

Appendix 2. Kahalu'u (Island of Hawaii) Focus Site Report

Kahalu'u (Island of Hawaii) Focus Site Report

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1. CONTEXT

A site map and a description of the Kahalu'u Focus site and recreational activities occurring there are given below. This is followed by information on current resource protection efforts at the focus site. County ordinances and state regulations pertaining to commercial ocean recreation activities are then summarized.

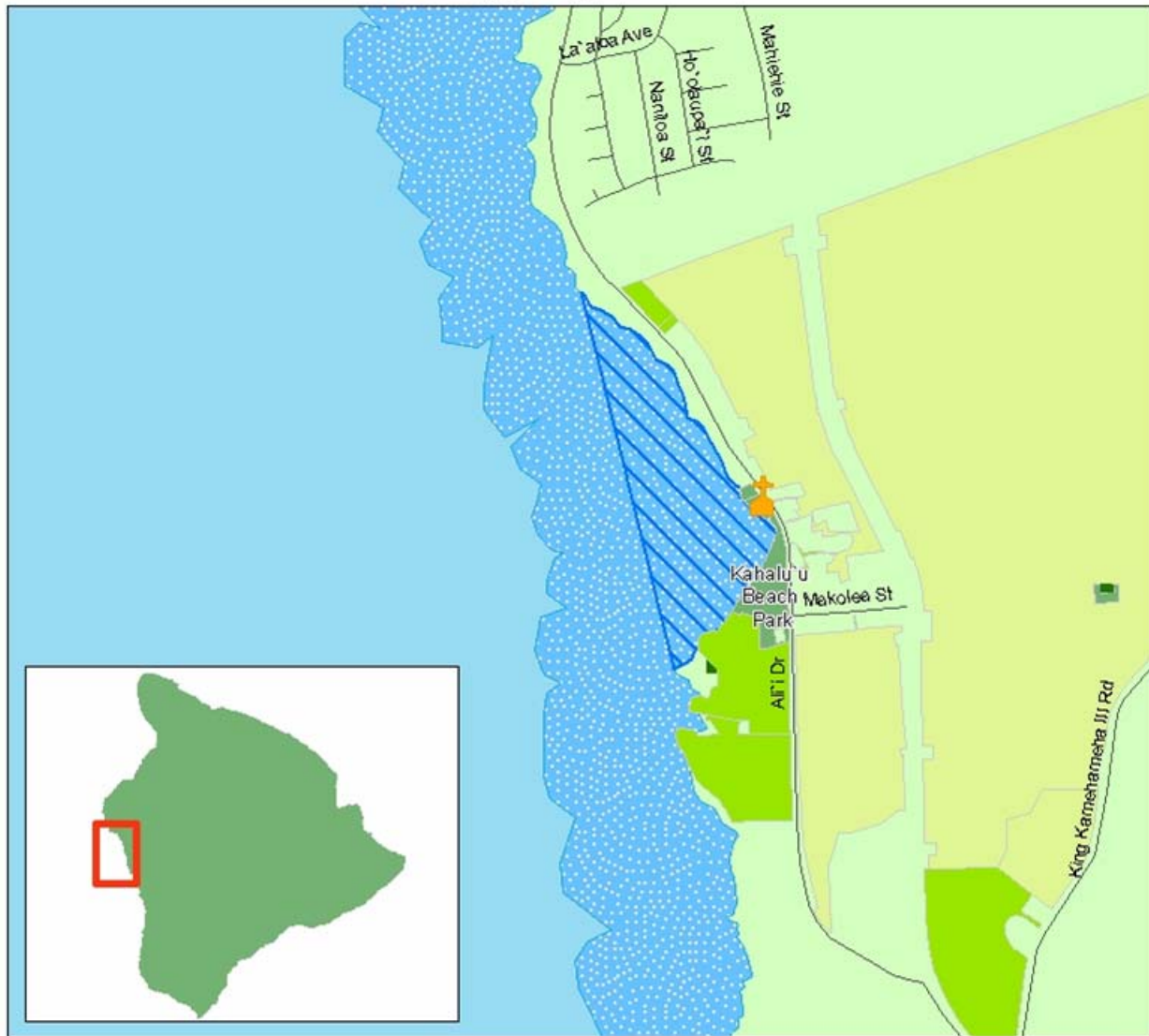
1.1 Site Description and Recreational Activities Occurring at Kahalu'u Beach Park

