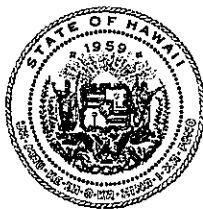


**SB2923**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committees on  
WATER, LAND AND HOUSING  
and  
HAWAIIAN AFFAIRS**

**Wednesday, February 15, 2012  
2:45 PM  
State Capitol, Conference Room 224**

**In consideration of  
SENATE BILL 2923  
RELATING TO OPIHI HARVESTING AND POSSESSION RESTRICTIONS**

Senate Bill 2923 proposes to establish new harvest control rules for protecting all opihi species by prohibiting its take during closed seasons, from certain areas and from underwater. It would also require the monitoring of the proposed rules effectiveness as well as prohibit the take of opihi on Oahu for 5 years and allow for an exemption for native Hawaiian gathering rights. The Department of Land and Natural Resources (Department) supports the intent of the bill and offers the following comments.

The Department appreciates the Legislature's support to protect valuable stocks like the opihi. Certain proposed provisions such as prohibiting the take of opihi from offshore islets, from possessing certain gear such as masks and knives and for anyone who claims the take of opihi for native gathering rights may be problematic in its enforcement.

The Department has concerns with an exemption for anyone who takes opihi by the exercising of native Hawaiian gathering rights. This is not defined and there is no criteria offered for distinguishing those who would qualify.

The possession of gears such as a mask and a dive knife would not be sufficient to pursue citation as these gear types generally make up standard diving paraphernalia.

Alternatively, the Department could support no take areas provided enforcement of this provision is feasible. For example, all marine life conservation districts already prohibit the take of opihi. But prohibiting the take of opihi from breakwaters and jetties would seem to prohibit the take of opihi where it is likely to be the safest and most accessible areas for pickers.

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**GUY H. KAULUKUKUI**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIHOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Different bag limits for recreational as well as commercial take may be more appropriate as a limit of one quart per day would effectively preclude commercial activity. Stating closed seasons may be clearer if the language were changed to state which months would be open for harvests.

Finally, there may be support for a moratorium for Oahu, but with the proposed exemption for traditional take, there is a concern that it would not be enough of a protective effect to meet the goals of the bill.



**SB 2923**  
**RELATING TO OPIHI HARVESTING AND POSSESSION RESTRICTIONS**  
Committee on Hawaiian Affairs and  
Committee on Water, Land, & Housing

February 15, 2012

2:45 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** SB 2923, which would establish a five-year moratorium on harvesting 'opihi from anywhere on O'ahu 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 that the legislature consider amending the bill to include 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 Hawai'i'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. OHA notes and appreciates the consideration for these rights in Section 2.

SB 2923 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 on protecting some of Hawai'i's special natural and cultural resources from continued over-harvesting, while still providing access to appropriately sized 'opihi, above the water line, for Native Hawaiian subsistence, cultural and religious purposes.

We respectfully suggest that Section 2 also include a baseline study of existing stocks of the various 'opihi throughout Hawai'i and a requirement of regular inventory

of those stocks – on a biannual basis, perhaps – which would allow for the potential re-opening of some of the fisheries if the stocks warrant it.

OHA urges the Committee to PASS SB 2923, with the above suggested amendments. Mahalo for the opportunity to provide testimony on this important measure.

## **KUAKINI HAWAIIAN CIVIC CLUB OF KONA**

Testimony of President Shane Akoni Palacat-Nelsen  
82-6026 Manini Beach Road, Captain Cook, HI 96704

