit C entitled "Map of Miloli'i CBSFA Pu'uhonua Areas", dated 3/9/22, 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 §§188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.6, 188-22.7, 190-3)

§13-60.XX-4 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as abridging traditional and customary native Hawaiian rights or as allowing within the Miloli'i CBSFA 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 engage in the act of aquarium fishing or to take marine life for aquarium purposes within the Area.

(c) Except as provided in section 5, the following species-specific restrictions apply within the Miloli'i CBSFA:

- (1) It is unlawful to take or possess any female 'a'ama crab with eggs.
- (2) It is unlawful to take or possess:
 - (A) Any kole during the months of March through June;
 - (B) More than twenty kole per person per day; or
 - (C) Any kole less than five inches in length.
- (3) It is unlawful to take or possess any kō'ele.
- (4) It is unlawful to take or possess more makaiauli and 'ālinalina (with shell attached) than can fit in a one-gallon size bag per person per day.
- (5) It is unlawful to take or possess:
 - (A) More than one pāku'iku'i per person per day; or
 - (B) Any pāku'iku'i less than five inches in length.
- (6) It is unlawful to:
 - (A) Spear any uhu at night using any gear type;
 - (B) Take or possess any uhu 'ele'ele or any uhu uliuli at any time;
 - (C) Take or possess any uhu 'ahu'ula or uhu pālukaluka during the months of March through May;
 - (D) Take or possess any uhu 'ahu'ula or uhu pālukaluka less than fourteen inches in length or more than twenty inches in length;
 - (E) Take or possess more than one uhu 'ahu'ula or uhu pālukaluka (one fish total) per person per day during the months of June through February; or
 - (F) Take or possess more than three total of any other uhu per person per day, provided that only one may be a terminal-phase uhu.
- (7) It is unlawful to take or possess more than two ula per person per day.

- (8) It is unlawful to take or possess any 'ū'ū from April through June. [Eff
] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

§13-60.XX-5 Activities prohibited within selected areas. (a) While within the 'Ōpelu Traditional Management Zone as described in section 13-60.XX-3(b)(1), it is unlawful to take any 'ōpelu using any method other than hook-and-line fishing from February through August.

(b) While within the four Pu'uhonua as described in section 13-60.XX-3(b), paragraphs -(2), -(5), -(6), and -(7), all fishing is prohibited except:

- (1) Fishing from shore using throw net, scoop net, and hook-and-line fishing methods;
- (2) Fishing from a vessel using hook-and-line fishing method;
- (3) Fishing using a pole spear; and
- (4) Fishing for akule using nets in compliance with chapters 13-60.4, 13-75, and 13-95.

(c) While within the four Pu'uhonua as described in section 13-60.XX-3(b), paragraphs -(2), -(5), -(6), and -(7), it is unlawful to:

- (1) Harvest any 'opihi; or
- (2) Fish using any gear or method other than specifically allowed in section 5(b).

(d) While within the Pāku'iku'i Rest Area, it is unlawful to take or possess any pāku'iku'i.

(e) While within Puakai'a Miloli'i, it is unlawful to:

- (1) Use or possess any spear except for a pole spear;
- (2) Spear any uhu, pāku'iku'i, weke 'ula, moano kea, or 'ū'ū; or
- (3) Fish using a lay net at night. [Eff
] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

§13-60.XX-6 Transit through Miloli'i CBSFA with restricted gear and species. Prohibited gear and restricted species as described in sections 13-60.XX-4 and 13-60.XX-5 may be possessed while onboard a vessel in active transit through the areas, provided that no prohibited gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit with the exception of vessels in line for the boat ramp and vessels actively loading and unloading at the wharf or on shore. [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

§13-60.XX-7 Penalty. (a) Any person who violates any provision of this chapter shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by section 188-70, HRS; and
- (3) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State. [Eff _____] (Auth: HRS §§187A-5, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-12.5, 188-22.6, 188-22.7, 188-70, 190-5)

§13-60.XX-8 Asset forfeiture. Any equipment, article, instrument, aircraft, vehicle, vessel, business record, or natural resource used or taken in violation of this chapter, may be seized and subject to forfeiture as provided by section 199-7 and chapter