Kahalu'u Beach Park is a 4.23-acre county beach park with lifeguards, parking lots, restroom facilities, showers, picnic tables, and sheltered areas providing shade. While the waters officially designated as part of Kahalu'u Beach Park comprise an area of roughly 41.7 acres (see Figure 1), the most heavily used area is only about one-eighth of that total. This heavily used portion of the bay is bordered on the south by the Kahalu'u Beach Park parking lot and on the other (i.e. the Kailua-Kona/north side) by St. Peter's Church.



The side close to the parking lot is enclosed by a sea wall referred to as the “menehune wall.” The outer edge of the north side of the bay is unenclosed and has a popular surf break, as well as a current that drifts north towards Kailua-Kona. Human use studies conducted over the past several years by the Kohala Center and the University of Hawaii Sea Grant Program show that Kahalu'u has twice the water density of Hanauma Bay (that is, there are two times the number of people per water acre on a daily basis). There are often 300 people in the water in this small enclosed bay during peak use times. The most popular recreational activities occurring in the water are snorkeling, swimming, and surfing. Spearfishers also use the bay and pole fishermen cast their lines in from shore.

Kahalu`u Bay, Big Island, Hawaii



Legend

- | | |
|--------------------|---|
| Streams | Kamehameha Schools |
| Roads | Kamehameha Investment CORP |
| State of Hawaii | Kahalu`u Bay surfing, swimming, & diving zone |
| County of Hawaii | Coral Reefs |
| St. Peter's Church | West Hawaii General ORMA |

The preparation of this map was financed in part by the Coastal Zone Management Act of 1972, as amended, administered by the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, United States Department of Commerce, through the Office of Planning, State of Hawaii. Created by DLNR, September 2006. Data gathered from Hawaii State Office of Planning, map for preliminary information purposes only.

Figure 1: Kahalu`u Site Map

Kahalu'u Beach Park is included in the West Hawaii Fishery Management Area (FMA) established in 1998. No fish feeding and no aquarium collecting are allowed. Federally protected green sea turtles are also frequently seen both in the water and on the beach at Kahalu'u Beach Park. They often bask in the sun for hours at the water's edge, in close proximity to dozens of beach users. A number of important cultural sites are present at Kahalu'u Beach Park, including Kuemanu Heiau and the "menehune wall". In addition, a number of cultural features are submerged in the nearshore waters of Kahalu'u Bay.

1.2 Commercial Ocean Recreation Operations at Kahalu'u Beach Park

The two concessions at Kahalu'u Beach Park that have a County permit are the snack bar and the snorkel concession. Other commercial activities occurring at Kahalu'u include surf instruction and the shuttling of cruise ship passengers to the beach park for snorkeling.

1.3 Regulation of Commercial Ocean Recreation Activities

Hawaii County, Department of Parks and Recreation ordinances apply to Kahalu'u Beach Park since it is a county beach park. But jurisdiction over the park is shared with Kamehameha Investment Corporation since the land for Kahalu'u Beach Park was given to the County by Kamehameha Schools. The sign posted at the beach entrance states that the park was dedicated to the County of Hawaii from the estate of Princess Bernice Pauahi Bishop.

County Ordinances

The following segments of chapter 15 of Hawaii County Code, "Parks and Recreation," apply to this study:

- Section 15-14 Fishing regulations "(b) Use of the following are prohibited in the gathering and collection for any purpose of fish, crustaceans or mollusks from any body of water located in any park area owned or controlled by the County, including, but not limited to, the pond at Lili'uokalani Park, Richardson Ocean Park, and Kahalu'u Beach Park: (1) cross nets; (2) Throw nets; (3) Spears; (4) Bows and arrows; (5) Chemicals; (6) Explosives; (7) Electrical devices; (8) All types of nets which measure more than three feet at the widest span. (c) No aquatic life taken from waters within park areas shall be sold or offered for sale." In addition to (b) and (c), "fishing shall be in accordance with the laws and regulations of the State."
- Section 15-27 Permission required for advertising and signs in park areas "(a) Commercial notices or advertisements shall not be displayed, posted or distributed on county lands within a park area unless prior written permission has been given by the director. Such permission may be granted by the director under any of the following circumstances:
 - (1) If the notice or advertisement is of goods, services or facilities available within the park area and such notices and advertisements are found by the director to be desirable and necessary for the convenience and guidance of the public; or
 - (2) If a sign is temporary in nature and is exhibited only during the time the event is actually occurring, provided that a payment is made to the County of Hawai'i as established by administrative rules."

