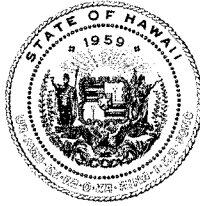
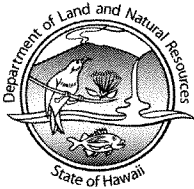


LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
LAURA H. THIELEN
Chairperson

Before the House Committee on
WATER, LAND AND OCEAN RESOURCES

Friday March 13, 2009
10:00 AM
State Capitol, Conference Room 325

In consideration of
SENATE BILL 1, SENATE DRAFT 1
RELATING TO OPIHI

Senate Bill 1, Senate Draft 1 would establish a five year moratorium on the harvesting of opihi on Oahu, a ban on taking or harvesting opihi statewide, subject to open and closed seasons and the traditional rights of certain ahupuaa tenants. **The Department of Land and Natural Resources (Department) opposes this bill.**

The spatial closures are not comprehensive, either geographically or in terms of habitat. Oahu is completely closed for five years, while other islands remain open, and harvesting is permitted above the waterline in the open areas, but not below. The closed seasons are also not comprehensive, with complete closure for five years on Oahu, but only six month alternating open and closed seasons each year on all other islands. Finally, the social extent of these proposed regulations is not comprehensive, given that an exemption is allowed for "ahupuaa tenants". The Department considers it likely that many persons will claim to be members of this excluded class of individuals, a claim that will be problematic for enforcement officers to disprove without lengthy and contentious discussion.

Fishery regulations tend to be very complex and difficult to enforce, which results in many confrontational situations, frustration on the part of the fishers as well as the public who desire to see improved fishery management, and discouragement with governmental regulations in general. Accordingly, the Department believes that it is extremely important to design regulations carefully so as to be enforceable.

Any provision to establish closed seasons should be based upon scientific research that properly identifies peak seasons for spawning and recruitment. The establishment of closed seasons is one of the most effective methods of protecting stocks because it is enforceable.

The bill does not establish bag limits. Combining seasonal closures with bag limits is probably

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

the most powerful combination of enforcement tools available to the Department because of their enforceability. Bag limits and seasonal closures are also more easily understood by the public. The prohibition on taking opihi from below the waterline is difficult to enforce and therefore should be deleted. A daily bag limit would mitigate both redistribution of effort from closed to open areas (i.e., from Oahu to other islands), and render the question of who is or is not an “ahapuaa tenant” far less debilitating to the overall management effort, by effectively limiting harvest across all islands at all times. The Department therefore favors a comprehensive output control, in the form of a daily bag limit, over the mix of partial input controls proposed in this measure.

Finally, Act 151, Session Laws of Hawaii 2002, transferred many of the marine life regulations from statutes to the Department's administrative rules. The Department argued in favor, and the Legislature agreed, that the creation of regulations for such matters as minimum sizes, seasons, bag limits, etc. were better handled through the administrative rule process.

The Department is currently conducting statewide public meetings on many marine species in need of further conservation including the species in this bill. At these meetings, fishers are being asked for their input on a variety of management options including: minimum sizes, bag limits, restrictions on take based on commercial or non-commercial purposes, open and closed seasons.

The Department therefore asks the Legislature's support for the Department to continue its efforts to promulgate these proposals through administrative rules.



OFFICE OF HAWAIIAN AFFAIRS
Legislative Testimony

SB 1, SD 1, RELATING TO OPIHI

House Committee on
Water, Land, & Ocean Resources

March 13, 2009

10:00 a.m.

Room: 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** S.B. 1, S.D. 1, which would establish a five-year moratorium on harvesting ŷopihi from anywhere on Oŷahu and a statewide ban on harvesting 'opihi from below the waterline, off-shore islets, man-made jetties and breakwaters, fishery management areas, fisheries replenishment areas, natural area reserves, refuges, and marine life conservation districts, subject to open and closed seasons and the traditional rights of Native Hawaiians. We suggest, however, consideration of including a baseline study to be conducted at the start of the ban, and regular review of the status of the various fisheries.

The State has a Constitutional responsibility to "conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources All public natural resources are held in trust by the State for the benefit of the people." (Hawai'i State Constitution, Art. XI, Section 1).

The State also has a Constitutional responsibility to "protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes" possessed by Native Hawaiians. (Hawai'i State Constitution, Art. XII, Section 2). This constitutional mandate has been reaffirmed by the Supreme Court of the State of Hawai'i in a series of landmark decisions which provide clarifications and outline a framework to effectuate this affirmative duty to protect these important Hawaiian rights.