### **SENATE BILL 2923**

### **RELATING TO OPIHI HARVESTING AND POSSESSION RESTRICTIONS.**

Before the Senate

COMMITTEE ON HAWAIIAN AFFAIRS and WATER, LAND, & HOUSING

Wednesday, February 15, 2012 2:45 P.M. Conference Room 224

Aloha Chairman Galuteria of the Senate Committee on Hawaiian Affairs and Chairman Dela Cruz of the Senate Committee on Water, Land, & Housing. I am Shane Nelsen, President of the Kuakini Hawaiian Civic Club of Kona. Mahalo for allowing me to testify. I have great concerns on the affect of SB2923, and submit this testimony in **OPPOSITION TO SB 2923 RELATING TO OPIHI HARVESTING AND POSSESSION RESTRICTIONS.**

The Kuakini Hawaiian Civic Club of Kona is a chartered club of the Association of Hawaiian Civic clubs. Our membership consists of both Native and Non-Native Hawaiians; we are committed to, and concerned with the welfare of the Native Hawaiian community.

Several points I would like to make:

1. The opening statement addresses the "opihi market" and its decline. We all know that there is a decline in the opihi population, however, this Bill seeks to target the commercial aspect of opihi gathering instead of the Native Hawaiian community at large. Place a permitting process or license to sell opihi in markets. But still the question is how do you handle the "black market", is a moratorium the solution, why should the greater population suffer?
2. Currently, the law states collection is year-round, but sizeable opihi of 1 ¼ inches in the longest dimension to at least ½ inch in length can be gathered. If enforcement was strategic, maybe we would not have this bill introduced. How will this enforcement take place? We have 8 major islands, and many scattered islets throughout the State. Is the State in a position to take on more kuleana? We have many other land and natural resource concerns that need enforcement's attention.
3. Should the population of opihi increase, how will this bill be lifted? I live in Kealakekua Bay, an MLCD since 1960 which prohibited almost all gathering, including opihi to this day in certain areas, and it is now a recreational tourist colony, suppressing the Native Hawaiian lifestyle. Placing restriction on Hawaiian practices in old Hawaiian Fishing Villages will subjugate the Native population to large fines and court appearances. Eventually we will not be allowed to gather food customarily. We are trying to keep Hawaiians out of trouble.

4. How did the author come up with the restricted harvesting months? Is this during mating season? or just a restriction based on commercial market? Is there a cultural piece to address the restriction on gathering practices for opihi?
5. This Bill may be in conflict with SB 3053: Aha Moku. Should the Aha Moku pass, how does it address customary gathering practices for opihi.
6. Section (h) in SB2923 addresses persons of Native ancestry and their gathering rights subject to law, if this bill passes does that mean Natives are subject to this moratorium? Opihi picking is a cultural practice. The commercial aspect is not the same practice, but does this bill address commercializing?
7. Placing a moratorium for the Island of O'ahu, means that the other islands will now feel the impact from the O'ahu market demands. Possibly O'ahu island should designate areas of moratorium instead of the entire island.
8. How do we pass on the knowledge of the opihi and kahakai if the law prohibits us to do it? We went through a language prohibition that lasted almost 100 years. How long will this be? The way of life is altered, because education in community is limited to Native speaking schools only, and kupuna wisdom within the 'ohana is minimized to a moral issue.

**IT IS EVIDENT THAT COMMERCIAL MARKET FOR OPIHI IS ATTACHED TO CULTURAL PRACTICES; e.g. baby lu'au, weddings, and other gatherings. Allow provisions to continue the culture and economic sustainability for ALL ISLANDS. PROHIBITION IS NOT THE ANSWER.**

Members of the respected committees and their Chairs, please look deep into this bill and see the underlining affects to the culture, lifestyle, and economic stability. Please do NOT allow yourselves to make the same decisions made in 1896, but look at the real concern, which is to streamline the commercial opihi market. I ask that you NOT pass this Bill and ask that there be more community input from all islands particularly in the rural Hawaiian Villages where the impact of this bill is far greater. Mahalo for your kind attention.

'O wau iho nei,  
Shane Akoni Nelsen

For further information please contact Shane Nelsen, President of Kuakini Hawaiian Civic Club of Kona at [shane.nelsen@gmail.com](mailto:shane.nelsen@gmail.com) .



