

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 House Committee on**  
**OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS**

**Wednesday, February 13, 2013**  
**10:50 AM**  
**State Capitol, Conference Room 325**

**In consideration of**  
**HOUSE BILL 1155**  
**RELATING TO OPIHI**

House Bill 1155 proposes to establish new harvest controls to protect all opihi species by prohibiting its take during closed seasons, from certain areas, and from underwater. House Bill 1155 would also require the Department of Land and Natural Resources (“Department”) to monitor the effectiveness of the new law, prohibit the take of opihi on Oahu for 5 years, and exempt native Hawaiian gathering rights. **The Department understands and supports the intent of the bill, but has reservations about the current draft. The Department offers the following comments.**

First, the Department strongly supports the Legislature’s goal of protecting valuable stocks of opihi statewide. However, the methods and enforcement may present problems. Prohibiting the take of opihi from offshore islets, barring the possession of certain gear (such as masks and knives) and determining native Hawaiian gathering rights create special difficulties.

For example, exempting anyone who claims to be exercising of native Hawaiian gathering rights places the Department and enforcement officers in difficult situations. Which individuals qualify? How do you identify these individuals? What criteria apply? And does wholesale exemption in a region undermine the goal of restoring the opihi population? If someone possesses a mask and a dive knife (common to many divers), are they *per se* in violation of the statute?

Similarly, disallowing the take of opihi from breakwaters and jetties would prohibit opihi picking from some of the safest and most accessible areas.

Second, and alternatively, the Department could support “no take” areas (assuming enforcement is feasible). For example, all marine life conservation districts already prohibit the take of opihi.

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

**ESTER KIA’AINA**  
FIRST DEPUTY

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

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

A moratorium on Oahu may be warranted due to the overharvesting. The Department is concerned that anything less than moratoriums in critical gathering grounds may be insufficient to restore the populations. There needs to be a broader conversation about what happens after a moratorium ends. If the population is immediately over-harvested again, then the management plan will have failed.

Third, following the 2012 Legislative Session, the Department met with scientists and opihi dealers to discuss administrative rules to provide for long term sustainable management of opihi. The Department's concepts (still under discussion) include an Oahu moratorium, a clarification on how to measure opihi, and a new licensing requirement for opihi dealers to track opihi through the market. These ideas need to be discussed in more detail with opihi fishers before they are ready for broader public consideration.



**HB1155  
RELATING TO OPIHI**

House Committee on Ocean, Marine Resources, and Hawaiian Affairs

February 13, 2013

10:50 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** HB1155, which seeks to allow the rehabilitation of 'ōpihi stocks throughout the state, by establishing seasons for collection, protecting submerged and offshore 'ōpihi stocks, and implementing a four-year moratorium on the taking of 'ōpihi from the island of O'ahu.

**Hawai'i's 'ōpihi are being loved to death.** Hawai'i's 'ōpihi are a prized food among local residents, as reflected in popular song lyrics, the ever-increasing high prices of 'ōpihi meat, and the considerable risks taken by those who gather them for the markets, and for home consumption. The subsistence gathering of 'ōpihi along the shoreline has also been a traditional and customary practice enjoyed by Native Hawaiian and kama'āina families for generations, and has served to both bring families together, as well as foster an early appreciation for the ocean and its resources. However, the notable scarcity of 'ōpihi in populated areas, especially on O'ahu, has indicated for years that harvesting pressures have resulted in a serious decline of this important resource. While studies continue to be conducted for the development of strategies to best restore our 'ōpihi stocks, it appears incumbent on the state to take immediate action to rehabilitate and better manage our 'ōpihi stocks, so that future generations may continue to enjoy this cultural resource and traditional local delicacy.

**This bill affirms the state's responsibility to conserve and better manage our 'ōpihi stocks for future generations to harvest and enjoy.** Given the critical state of 'ōpihi populations throughout our islands, and given the increasing pressures that have been placed on our remaining 'ōpihi stocks with the recent economic downturn, it is readily apparent that the state has a duty to take action to conserve this important natural and cultural resource.<sup>1</sup> This measure is therefore a much needed step in the right direction, to ensure that 'ōpihi stocks are allowed to meaningfully recover, and that harvesting practices are continued only in a responsible and sustainable manner.