SB 1, SD 1 appropriately balances the needs of the people and of the sea, while such a balance can still be struck. OHA agrees that Hawai'i's 'opihi populations have declined dramatically. We appreciate that the legislature has taken such a responsible stance toward protecting some of Hawai'i's special natural and cultural resources from continued over-harvesting, while still providing access to appropriately sized ŷopihi, above the water line, for conscientious Native Hawaiian subsistence, cultural and religious purposes.

We respectfully suggest, however, that Section 2 include a

baseline study of existing stocks of the various ŷōpihi throughout Hawai'i and an requirement of regular inventory of those stocks - on a biannual basis, perhaps - which would allow for the potential of re-opening some of the fisheries if the stocks warrant.

OHA urges the Committee to PASS SB 1, SD 1, with the above suggested amendments. Thank you for the opportunity to provide testimony.

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 1 SD1 Relating to 'Opihi
House Committee on Water, Land, & Ocean Resources
Friday, March 13, 2009, 10:00am, Rm. 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy supports S.B. 1 SD1. We believe this measure is an important step toward recovery of over-harvested 'opihi species in Hawai'i.

'Opihi shells in archaeological layers are some of the earliest evidence of human habitation in the Hawaiian islands. Indeed, 'opihi have been an important and prized food source for Hawaiians for centuries.

Although limpets grow throughout the world, Hawaii's 'opihi are only found here, evolving over thousands of years in isolation to become unique species in the world.

Sadly, Hawaiian 'opihi are severely depleted and becoming increasingly difficult to find in the main islands. We are in danger of losing not only a marine animal that is unique in the world, but also losing an important direct connection to Hawaiian history and culture.

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Thomas T Shirai Jr

Email [REDACTED]

Notice of Hearing
Friday, March 13, 2009
10:00 AM / State Capitol Conference Room 325

House Committee on Water, Land & Ocean Resources (WLO)
Representative Ken Ito (Chair) / Representative Sharon E Har (Vice Chair)

March 12, 2009

RE: Testimony of Strongly Support for SB 1 SD1 (Relating to Opihi)

Aloha Chair Ito, Vice Chair Har & Committee Members,

I'm a lifetime resident of *Mokule'ia* with lineage spanning several generations within *Waialua Moku* and originating at *Kawaihapai*. Additionally, I'm active in *Community and Cultural Affairs* with an emphasis regarding the *Northwest Coastline of Waialua* which includes *Ka'ena* where SB 1 SD1 is directly applicable. Therefore, I strongly support SB 1 SD1.

As previously mentioned, I'm currently active regarding the *Ka'ena NARS (Natural Area Reserve System) Fencing Project* and participation regarding the formation of the *Ka'ena Point Task Force*. This legislation should be included regarding these efforts to *Malama Ka'ena*. Long gone are the days when my Grandparents and I went *holoholo* at *Ka'ena* for seafood subsistence which included gathering *opihi* and *pipipi* which were bountiful. If SB 1 SD1 is enacted, it would be part of what my *Grandpa* instilled in me with a single word without any form of elaboration: TOMMOROW.

Therefore, I'd like to see this done at *Ka'ena* with at least enforced within the *Kaena NARS* which would be consistent with the established *Bottomfish Restricted Fishing Area - D (BRFA D)* that is offshore of that area. This legislation would also give *opihi* a chance to replenish after generations of depletion. The *Wahi Pana* of *Ka'ena* is not only a departure into the spirit world but *mo'olelo* of how the demi-god *Maui* and his brothers fished up the *Hawaiian Islands* therefore, a place of birth making SB 1 SD1 consistent with it. Included with this testimony are informational attachments applicable to SB 1 SD1. Further background about my credentials can be found of the *DLNR (Department of Land & Natural Resources) Draft EA (Environmental Assessment)* for the *Ka'ena Ecosystem Restoration Project*. *Mahalo nui loa* for the opportunity to provide testimony supporting SB 1 SD1. *Malama Aina*.

Thomas T Shirai Jr
Moku'leia, Waialua

Ka'ena's Significance and Legacy

by Thomas T. Shirai Jr.



Taro farmer fisherman and master carpenter, David Peahi Keao Jr., repairs a lobster net in his front yard.