712A, HRS. [Eff] (Auth: HRS §190-3) (Imp: HRS §199-7, ch. 712A)

§13-60.XX-9 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, 188-22.6, 188-22.7, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.6, 188-22.7, 188-53, 190-3)

2. The adoption of chapter 13-60.XX, 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.

SUZANNE D. CASE
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Exhibit A: Map of the Miloli'i Community-Based Subsistence Fishing Area, Hawai'i (3/9/22)

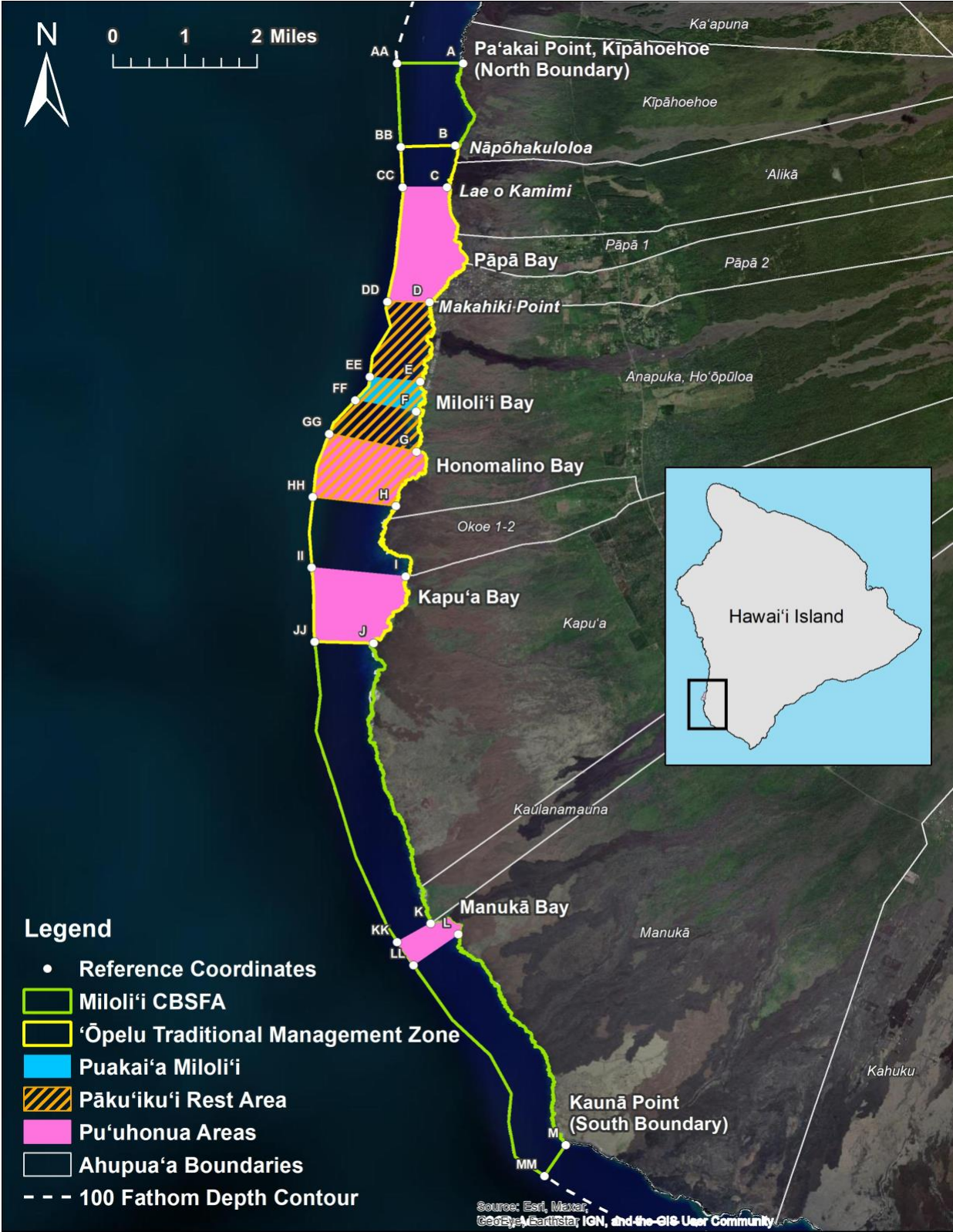


Exhibit B: Map of the 'Ōpelu Traditional Management Zone
(3/9/22)