**OHA recommends the following amendments to improve the enforceability and clarity of this important measure.** In order to improve the practical enforceability, clarity, and overall effectiveness of this measure, OHA recommends the following amendments:

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<sup>1</sup> HAW. STATE CONST. ART. XI SECS. 1, 6.

On page 4, lines 8-10:

~~“(2) An instrument that is commonly used as a tool to harvest or take opihi, such as an opihi knife;] and~~  
~~[(3)](2) Live opihi.”~~

On page 4, lines 11-17:

~~“(d) It shall be unlawful for any person to take, harvest, or possess opihi from [above the waterline of] the coastal areas or nearshore waters of the islands of the State during the closed seasons from February 1<sup>st</sup> through May 31<sup>st</sup>, and September 1<sup>st</sup> through November 30<sup>th</sup> [; provided that opihi taken or harvested from above the waterline during the open seasons may be possessed for sale or consumption during the closed seasons.]”~~

Therefore, OHA urges the Committee to **PASS WITH AMENDMENTS** HB1155.  
Mahalo for the opportunity to testify on this important matter.

**omhtestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 11, 2013 1:28 PM  
**To:** omhtestimony  
**Cc:** mz@conservehi.org  
**Subject:** \*Submitted testimony for HB1155 on Feb 13, 2013 10:50AM\*

**HB1155**

Submitted on: 2/11/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marjorie Ziegler	Conservation Council for Hawai'i	Support	No

Comments:

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HB1155 Relating to Opihi SUPPORT OMH and WAL  
Wed, Feb. 13,2013 at 10:50 AM, Rm325

Aloha, Chair H

Na Koa Ikaika, an ohana organization, said years ago that we needed to conserve our natural resources as our kupuna have taught us: to take only what we need and to do that carefully while thinking of leaving some for others in the future. Unfortunately our ocean has been thoughtlessly plundered and our HHowever, mere kapu on one species is insufficient for protection of our ocean resources. A program must be developed whereby anyone who gathers from the ocean must attend classes, learn how to respect what Akua has given us, and to practice how to gather properly without destroying the area. Knowledge of when to take species, legal size for takes, and other regulations will be part of the test before anyone receives a permit Everyone in the State would have to take this user's test including children, locals and visitors although formal classes would be waived if the user is able to pass a pre-test.

We would hope that those who know the ocean practically, native H scientists, and environmentalists would be part of a task force to develop this program.

Mahalo for this opportunity to speak,

Lela M. H

Testimony of The Nature Conservancy of Hawai'i  
Supporting H.B. 1155 Relating to 'Opihi  
House Committee on Ocean, Marine Resources & Hawaiian Affairs  
Wednesday, February 13, 2013, 10:50AM, Room 325

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*The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of the lands and waters upon which life in these islands depends. The Conservancy has helped to protect nearly 200,000 acres of natural lands in Hawai'i. Today, we actively manage more than 32,000 acres in 10 nature preserves on 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.*

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The Nature Conservancy supports H.B. 1155. We believe this measure is an important step toward recovery of over-harvested 'opihī species in Hawai'i.

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

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

Sadly, Hawaiian 'opihī 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.

Thank you for the opportunity to testify in support of this bill.

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**omhtestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 11, 2013 10:39 PM  
**To:** omhtestimony  
**Cc:** onboardtours@yahoo.com  
**Subject:** \*Submitted testimony for HB1155 on Feb 13, 2013 10:50AM\*

**HB1155**

Submitted on: 2/11/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Caroline Armon	Individual	Support	No

Comments:

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## omhtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 12, 2013 9:19 AM  
**To:** omhtestimony  
**Cc:** rbrunner61@gmail.com  
**Subject:** \*Submitted testimony for HB1155 on Feb 13, 2013 10:50AM\*

### **HB1155**

Submitted on: 2/12/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rich L Brunner	Individual	Support	No

#### Comments:

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## omhtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 12, 2013 9:39 AM  
**To:** omhtestimony  
**Cc:** NatalieJoyce1@yahoo.com  
**Subject:** Submitted testimony for HB1155 on Feb 13, 2013 10:50AM