- Section 15-28 Prohibited activities in recreational areas “The following activities are prohibited in recreational areas:
 - (1) The intentional or wanton destruction, defacement or removal of any natural feature or nonrenewable natural resource.
 - (2) The intentional or wanton possession, destruction, injury, defacement, removal, or disturbance, in any manner of any public building, sign, equipment, monument, marker, or other structure, or of any relic, artifact, ruin, or historic or prehistoric feature or of any other similar public property.
 - (3) Gathering or collecting for personal use, reasonable quantities of natural products of a renewable nature, including, but not limited to, seashells, fruits, berries, driftwood, and marine deposits of natural origin, and the gathering or collecting of such products for the purpose of sale.”
- Section 15-32 Swimming, bathing, surfing and use of flotation devices “(a) Swimming and bathing are permitted except in waters and at times where such activities are prohibited in the interest of public health or safety, which excepted waters shall be designated by the posted signs. (b) The director may prohibit the use of flotation devices within designated swimming areas by the posting of appropriate signs. (c) The use of surfboards and similar devices is prohibited within the limits of designated swimming beaches.”
- Section 15-34 Boating in swimming areas prohibited “No vessel, including but not limited to, boat, motorboat, houseboat, rowboat, powerboat, jet boat, sailboat, fishing boat, towboat, scow, flatboat, cruiser, motor vessels, ship barge, tug, floating cabana, party boat, charter boat, ferryboat, canoe, raft or any buoyant device permitting or capable of free flotation, shall be operated or anchored within the swimming areas of all beach parks.”

State Rules and Regulations

The State of Hawaii Department of Land and Natural Resources has jurisdiction over the waters of Kahalu’u Bay, up to the high wash of the wave. Within its jurisdiction the state regulates operators of commercial vessels, water craft, and water sports equipment (this includes surf instructors). Both commercial and non-commercial uses are regulated in West Hawaii Island Ocean Recreation Management Area (ORMA).

Blue Card Surf Instructor Licenses

Blue Card Surf Instructor Licenses are issued by the DLNR, DOBOR. An instructor holding a blue card license is allowed to operate anywhere in Hawaii, even though the card itself may have a specific area written on it (such as Waikiki, West Hawaii, etc.).

Commercial Operator Permits and Equipment Registration

Chapter 256 “Ocean Recreation Management Rules and Areas” of the Hawaii Administrative Rules (HAR), Part III (Ocean Waters, Navigable Streams and Beaches), §13-256-3, specifies that “All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial operator permit to be issued by the department.” Section 13-256-4 specifies that “All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with Sections 13-251-36 to 13-251-52 [Subchapter 5: Registration].” The Chapter 251 referred to here is titled “Waikiki and Kaanapali Ocean Waters,” but many State and County

officials feel the intent of the law is that the regulations outlined in Chapter 251 apply statewide. The regulations in Chapter 251 specify that catamarans, outrigger canoes, surfboards, sailboards, and water sports equipment being used for commercial purposes must be registered with the department. Registered equipment must be identified (by a name, number, or both) and may also require an ORMA decal. Equipment registration must be renewed annually, and registration expires upon transfer of ownership.

ORMA Use Zones

Kahalu'u Bay is located within the broader West Hawaii Island ORMA. There is only one ORMA use zone specified for Kahalu'u Bay (§13-256-152) and it is a swimming zone, designated for swimming and diving. No one is allowed to moor or operate vessels within the zone.

