



GOV. MSG. NO. 818

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 15, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB1 SD1 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB1 SD1 HD2 CD1

A BILL FOR AN ACT  
RELATING TO OPIHI.

Sincerely,

  
LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1

Honorable Members  
Twenty-Fifth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1, entitled "A Bill for an Act Relating to Opihi."

The purpose of this bill is to make it unlawful to take, harvest, or possess opihi, except under certain prescribed circumstances.

This bill is objectionable because it establishes unenforceable standards for the harvesting of opihi that run counter to good fisheries management practices.

Legislation that addresses the management and sustainability of certain fisheries should be evidenced-based, using best practices tools that are scientifically supported. For example, seasonable closures should be based on the spawning and rejuvenation periods for select species of marine life, not on randomly picked dates.

Based on their extensive experience with the management of fishing areas, the Department of Land and Natural Resources has found that tools such as bag limits and seasonal closures are more easily enforceable and more readily understood by the public. This bill would require State enforcement personnel to attempt to determine if the opihi in a person's possession was picked above the waterline or below the waterline, a virtually impossible task when the opihi is already in a collection pail.

STATEMENT OF OBJECTIONS  
SENATE BILL NO. 1  
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Further, the bill would require enforcement personnel to determine if the opihi picker was exercising native gathering rights and whether the amount of opihi in his/her possession met precise weight limits. Additionally, this bill fails to recognize those persons, particularly on the neighbor islands, who consider opihi harvesting a profession that sustains them throughout the year.

The Department of Land and Natural Resources has existing authority to regulate near-shore fisheries and aquatic stocks, including the establishment of marine resources management areas that have worked successfully for certain species. I have asked the Department to conduct a scientific, fact-based review of opihi to determine whether harvesting limits should be imposed and when they should be imposed. This bill is both unnecessary and counter-productive to that effort.

For the foregoing reasons, I am returning Senate Bill No. 1 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE  
Governor of Hawaii

# VETO

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

S.B. NO. <sup>1</sup>  
S.D. 1  
H.D. 2  
C.D. 1

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## A BILL FOR AN ACT

RELATING TO OPIHI.

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

1           SECTION 1. In the past century, there was a ten-fold  
2 decline in the amount of opihi available in markets, and the  
3 average amount of opihi has further been halved in the past  
4 forty years. The people of Hawaii, opihi harvesters, university  
5 scientists, and marine resource managers agree that the  
6 popularity of opihi as a delicacy has led to overharvesting  
7 statewide and the decline of natural populations. Notably, the  
8 island of Oahu has been hit especially hard, where *Cellana*  
9 *exarata* and *Cellana sandwicensis* are rare, and *Cellana talcosa*  
10 is functionally absent.

11           Opihi comprise four species of saltwater Hawaiian limpets  
12 and are found nowhere else on earth. The blackfoot opihi  
13 (*Cellana exarata*), also known as "opihi makaiauli," is found on  
14 the upper portion of wave-washed intertidal shores from Puhahonu  
15 (Gardner Pinnacles) to the island of Hawaii. The yellowfoot  
16 opihi (*Cellana sandwicensis*), also known as "opihi alinalina",  
17 is found on the middle-low portion of wave-washed intertidal



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1 shores from Mokupapapa (French Frigate Shoals) to the island of  
 2 Hawaii. Opihi koele, also known as the "kneecap" opihi (*Cellana*  
 3 *talcosa*), is found from the shallow subtidal to the middle  
 4 intertidal zone on shores from Niihau and Kauai to Hawaii. The  
 5 greenfoot opihi (*Cellana melanostoma*) is commonly observed  
 6 throughout the intertidal zone from Puhahonu to Nihoa, and is  
 7 less commonly observed in the main Hawaiian Islands.

8       Although opihi can be collected year-round, opihi shells  
 9 must be at least one and one-fourth inches in the longest  
 10 dimension, or the meat must be at least a half-inch in length,  
 11 to be legally harvested in Hawaii.