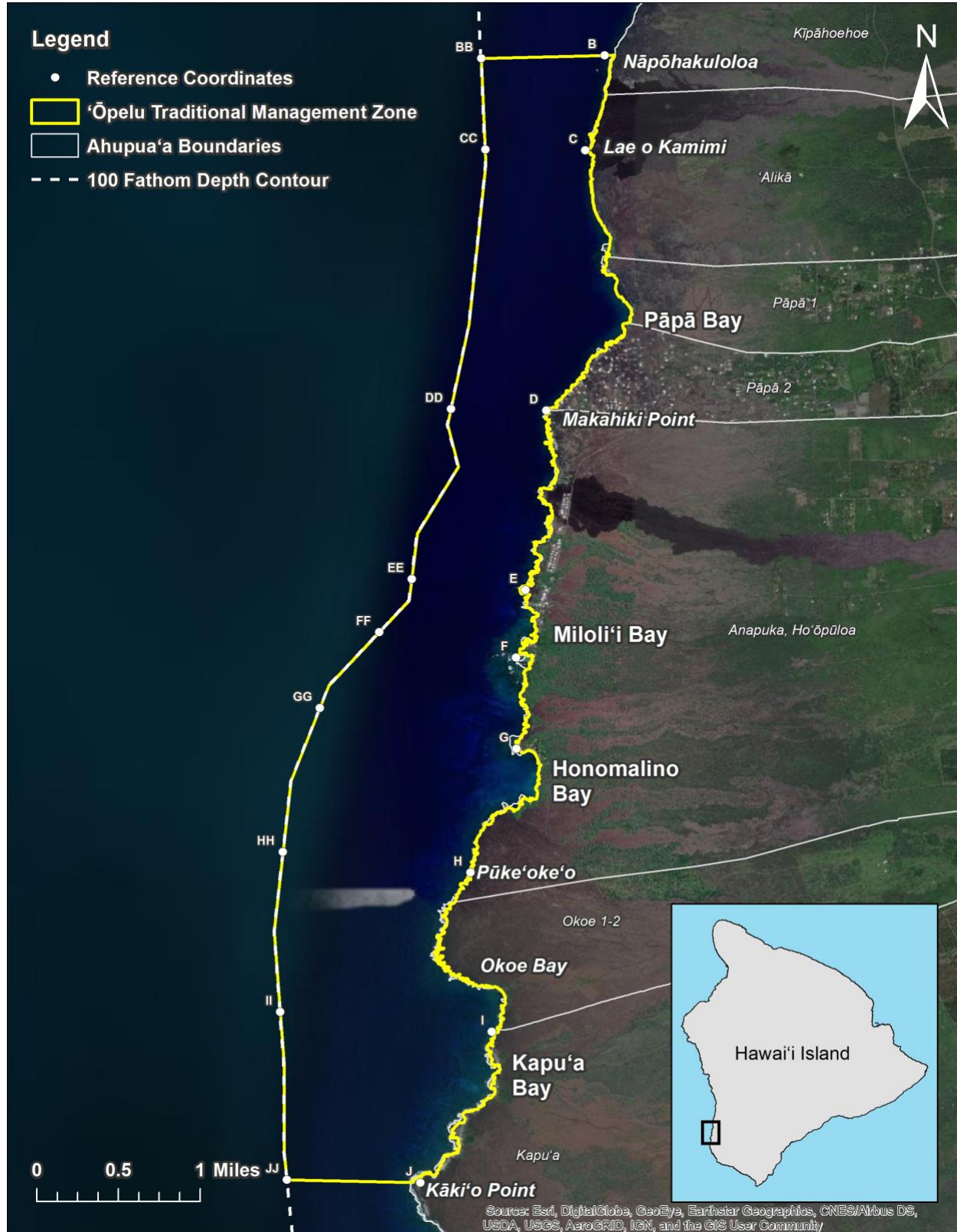


Exhibit C: Map of Miloli'i CBSFA Pu'uhonua Areas (3/9/22)