ORMA Recreation Advisory Committees

According to §13-256-3 (b), Recreation Advisory Committees are to be established by the department for each designated ORMA. The DLNR, DOBOR, is currently establishing a Recreation Advisory Committee for the West Hawaii Island ORMA.

2. PRIMARY ISSUES OF CONCERN

According to Kahalu'u Ocean Recreation Focus Group participants (hereafter referred to as "Focus Group" participants) the primary resource conservation issues needing to be addressed were coral trampling and cultural resource degradation. The primary concerns relating to public safety and access were overcrowding, carrying capacity, and user conflicts. The topics of greatest concern relating to commercial ocean recreation activities were enforcement presence and coordination among jurisdictions, the snorkel rental concession, surf school regulation, cruise ship passenger shuttles, and the title of HAR Chapter 251.

The Kahalu'u Ocean Recreation Focus Group, facilitated by CSV Consultants, is comprised of individuals representing the following agencies, organizations, and businesses:

State Government: Office of Hawaiian Affairs, DLNR (Office of the Chairperson, Division of Aquatic Resources, Division of Boating and Ocean Recreation, and Division of Conservation and Resource Enforcement)

County Government: Hawaii County (Parks and Recreation, Planning Department, Office of the Mayor, Corporation Council, and Aquatics Division—Ocean Safety Services)

Non-Profits: Kohala Center, Malama Kai, Association of Hawaiian Civic Clubs (Kona Hawaiian Civic Club, Kuakini Hawaiian Civic Club of Kona, Hawaii Council)

Businesses: Kona Beach Boys, Jack's Diving Locker, Hawaii Hotel Association, Kamehameha Investment Corporation

Others: UH SeaGrant, Governor's West Hawaii Liaison, concerned citizens

2.1 Resource Conservation

Coral Trampling

The very high use levels in the water at Kahalu'u Beach Park have prompted some Focus Group participants to call this area "Kona's sacrificial reef." According to masters thesis research conducted by Kuulei Rogers, coral trampling is occurring in the nearshore

waters of Kahalu'u. One of the causes is fin damage from inexperienced snorkelers standing up in the shallow water. The situation continues to worsen because use levels are so high.

Cultural Resource Degradation

Focus Group members are concerned about the damage that is occurring to cultural sites at Kahalu'u. They have witnessed people climbing on Kuemanu Heiau and are concerned about surf school buoys causing damage to cultural features that are submerged in the bay. In addition, non-maintenance of the break wall (often referred to as the "menehune wall") is leading to erosional damage of other structures. The Office of Hawaiian Affairs and the Association of Hawaiian Civic Clubs, Hawaii Council, would like to see a Cultural Assessment of Kahalu'u conducted.

2.2 Public Safety and Access

Overcrowding and Carrying Capacity

There was a general consensus among Focus Group participants that there are too many people in the water at Kahalu'u and that the Ocean Safety Officers (OSO) are being overtaxed. The Focus Group wanted to know the bay's carrying capacity in order to put some sort of limit on use. However, the group also recognized that the DLNR could limit the number of commercial operators at Kahalu'u (by amending existing rules) but not the number of citizens using the area. The example of Hanauma Bay (which is under county jurisdiction) was discussed as perhaps the only place in Hawaii where use limits are set (via parking limits). If use limits were to be enforced at Kahalu'u, there was discussion about whether the size of the existing parking lot should be used to set capacity. The main parking lot has roughly 70 parking spaces, and the small additional lot located closer to the heiau has four parking spaces. There was disagreement within the group as to whether parking along the road should be allowed or not. These issues fall within the County's jurisdiction since it is a public county road and a public county park.

User Conflicts

Focus Group participants reported some conflicts between recreational and subsistence constituencies. One conflict cited was the potential safety hazard of spearfishers and snorkelers being in close proximity to one another. Another conflict was the problem with snorkelers being upset with fishermen taking he'e (octopus) out of the water. Many visitors do not seem to understand that subsistence fishing is legal in Kahalu'u Bay and that these practices are a cultural use of the area.

