

Honolulu, Hawaii

April 24, 2008

RE: S.B. No. 6
H.D. 2
C.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 6, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO OPIHI,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to prohibit the sale of all Hawaiian species of edible opihi, with an exception for opihi shells of a certain size used to make curios and jewelry.

According to Hawaii's scientific community, in the past century, there has been a ten-fold decline in the amount of opihi available in markets, and the average amount of opihi has further decreased by one-half in the past 40 years. The people of Hawaii, opihi harvesters, university scientists, and marine resource managers agree that the popularity of opihi as a delicacy has led to overharvesting statewide and the decline of natural populations. Notably, the Island of Oahu has been impacted especially hard, where



Cellana exarata and *Cellana sandwicensis* are rare, and *Cellana talcosa* is functionally absent.

Marine scientists have discovered that the key to increasing the sustainable harvest of the opihi populations is protecting a portion of the populations so that they may reproduce and create the next generation. Fisheries replenishment/management areas are a promising management tool to protect breeding populations, while allowing harvest in unprotected areas. The life history characteristics of opihi are perfectly suited to this management strategy because the adults will remain within the protected areas, and the swimming larvae of the opihi can disperse within an island and replenish both harvested and protected areas.

Your Committee on Conference finds that the use of scientific management tools to protect and increase breeding populations, in particular on the Island of Oahu for at least a period of five years, is necessary. Further, this measure recognizes Native Hawaiian gathering rights as articulated by the Supreme Court of Hawaii in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 903 P.2d 1246, 79 Haw. 425 (Haw. 1995), and the area governed by the Kahoolawe Island Reserve Commission.

Your Committee on Conference has amended this measure by:

- (1) Amending its purpose to more accurately reflect the intent to protect the opihi population and prevent the extinction of opihi in the State;
- (2) Making it unlawful for five years to take or harvest opihi on the Island of Oahu;
- (3) Making it unlawful to take, harvest, or possess opihi from all off-shore islets and islands in the State, including but not limited to those islands listed in the *Atlas of Hawai'i, 3rd Edition (1998), Geography Dept., UH-Hilo*, man-made jetties and breakwaters, as well as fishery management areas, fisheries replenishment areas, natural area reserves, refuges, and marine life conservation districts established by the Department of Land and Natural Resources;
- (4) Making it unlawful for a person to be in possession of at least one item from each of the following paragraphs, at the same time:



- (a) Equipment of any apparatus that would allow a person to see and remain underwater;
 - (b) An instrument commonly used as a tool to harvest or take opihi; and
 - (c) Live opihi;
- (5) Requiring the Department of Land and Natural Resources, Division of Aquatic Resources to monitor the population size and demography of each species of opihi to determine the effectiveness of this measure and to submit an annual report to the Legislature;
- (6) Providing that the Kahoolawe Island Reserve Commission shall govern the taking, harvesting, or possessing of opihi from within the Kahoolawe Island Reserve;
- (7) Exempting from this measure the exercise of native Hawaiian gathering rights as defined by the Supreme Court of Hawaii in Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 903 P.2d 1246, 79 Haw. 425 (Haw. 1995); provided that this section shall not apply to the taking of opihi from below the waterline at anytime; and
- (8) Changing the effective date to "upon approval" and repealing the ban on taking or harvesting opihi on Oahu on June 30, 2013.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 6, H.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 6, H.D. 2, C.D. 1.



Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE

K. Ito

KEN ITO, Co-Chair

Clayton Hee

CLAYTON HEE, Chair

Tommy Waters

TOMMY WATERS, Co-Chair