12       The key to increasing the sustainable harvest of opihi  
 13 populations is protecting a portion of the populations so that  
 14 they may reproduce and create the next generation. Fisheries  
 15 replenishment/management areas are a promising management tool  
 16 to protect breeding populations, while allowing harvest in  
 17 unprotected areas. The life history characteristics of opihi  
 18 are perfectly suited to this management strategy because the  
 19 adults will stay within the protected areas, and the opihi  
 20 larvae can disperse within an island and replenish both  
 21 harvested and protected areas.



1           The purpose of this Act is to rehabilitate the natural  
2 populations of all Hawaiian opihi species and establish a new  
3 direction for the management of the fishery. This Act is  
4 intended to increase both long-term standing-stock opihi  
5 abundance, as well as the amount of opihi available for use by  
6 the people of Hawaii.

7           SECTION 2. Chapter 188, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10           "§188-A Opihi harvesting and possession, restricted. (a)

11 Except as provided in this section, it shall be unlawful for any  
12 person at any time to take, harvest, or possess opihi from any  
13 coastal area or nearshore waters of off-shore islets in the  
14 state, including those islands listed in the Atlas of Hawaii,  
15 Third Edition (1998), man-made jetties and breakwaters, as well  
16 as fishery management areas, fisheries replenishment areas,  
17 natural area reserves, refuges, and marine life conservation  
18 districts established by the department of land and natural  
19 resources, division of aquatic resources.

20           (b) It shall be unlawful for any person at any time of the  
21 year to take or harvest opihi from below the waterline, or



1 possess opihi taken from below the waterline, of any coastal  
2 area or nearshore waters of the islands of the State.

3 (c) It shall be unlawful for a person to be in possession  
4 of at least one item from each of the following paragraphs, at  
5 the same time:

6 (1) Equipment or any apparatus that would allow a person  
7 to see and remain underwater, such as a swimming mask,  
8 snorkel, or self-contained underwater breathing  
9 apparatus;

10 (2) An instrument that is commonly used as a tool to  
11 harvest or take opihi such as an opihi knife; and

12 (3) Live opihi.

13 (d) It shall be unlawful for any person to take or harvest  
14 opihi from above the waterline of the coastal areas or nearshore  
15 waters of the State or be in possession of opihi within the  
16 State during the closed seasons from February 1st through May  
17 31st, and September 1st through November 30th; provided that  
18 opihi taken or harvested from above the waterline during the  
19 open seasons may be possessed for sale or consumption during the  
20 closed seasons.

21 (e) It shall be unlawful for any person to take or harvest  
22 an amount greater than one quart of opihi with shells attached,



1 or one half pint of opihi without shells attached, per day  
2 during the open seasons, as described in subsection (d).

3 (f) The division of aquatic resources of the department of  
4 land and natural resources shall submit an annual report on the  
5 effectiveness and enforcement of this section to the legislature  
6 no later than twenty days prior to each regular session  
7 commencing with the regular session of 2011 and continuing  
8 through the regular session of 2013.

9 (g) The Kahoolawe island reserve commission shall govern  
10 the taking, harvesting, or possessing of opihi in the Kahoolawe  
11 island reserve, including the islands of Puukoa and Aleale.

12 (h) This section shall not apply to any person exercising  
13 native Hawaiian gathering rights and traditional practices as  
14 authorized by law, or as permitted by the department of land and  
15 natural resources pursuant to article XII, section 7, of the  
16 Hawaii Constitution.

17 (i) As used in this section, "opihi" means all known  
18 Hawaiian opihi species, including *Cellana exarata* (blackfoot),  
19 *Cellana sandwicensis* (yellowfoot), *Cellana talcosa* (koele), and  
20 *Cellana melanostoma* (greenfoot)."





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

4 "§188-B Opihi harvesting or taking; Oahu; prohibited.  
5 Except as provided in section 188-A(h), and notwithstanding any  
6 other provision to the contrary, it shall be unlawful for any  
7 person at any time to take or harvest opihi from the coastal  
8 areas or nearshore waters of the island of Oahu."

9 SECTION 4. In codifying the new sections added by sections  
10 2 and 3 of this Act, the revisor of statutes shall substitute  
11 appropriate section numbers for the letters used in designating  
12 the new sections in this Act.

13 SECTION 5. New statutory material is underscored.

14 SECTION 6. This Act shall take effect upon its approval;  
15 provided that section 3 shall be repealed on June 30, 2014.