2.3 Commercial Ocean Recreation Activities

Enforcement Presence and Coordination Among Jurisdictions

An overarching issue for the Focus Group was the need for more state (DOCARE) and county (Hawaii Police Department) on-the-ground personnel. There was concern that people operating illegally at Kahalu'u are not being cited. For example, people are teaching surf lessons without obtaining blue card instructor permits and without registering their surfboards. In addition, people are renting surfboards and snorkeling gear out of their vans. One of the difficulties of enforcement, as perceived by the Focus Group, was that without enough enforcement personnel, response times are too slow. In addition, unclear regulations make enforcement difficult. OSO are present on-site but do not have enforcement authority and do not have enforcement jurisdiction in state waters. The only enforcement arm the County has is the police and they are often occupied

taking care of other matters. The County Council is looking into the possibility of deputizing lifeguards as lieutenants who would be authorized to enforce the law. Ocean Safety Officers present at the Focus Group meeting appeared supportive of the idea as long as their staffing levels were increased so that their normal lifeguarding duties would not be compromised.

There was general consensus among the Focus Group that it would be beneficial for the County and State to increase their inter-department communication to better integrate their enforcement and ocean safety efforts. There were also requests that the language in existing rules be modified, as necessary, to clarify their interpretation.

Snorkel Rental Concession

There was concern among Focus Group participants that the educational outreach portion of the current snorkel rental concession agreement is not being adhered to. The County's Lease and Concession Agreement IFB #2082 for Snorkel Rental at Kahalu'u Beach Park states (in "specifications" item #29 on page 7 of 13) that: "Concessionaire shall be required to brief each client on what corals are, their importance to the coral reef ecosystem, and that people must avoid standing on or touching coral colonies. A visual educational sign or pamphlet with photographs of coral colonies and text warning snorkelers not to stand on corals or feed fish will be displayed. This educational tool must be reviewed and approved by the DLNR Division of Aquatic Resources West Hawaii Fisheries Biologist." Currently no such signage is present and no briefings are given.

Surf School Regulation

One of the primary concerns of the Focus Group was the need for regulation of surf schools at Kahalu'u. Currently, the DLNR issues blue card surf instructor permits but does not recognize surf schools. Focus Group participants mentioned a number of problems they feel are associated with the lack of regulation of surf schools. One is that there is currently no way to control business protocols affecting safety and the environment, such as student-to-instructor ratio, the maximum number of people per lesson and maximum number of lessons per day, and allowed days and locations of operation. It is also difficult to tell who's who out on the water because many surf schools do not use brightly colored rash guards.



The general sentiment among the Focus Group was that all commercial activities occurring at Kahalu'u should require permits. Commercial operators present at the meeting wanted to know how to obtain such permits, and whether a limited amount of permits would be issued based on carrying capacity. The DLNR has begun to develop regulations for surf schools. Templates have been drafted that detail requirements and protocols necessary for obtaining a permit. These include qualifications for a surf school permit/concession, general permit conditions, operating conditions, equipment registration, health and safety conditions, beachside instruction, buoy system use, and protection of natural and cultural resources.

There was also strong support within the Focus Group for increasing the rigor of current blue card surf instructor permits. Focus Group members discussed the possibility of a two-tiered permit system that could be used to increase the level of professionalism and accountability of surf school instructors. The blue card surf instructor permit would remain as the first level of qualification, and the second level would be a more stringent site-specific Ocean Recreation Management Area permit.

The lawsuit filed by Honolii surfers against the state, the county, and the owner of a surf school in October 2004 underscores the need to resolve these issues. The lawsuit alleged that surf schools interfered with recreational surfing at Honolii, were dangerous, and that the area was overcrowded. While the plaintiffs sought to bar the state from issuing permits for commercial surf classes at Honolii, the circuit judge decided in favor of the state, leaving the decision of whether or not to offer permits up to the Land Board.

Many Focus Group participants feel that issuing permits is an important tool for controlling numbers and protocols of commercial activities that are already occurring at public beach parks. The Hawaii County Department of Parks and Recreation, while sympathizing with the plaintiffs that commercial activity is not always appropriate at public parks, also recognized that these activities are occurring and have been for years. Either way, an established permit system clarifies who is operating legally and who is operating illegally, which assists enforcement personnel in upholding the law.