### **HB1155**

Submitted on: 2/12/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Natalie Joyce-Maeda	Individual	Support	No

Comments: I support this HB 1155 Bill and the protection of 'opihi on O'ahu for the purposes of reinvigorating the species in that aforementioned geographic location. A moratorium until 2017 is supported, exceptions being Native gathering rights. Sincerely, Natalie Joyce-Maeda

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## omhtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 11, 2013 6:25 PM  
**To:** omhtestimony  
**Cc:** robin@mauirobin.com  
**Subject:** Submitted testimony for HB1155 on Feb 13, 2013 10:50AM

### **HB1155**

Submitted on: 2/11/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robin Newbold	Individual	Support	No

Comments: Although its always sad to see harvesting get to the point where kapu is necessary we're at that point once again with opihi. We're being called upon to malama the species before it disappears from Hawaii. Humans are so efficient at gathering that many species have become extinct or seriously depleted at locations world-wide. The only solution is to stop doing what we're doing and give the species time to recover. So I support HB 1155 and encourage all Hawaii's residents to join in the prohibition to provide time for replenishment.

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## omhtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 12, 2013 9:05 AM  
**To:** omhtestimony  
**Cc:** karenpoepoe@yahoo.com  
**Subject:** Submitted testimony for HB1155 on Feb 13, 2013 10:50AM

### **HB1155**

Submitted on: 2/12/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kelson K. Poepoe	Individual	Support	No

Comments: Opihi should be treated as food, not a commodity. Sale to people on your own island who cannot harvest for themselves is alright. Mac Poepoe

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**omhtestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 12, 2013 11:17 AM  
**To:** omhtestimony  
**Cc:** sea.illumination@gmail.com  
**Subject:** \*Submitted testimony for HB1155 on Feb 13, 2013 10:50AM\*

**HB1155**

Submitted on: 2/12/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tia Rose	Individual	Support	No

Comments:

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**omhtestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 11, 2013 12:05 PM  
**To:** omhtestimony  
**Cc:** hanalei525@gmail.com  
**Subject:** \*Submitted testimony for HB1155 on Feb 13, 2013 10:50AM\*

**HB1155**

Submitted on: 2/11/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Roxie Sylva	Individual	Support	No

Comments:

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## omhtestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 12, 2013 7:10 AM  
**To:** omhtestimony  
**Cc:** youngc042@hawaii.rr.com  
**Subject:** Submitted testimony for HB1155 on Feb 13, 2013 10:50AM

### **HB1155**

Submitted on: 2/12/2013

Testimony for OMH on Feb 13, 2013 10:50AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charles Young	Individual	Support	No

Comments: I support the intent of HB 1155 but would prefer to have a two year moratorium on all opihi gathering to allow the existing population to regenerate fully. Then employ seasonal measures.

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HB1155 testimony.txt  
COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Rep. Faye P. Hanohano, Chair  
Rep. Ty J.K. Cullen, Vice Chair

Re: HB1155, Relating to opihi

There has certainly been a significant depletion of opihi statewide and, as mentioned in the bill, particularly on the island of Oahu.

According to existing rules, the minimum size of opihi that can be taken is 1.25" across. If this minimum size were respected by everyone, there should be 1" opihi all along our shorelines. But as many already know, that's not the case. Opihi are being picked at much smaller sizes to the point where they're almost gone from much of our coastlines.

While we certainly need to better protect this resource, my objection to this bill is that this protection is being legislated, when it should be handled through the DLNR's Administrative Rulemaking Process, as mandated within HRS Chapter 91.

Please defer this important matter over to the State's Division of Aquatics Resources as that agency can provide the necessary scientific expertise to effectively manage opihi. Crafting fisheries rules through the legislative process might not take important aspects into consideration.

For example, this bill specifies certain closed periods. While seasonal closures are preferred to geographic closures, the question begs to be asked: How were these closures determined?

The equipment restrictions could be a problem as most divers always carry a knife. Without a specific definition of "opih knife," a dive knife could be deemed by a DOCARE officer as a tool for harvesting opihi and the diver be unjustly cited.