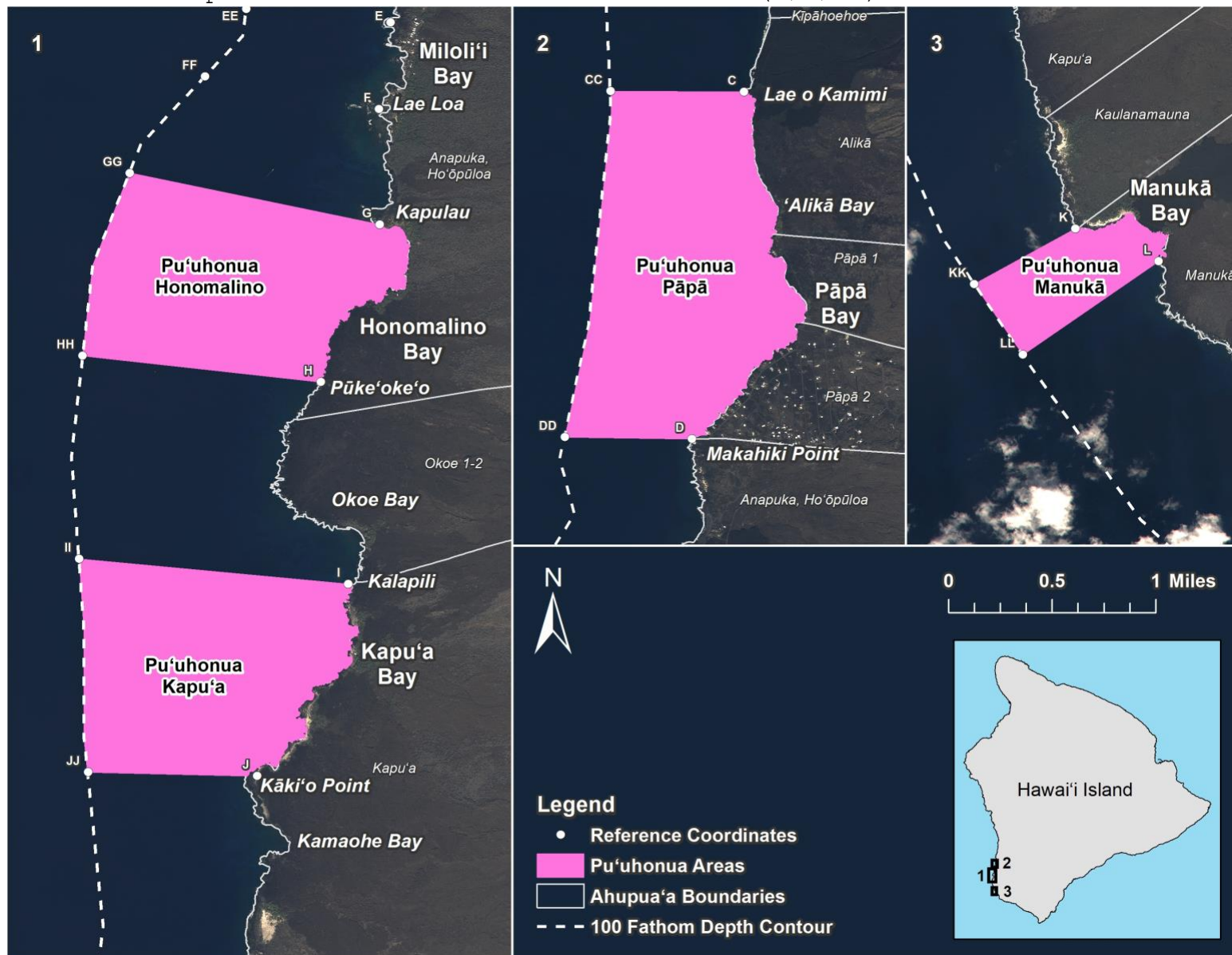


Exhibit D: Map of Pāku'iku'i Rest Area (3/9/22)