Cruise Ship Passenger Shuttles

The impacts resulting from cruise ship visits to Kona is a growing concern among Focus Group participants. In 2004 there were 116 cruise ship visits in Kona, and in 2007 there are projected to be double that amount (246 cruise ship visits). The primary impact of concern was the volume of cruise ship passengers using the county facilities at Kahalu'u, contributing to overcrowded conditions in the water. Cruise ship passengers are currently being shuttled to Kahalu'u Beach Park. Only one bus is sponsored by the official concessionaire at Kahalu'u, but, according to research conducted by UH Sea Grant and the Kohala Center, there are additional shuttles dropping snorkelers off at Kahalu'u Beach Park that are being booked directly through Maui and bypassing the cruise ships.

Title of Chapter 251 (Hawaii Administrative Rules)

Focus Sites participants were concerned about the title of HAR, Part III, Section 13, Chapter 251, entitled "Waikiki and Kaanapali Ocean Waters." There has been confusion as to whether the rules in Chapter 251 apply statewide. These rules pertain to the issuance of commercial operator permits for water sports equipment, water craft, and commercial vessels and are based on Waikiki shore waters of the Hawaii Shore Waters Rules, effective November 6, 1981.

The Waikiki commercial zone was established to continue traditional activities and limit motoring in the area. In the 1980s this Waikiki model was applied to Ka'anapali on Maui because there was a mix of activities occurring there. These rules were initially written for Waikiki and Kaanapali, since these areas receive heavy use and multiple uses and were areas of high levels of commercial use. As ocean recreation activity has increased both commercially and recreationally across the state, many feel the intent of the law is to apply statewide to other areas also now receiving these types of uses. The limited

interpretation of this rule as only applying to Waikiki and Kaanapali has, in some cases, prevented the issuance of commercial operator permits in other areas of the state.

3. OTHER ISSUES OF CONCERN

Beach Access

Controlling access to Kahalu’u Bay, and therefore to the number of people using the area at any one time was viewed by some Focus Group participants as a way to increase safety. However, OSO present at the Focus Group meeting were concerned that enforcement of any kind of carrying capacity limitation (e.g., limited parking) would encourage people to try to skirt regular access routes and attempt access in more dangerous areas or across private property.

Protocol Standardization

Kahalu’u Focus Group participants suggested that one way to standardize protocols aimed at increasing safety, reducing user conflicts, and protecting natural and cultural resources would be to create a tour consortium for ocean recreation businesses choosing to adhere to good business practices.

4. PROPOSED RECOMMENDATIONS FOR THE KAHALU’U FOCUS SITE

Top priority recommendations for the Kahalu’u Focus Site and their expected outcomes are presented in the tables below. Suggestions in the “other recommendations” table are secondary in importance. These three tables mirror the DLNR hierarchy of uses: Table 1 contains proposed recommendations for resource conservation, Table 2 contains proposed recommendations for the enhancement of public safety and access, and Table 3 contains proposed recommendations for control of commercial ocean recreation activities.

Table 1: Proposed Recommendations for Resource Conservation

Top Priority Recommendations	Expected Outcomes
Take action to curtail coral damage and coral trampling, including: <ul style="list-style-type: none"> • Restricting the use of surf school buoys in sensitive areas • Restricting the level of commercial operations occurring within Kahalu’u Bay (see Table 3) • Better educating the user groups about coral reef etiquette 	<ul style="list-style-type: none"> • Reduced damage to coral colonies
Encourage the County, as sponsoring agent, to undertake repair of the “menehune wall” by obtaining the COE (Corps of Engineers) permit required for conducting shoreline enhancement projects.	<ul style="list-style-type: none"> • Improved shoreline safety, access, and cultural structure integrity • Protection from erosion for several cultural and other structures within Kahalu’u Bay.
Encourage the community to initiate discussions with the Kamehameha Investment Corporation (KIC) to make repairs and possibly undertake curatorship of the Kuemanu Heiau.	<ul style="list-style-type: none"> • Improved structural integrity of an important cultural site • Opportunity for community awareness regarding the importance of cultural site protection