■ Aloha. I'd like to take the opportunity to share with everyone some of my family's stories that illustrate how significant the Ka'ena *ahupua'a* is from a seafood subsistence perspective. I will connect these stories of old with modern articles that were featured in past issues of *HAWAII FISHING NEWS*.

I had the privilege to be raised in Mokulei'a by my grandparents, David and Abigail Keao. Through them, I've learned much about my grandfather's *'ohana* and their relationship to the northwest coastline of Waialua, which encompasses Kamananui, Mokulei'a, Auku'u, Kawaihapai, Kealia and Ka'ena. The emphasis in this article will be on Ka'ena.

The Bishop Museum's 1933 publication entitled "Archeology of Oahu" by McAllister featured my grandfather's *kupuna* and grandmother Annie Keahipaka, who shared some family stories and knowledge of Waialua that included Ka'ena.

Hawaiian Stories of Ka'ena

The first story is a version of how Maui tried to unite O'ahu with Kaua'i. Excerpts from this publication are as follow:

"In a version told to me by Annie Keahipaka, Maui had many helpers tugging at the line. One disobeyed orders and looked back as Kaua'i was being drawn up to O'ahu. This caused the line to break and Kaua'i to slip back into the ocean, with only the fragment Pohaku O Kaua'i remaining, which is proof of Maui's mighty effort."

Also from "Archeology of Oahu," the next story mentions Ka'ena Point as an excellent fishing ground (*ko'a*): "At one time Maui was fishing at Ka'ena and caught a huge red fish (*kumu*) which he dragged from Pohaku O Kaua'i to Kuakala Hei'au and placed it there. The *menehune* found this *kumu* (goatfish) named Kumunuiakea and cut it into small pieces. Then when the sea covered the land (*Kaiakahinalii*), pieces of this fish went back to the ocean. Since then the *kumu* are small."

This part of the story means that this variety of fish never attained the size of Kumunuiakea; however, small *kumu* became abundant at Ka'ena.



Kaieni Smith, Paul Akiona and Bing Chock stumbled onto a *kumu ko'a* in 1957 and speared 250 lbs of fish.

In 1994, *HFN* featured an article about three scuba divers who went spear fishing at Ka'ena Point, discovered a pristine *kumu ko'a* and caught a lot of this species of fish in 1957. The photo that accompanied this article displayed the fish caught. Judging by the photo, the average size appeared to be about 5 lbs.

Also from "Archeology of Oahu," the third story that I'd like to share is about a supernatural octopus (*kupua*) called Kakahe'e that lived at Ka'ena: "Pi'ikoi-a-ka-Alala and his father were on a canoe travelling to O'ahu where they planned on visiting his sister when Pi'ikoi-a-ka-Alala while still far from land sighted a huge octopus in a hole near where the sea washes ashore. He informed his father, took aim at Kakahe'e with his bow and arrow, letting it fly through the air and finally piercing Kakahe'e. They landed at Waiakaaiea and then proceeded to beat it to death. Kakahe'e met the same fate as Kumunuiakea, and thus creating an abundant he'e (octopus) *ko'a*."

The February 1994 issue of *HFN* featured a fisherman who had caught a large octopus at Ka'ena. Also, it's fitting that the current state record for largest octopus was caught at Ka'ena.

In the Bishop Museum's 1940 publication entitled "The Hawaiian Planter," my great-great-grandfather Kaaemoku Kakulu shared the name of a freshwater spring called Ka'aie'a located in the mountains just past Camp Erdman where sweepage from Ka'aie'a crossed the roadway and entered the ocean. There it created a small *muliwai* (headwater) where nutrients supply marine life with food and thus created an abundant seafood subsistence area (*ko'a*). Sweepage from Ka'aie'a made its way to the ocean up to 1998 when it was capped and never flowed again.

Family History

My grandparents and I would periodically go *holoholo* to Ka'ena to gather such delicious food as shellfish (*'opihi* and *pipipi*), seaweed (*limu koku*), sea cucumber (*loli*), sea urchin (*wana*, *haukiuki* and *hawai*) and many others. They would make *pa'akai* (salt) on a parcel of land that his family owned at Ka'ena where this seafood subsistence gathering took place.



Stewart Matsunaga, bottom fishing in 250 feet of water outside Ka'ena Point when he got this 19-lb 1-oz tako.