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Testimony to Senate Committee on Hawaiian Affairs  
Senator Brickwood Galuteria, Chair  
Senator Pohai Ryan, Vice Chair

Senate Committee on Water, Land, and Housing  
Senator Donovan Dela Cruz, Chair  
Senator Malama Solomon, Vice Chair

Subject: Senate Bill 2923

Notice of Hearing

Date: Wednesday, February 15, 2012  
Time: 2:45 pm  
Place: Conference Room 224  
State Capitol – 415 So. Beretania Street

Opposition to Senate Bill 2923: relating to opihi

I'm Guy Tamashiro of Tamashiro Market and I am testifying in opposition to Senate Bill 2923. Opihi is a local delicacy that is part of Hawaii's culinary culture. The effect of this bill will make criminals out of those people who risk their lives to supply Hawaii with this tasty treat.

Opihi is not in short supply as this bill has stated. We have found opihi to be available almost year round. I currently have only three suppliers and still cannot take all that they can produce. I have calls from people wanting to sell opihi but we refuse them because they do not have commercial fishing licenses. This tells me that the supply is even greater because some opihi pickers are not reporting their harvests.



SB 2923 states, "This ACT is intended to increase both long-term standing stock abundance, as well as the amount of opihi available for use by the people of Hawaii". How is this statement possible if you prohibit harvesting 58 percent (7 of 12 months) of the time, prohibit all the opihi below the water line, all islets, man-made jetties and breakwaters, and then stick in a RIDICULOUS bag limit!

Serious pickers harvest from areas that are abundant because they are self-replenishing due to inaccessibility. They get to the opihi grounds by taking a long hike or rappelling down cliffs or both. They have to contend with nature's own way of conserving resources with high surf, strong winds, bad weather, poor accessibility, and bad timing of the tides.

The bag limit of one quart per day is absurd! That is approximately 2 pounds! That's like telling people you can only work for 30 minutes per day. RIDICULOUS!

This bill is also mandating the Division of Aquatic Resources of the Dept. of Land and Natural Resources to submit a report on the "effectiveness and enforcement" of this bill. As written, this bill will effectively black market the few pickers that report their catch, so will this be a good excuse for further legislative intervention because the catch report is so small? Is the intent of this bill to stop the legal sale of opihi?

The enforcement is another issue: 1) How can the officers tell if it's caught below the water line? 2) How can they tell if someone is exempted because they are exercising their native rights as permitted by the DLNR.

Even if we don't feel the shortage, we at Tamashiro Market are willing to accept reasonable and logical resource management regulations because we want to eat and sell opihi for many generations.

Why don't we have a three month closure for recreational and commercial pickers at the time the opihi spawns the most. Keep it simple and reasonable. 25% less is significant.

I strongly urge you to modify this bill to make it fair, sensible and reasonable.

February 14, 2012

TESTIMONY TO: SENATE COMMITTEE ON HAWAIIAN AFFAIRS  
Senator Brickwood Galuteria, Chair  
Senator Pohai Ryan, Vice Chair

SENATE COMMITTEE ON WATER, LAND, AND HOUSING  
Senator Donovan M. Dela Cruz, Chair  
Senator Malama Solomon, Vice Chair

SUBJECT: SB 2923

RELATING TO OPIHI HARVESTING AND POSSESSION RESTRICTIONS

February 15, 2012  
2:45 p.m.  
Conf. Rm. 224  
State Capitol  
415 South Beretania Street

Honorable Chairs and Members of the Committee:

Thank you for this opportunity to provide testimony on SB 2923. I am Jennifer Lopez Reavis, small business owner/operator on the Big Island of Hawaii. I'm submitting testimony against SB 2923 relating to opihi harvesting and possession restrictions.