Table 2: Proposed Recommendations for Enhancement of Public Safety and Access

Top Priority Recommendations	Expected Outcomes
Encourage the Hawaii County Department of Parks and Recreation to work with the Kohala Center, UH Sea Grant, the KIC, and others to create an education center located at the Kahalu’u Beach Park pavilion and to have naturalists on-site during peak use times.	<ul style="list-style-type: none"> • Better informed users resulting in reduced coral reef damage
Work with the County to develop a user-friendly document and/or signage for the community to help public beach users understand county, state, and federal rules. Include the history of local structures, such as the menehune wall, and post and maintain signage as necessary.	<ul style="list-style-type: none"> • Better compliance from a more informed user group • Better understanding of where subsistence fishing is legal resulting in fewer recreational user confrontations • Better understanding of cultural resources

Table 3: Proposed Recommendations for Commercial Ocean Recreation Activities

Top Priority Recommendations	Expected Outcomes
Participate in discussions with Hawaii County to coordinate inter-jurisdictional enforcement efforts	<ul style="list-style-type: none"> • Increased inter-jurisdictional coordination resulting in better recreational user compliance and more successful enforcement efforts
Develop volunteer community “eyes and ears” groups, like Mauka-Makai Watch, to coordinate protection efforts with DOCARE and HPD.	<ul style="list-style-type: none"> • Assist HPD and DOCARE by reporting violations resulting in more efficient enforcement efforts • Broader community support of enforcement • Volunteer opportunities for community members
Work with the County to encourage the enforcement of the terms of the Snorkel Rental concession agreement, particularly as they apply to coral reef etiquette educational outreach.	<ul style="list-style-type: none"> • Better informed users resulting in less damage to coral reefs within Kahalu’u Bay
Determine carrying capacity for Kahalu’u Beach Park and Kahalu’u Bay and the appropriate levels of commercial activities that should be allowed. (Utilize existing human use data collected by the Kohala Center and UH Sea Grant.)	<ul style="list-style-type: none"> • Less crowded conditions • Less resource damage and fewer recreational user conflicts
Develop a site-specific ORMA permit for surf schools that requires the use of colored rash guards, a minimum of two instructors for a new surfer (one instructor stationed at the beginning of the ride and one at the end), and other safety measures.	<ul style="list-style-type: none"> • Use of a different colored rash guard for each surf school will allow instructors to better account for their students, will make students more visible to lifeguards and enforcement, will identify which student belongs with which school, and will protect students and instructors from sunburn, board rash, and jellyfish stings. • Safety protocols will improve ocean safety and reduce the current burden on lifeguards

Add a practical in-water test in addition to the land test for the issuance of Blue Cards.	<ul style="list-style-type: none"> • Increased test stringency leads to more qualified personnel and better ocean safety
Require permits for cruise ship and other shuttles that use Kahalu’u Beach Park	<ul style="list-style-type: none"> • Less crowded conditions • Less resource damage and fewer recreational user conflicts • Source of funding for resource protection and enforcement efforts
Involve cruise ships in reef etiquette educational outreach (e.g., hold snorkel classes in the ship’s pool for guests being shuttled to snorkel areas, show reef stewardship videos)	<ul style="list-style-type: none"> • Better informed user group resulting in less impact on the reef
Revise the title of HAR, Chapter 251 to include all Hawaiian Waters so that these existing regulations for commercial operator permits can be applied to Kahalu’u Bay.	<ul style="list-style-type: none"> • Will enable the DLNR to have more control over ocean recreation commercial operations in Kahalu’u Bay. • Will clarify the law for the general public as well as within and between jurisdictions. • A clearer law will support enforcement efforts.
Other Recommendations	Expected Outcomes
Establish a tour consortium/clearinghouse for businesses that follow good business protocols.	<ul style="list-style-type: none"> • Identification of true “eco-friendly” businesses to consumers • Marketing advantage for responsible businesses • Improved professionalism within the commercial ocean recreation industry
Consider the following sources of funding: <ul style="list-style-type: none"> • Levy an airport tax • Ask visitors participating in commercial ocean recreation activities to contribute an additional amount towards conservation. • Charge cruise ships and hotels a fee for supporting target site education/enforcement efforts. 	<ul style="list-style-type: none"> • Visitor dollars will be used to fund conservation, education, and enforcement.