Before I came along, my grandfather was a taro farmer and a fisherman who specialized in lobster fishing. He would paddle his canoe with my grandmother and uncle from a place he called McInerny (same store that was at Ala Moana) located on the shoreline at Auku'u, which is adjacent to Kawaihapai, and paddle to his fishing grounds. Ka'ena was one of his grounds. He learned these skills from his grandfather, Kaaemoku Kakulu, who was the last *konohiki* of Kawaihapai. The McInerny family allowed my grandfather to leave his canoe on the parcel that they owned during that time.

After catching the lobster, he would put them in 100-lb burlap bags and load them onto the train at Kawaihapai Station to be delivered to Kekaulike Market to a family that operated a fish stall. Later in the week, he would catch the train and pick up his money in Honolulu.

Although that era is gone, the names of places located within Ka'ena remain. I know there are others with similar stories that keep these places and memories of our *kupuna* alive.

I hope this has been informative. I am grateful to share some of my family's legacy that included Ka'ena.

Malama 'aina.

... Thomas

DLNR Holds Public Meeting To Discuss Evening Closure of Keawa'ula Section of Ka'ena Point State Park

"We want to address long-standing problems with illegal evening activities at the park, damage to natural resources and potential for injury to the public at a very isolated and remote area."

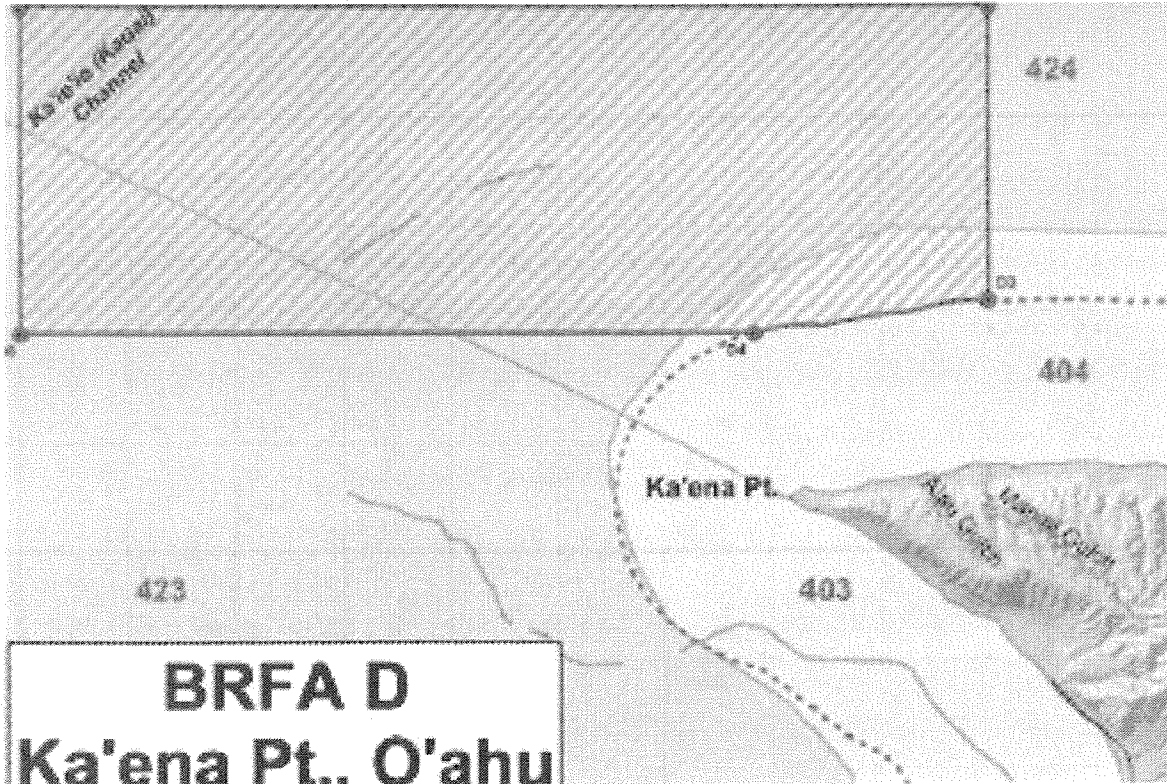
—DLNR Chairperson Peter Young

"We strongly disagree with denying fishers and families access to shorelines. This is an enforcement problem, not an access problem."

—Chuck Johnston

"I understand that the people at state parks are trying to find a way for the fishers to continue using the shoreline during the evening hours, yet cut down on crime."