There are already rules that would provide adequate protection of opihi if followed. Adding another layer of laws aren't going to help without adequate enforcement. And that's where the legislature can do the most good: Find a way to provide DOCARE the funding it needs to enforce all fisheries regulations.

Thank you for giving this issue your attention. It's certainly well-meaning. However let's hand this over to the experts who have the best understanding of this resource.

Aloha,  
Dean Sensui  
Executive Producer, Hawaii Goes Fishing



Teresa L. Nakama  
73-998 Ahulani Street  
Kailua-Kona, HI 96740

February 9, 2013

COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Rep. Faye P. Hanohano, Chair  
Rep. Ty J.K. Cullen, Vice Chair

COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Rep. Faye P. Hanohano, Chair  
Rep. Ty J.K. Cullen, Vice Chair

Rep. Denny Coffman                      Rep. Chris Lee  
Rep. Cindy Evans                        Rep. Nicole E. Lowen  
Rep. Derek S.K. Kawakami          Rep. Richard Lee Fale

NOTICE OF HEARING

DATE:        Wednesday, February 13, 2013  
TIME:        10:50 a.m.  
PLACE:       Conference Room 325  
                 State Capitol  
                 415 South Beretania Street

I Teresa L. Nakama ask all members of these committees to oppose HB 1155. This bill will soon come to a vote in your committee.

I speak also for my fishing ohana who oppose this House Bill 1155. This bill will make criminals for just those who are 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, generational families who are Hawaiian born and raise here on the Islands, but not have koko, but my blood relatives do, my son is named after his 14<sup>th</sup> great grandfather UmiALilooa, and we also gather for subsistence's for all these years we have lived here and now you want to make criminals out our next generation that we need to teach how to survive on our pai aina and along our Kahakai coastal areas.

Opihi needs pristine ocean wash of the waves, so that the diatoms and other nutrients that come from the wash of the waves will be nourishment for the opihi's. This can only be accomplish in undeveloped coastal areas, which we will not have in the very near future because when you follow the money, you will see continued development along every inch of coastline throughout the Hawaiian Islands.

This bill does not take into consideration that many of us islanders are raise to be very respectful of our marine resources and do not overharvest any of the opihi on our Hawaii Island.

No law, rules, or regulation can bring back the opihi on Oahu in to its former abundance, for other factors come into play. Development too close to the coastal areas, too many private homes too close to the coastal areas, and too many golf courses have been develop and the high nitrogen compounds have leaked into the coastal waters from the golf course. To bring back what was, you need to remove all development along Waikiki all the way to the beach homes in Ewa. From Kapiolani Park all the way to Hanama Bay you will need to remove those beach houses built so close to the shores. It is not laws and regulations that will bring back the opihi, you need pristine coastline to bring back the opihi.

Sincerely,  
*Teresa L. Nakama*

Opposed to HB 1155 2-13-13 10:50 Rm325

I do not eat Opihi and I am a fisherman. I am a tropical fish collector and have no stake in the Opihi business. I just see another Bill with no basis in fact. I have spent 35 years in the Hawaiian waters diving and see abundant populations of Ophi on Oahu and other Islands. There is no need for such law.

The Oahu example.

Port lock to Sandy's beach has Opihi in abundance. They love the surge zones on cliffs. Only a few areas along this zone are even approachable for collection. It is a very dangerous way to collect as the surge zone is a danger zone too. Many die taking Opihi and I personally have seen a decline in its collection. My Hawaiian friends who invite me to their parties no longer serve Opihi. Other abundant areas on Oahu the most populated Island are protected Moku Manu shore and Islands, Rabbit Island, Bird Islands, shore from crouching lion to way past Turtle Bay. Areas along the west side too still have large Opihi, the reef runway rock jetti is untouched and has many Opihi.

The story on all outer Islands is even better as more areas are untouched for this species. Think about how many cliff areas there are on these Islands. Do we really need this ban??

Opihi does not need protection. We may want to set aside protected areas (west side where they are hit hard). Small preserves in areas where they are abundant already. To do the right thing would be not to pass SB 1155

Ron Tubbs

Just sharing accurate info.