As a native of the islands and owner of a small business, I'm well aware of the resources from the ocean, and express the need to conserve. I educate my family and friends about this. I realize there are some people that pick opihi for limited family consumption. However, those of us who work with DLNR regulations, know the legal size to pick is 1 ¼" and greater in diameter due to the fact that they need to reproduce. When we pick, we never take more than is ordered and never go to the same location in a 4 month period. The amount we pick is reported to DLNR on a monthly basis.

The possession limits recommended by this bill would make it impossible to operate our small business. There is an abundant supply of opihi here on the Big Island. The areas we pick are very dangerous, and there are a lot of risks involved. These areas consist of 3/4<sup>th</sup>s of the Island and are mainly full of opihi because of the rough terrain. If you ever have the chance, you will see that our shores around the entire Island are covered with opihi. The size of our Island alone is so big, you can put the other Hawaiian Islands together and it won't cover the size of our Island. Our opihi picking is not done on a daily basis, not even a weekly basis. It is done 2 – 4 times a month at an average.

Opihi is considered a delicacy that is enjoyed on a special occasion. We want to be able to continue to share this delicacy with others.

Thank you for providing me the opportunity to testify.

Jennifer Lopez Reavis  
Small Business Owner  
P.O. Box 13  
Kurtistown, HI 96760  
808-640-9263

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 14, 2012 7:24 PM  
**To:** WLH Testimony  
**Cc:** gkapaku@yahoo.com  
**Subject:** Testimony for SB2923 on 2/15/2012 2:45:00 PM

Testimony for WLH/HWN 2/15/2012 2:45:00 PM SB2923

Conference room: 224  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Ginger Kapaku  
Organization: Individual  
E-mail: [gkapaku@yahoo.com](mailto:gkapaku@yahoo.com)  
Submitted on: 2/14/2012

Comments:

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 14, 2012 8:36 PM  
**To:** WLH Testimony  
**Cc:** crystalkpaul@yahoo.com  
**Subject:** Testimony for SB2923 on 2/15/2012 2:45:00 PM

Testimony for WLH/HWN 2/15/2012 2:45:00 PM SB2923

Conference room: 224  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: Crystal Kia Paul  
Organization: Individual  
E-mail: [crystalkpaul@yahoo.com](mailto:crystalkpaul@yahoo.com)  
Submitted on: 2/14/2012

Comments:

Senator Brickwood Galuteria, Chair  
COMMITTEE ON HAWAIIAN AFFAIRS

Senator Donovan M. Dela Cruz, Chair  
COMMITTEE ON WATER, LAND, AND HOUSING

Honorable Chairs,

Thank you for allowing me to submit testimony on SB2923 and why I am opposed to it. I am very conflicted on this bill, we have to do all we can to ensure that we have opihi for the future 7 generations of Hawai'i. However, I do not believe this bill will do that. There are several issues that need to be discussed in this bill:

a) If we place a moratorium on Opihi on Oahu, then other islands will be severely impacted by requests from friends and families to get opihi for luau's on Oahu as well as their home islands.

b) In my past experience with DLNR and some of the Fish Management Areas (FMA) or Marine Life Conservation Districts (MLCD's), they are suppose to be opened and closed in regards to fishery availability. I know that some have never been reopened.

c)The problem with this bill is enforcement. There is not enough funding as it is for DLNR enforcement whether we are talking about the aquatics division or the hunting division.

d)Is the decline in opihi due to overfishing; pollution; water quality; global weather changes or economic, etc? Has there been studies on this fishery, if so by whom and what is the information? How do they reproduce and what time of year?

e)Everything is lumped into this bill, commercial and cultural practices. These are two different issues that need their own sections. We need to go into the various communities to see what is the best plan to conserve our opihi resource. If we just ban it, then only the unscrupulous will continue to take because they feel it's their right to do so.

I believe the spirit of the bill is in the right place to ensure opihi for Hawai'i's future generations, however, at this time I can not support it as written. Let's not eliminate this fishery, rather manage it correctly.

Do the studies and ensure it's sustainability for our keiki's to enjoy.