—Clifford Inn



BRFA D
Ka'ena Pt., O'ahu

**Kawaihapai Ohana
c/o Thomas T Shirai Jr**

Email: [REDACTED]

**Notice of Hearing
Friday, March 13, 2009
10:00 AM / State Capitol Conference Room 325
House Committee on Water, Land & Ocean Resources (WLO)
Representative Ken Ito (Chair) / Representative Sharon E Har (Vice Chair)**

March 12, 2009

RE: Testimony Strongly Supporting SB 1 SD1 (Relating to Opihi)

Aloha Chair Ito, Vice Chair Har & Committee Members,

My name is Thomas T Shirai Jr and providing testimony as *Po'o (head)* of the *Kawaihapai Ohana* which is recognized by *The Department of Interior (DOI)* as a *Native Hawaiian Organization (NHO)* whose *Kuleana (mission statement of responsibility)* has an emphasis on the *Northwest Coastline of Waialua Moku* which encompasses the *Ahupua'a of Kamananui, Mokule'ia, Kekahi, Auku'u, Kawaihapai, Kealia and Ka'ena*. The *Kawaihapai Ohana Kupuna* were *Cultural Practioners* which included gathering seafood subsistence that included picking *Opihi* at *Ka'ena Ahupua'a*.

The *Kawaihapai Ohana* strongly supports SB 1 SD1 because it would give the *opihi* chance for replenishment at places like *Ka'ena* where it once thrived and was bountiful. After decades of constant depletion, it's absolutely necessary to incorporate SB 1 SD1 and similar legislation be apart of the mission of the *Ka'ena Point Task Force* to ensure existance and availability for TOMMOROW. If enacted, SB 1 SD1 should at least be applied and strictly enforced within the *Ka'ena NARS (Natural Area Reserve System)* where a *BFRA (Bottomfish Restricted Area – A)* was established and being consistent with an *Ahupua'a System*.

Entities such as the *Mokule'ia Community Association (MCA)* has a tenure of stewardship at *Ka'ena* spanning 30 years to *Malama Ka'ena*. Another entity with similar tenure and longevity is the *North Shore Neighborhood Board 27*. Continuing this *Kuleana* today is the *Friends of Ka'ena*.

This legislation would be apart of the *ho'oponopono* process needed in restoring the special and sacred *Wahi Pana* of *Ka'ena* which was not intended for over use like *Shark's Cove* at the *Pupukea Marine Life Sanctuary District (MLSD)*. Thank you for the oppportunity to provide testimony strongly supporting SB 1 SD1. *Malama Aina*.

***Thomas T Shirai Jr*
*Kawaihapai Ohana – Po'o***

To Whom It May Concern:

Aloha, our organization KUPA represents the ahupua'a tenants in Hookena, South Kona and neighboring ahupua'a from Ki'ilae to Alika.

Our traditional fishing and gathering area extends from Loa Pt. in Kealia 2 - 12 miles south to the boundary of the Alika ahupua'a. This area is largely undeveloped and has provided our families with nutrition from the marine resources along the shoreline and out to the fishing ko'a. Families have passed on traditions for generations but the pressure from people who harvest opihi and other i'a for commercial purposes have had a negative impact upon our ability to continue to do so.

Responsible use of the resources is impossible if you allow people to harvest as much as they want, whenever they can. Look at the other islands, why is there no opihi there? People risk their lives because they are forced to harvest opihi where it is most dangerous because the supply is limited.

It is not fair to us that people can come here to take everything and leave because they do not live here or because they don't care if there is nothing left. Some people look at our opihi, and reef fish as money, not food. When you have that attitude you don't care about the i'a because when there is none left you look for someplace else.

The government makes rules to protect our marine resources but where is the enforcement? If you cannot enforce the rules then stop those who misuse and abuse our resources. Everything is about the Constitution, but what about protecting our rights to hunt, fish, and gather? How can you say that we must protect everyone's constitutional rights when they are infringing upon ours.

The lineal descendants and ho'aina of our land have practiced traditions for generations because they practiced conservation. They have hundreds of years of research and study to back up their claims. Common sense dictates that if it worked before why not use the same system. Let the people who live in the ahupua'a take care of the resources.

The US Constitution says that all men are created equal, so why give people more than others by letting them destroy cultures, traditions, and deplete resources through their disregard for what we want. When the sugar plantations went out of business the workers found other jobs. People are resourceful; they will find other ways to make money without infringing upon the rights of other people.

Please support this bill SB 1 Opihi,

Mahalo
Damien Kenison Sr.
KUPA