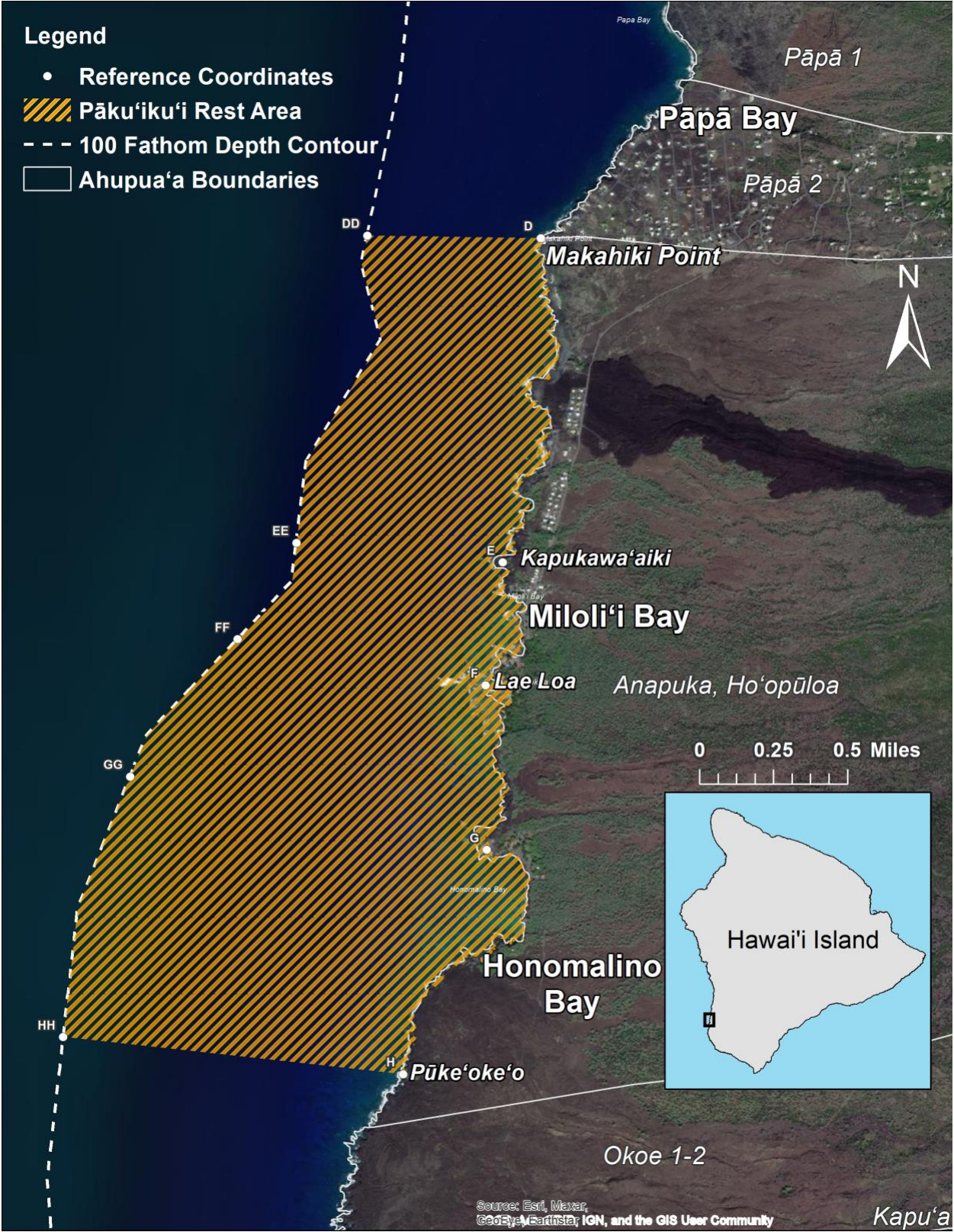


Exhibit E: Map of Puakai'a Miloli'i (3/9/22)

