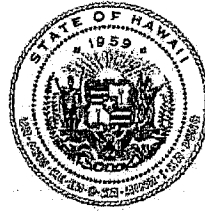


**TESTIMONY**

**SB 1**

**LATE**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
**LAURA H. THIELEN**  
Chairperson

Before the Senate Committee on  
**WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

30, January, 2009  
3:00PM

State Capitol, Conference Room 229

In consideration of  
**Senate Bill 1, RELATING TO OPIHI**

Senate Bill 1 would establish a five-year moratorium on the take of opihi on Oahu, prohibit opihi take below the waterline, establish a closed season for the take of opihi, establish no-take zones, exempt customary and traditional practices of ahupua'a tenants, and other provisions. **The Department of Land and Natural Resources (Department) is concerned with the bill in its current form, and asks consideration of the following.**

The Department agrees opihi stocks have declined and that their populations deserve protection but that the bill's provisions need to be carefully crafted to ensure their effective enforcement. As an example, closed areas as proposed can be effectively enforced. However the provision to prohibit take of opihi below the waterline is less enforceable as the officer would have to be present and witness (this prohibition) the violation. An opihi picker already on shore with opihi could not be determined to be in compliance (or not in compliance) with this provision.

Examples of more enforceable restrictions include bag limits, open and closed areas, and open and closed seasons. A bag limit would ensure a more equitable allocation of the resource between users and to extend the period after harvesting opens when legal size opihi are available. The Department believes a one quart limit for opihi, with shells attached, per-person per-day represents a reasonable rate for consumption and gathering. A per-person bag-possession limit would help ensure that everyone has an opportunity to share in the resource.

University studies indicate that February through May, and September through November are the largest maturation-spawning-recruitment periods for the yellow and black foot opihi. The Department recommends that opihi harvesting be closed from February 1 through May 31, and September 1 through November 30 in order to protect the perpetuation of the stock. (Please see the attached exhibits, exhibit 1: Kay and Magruder, 1977; exhibit 2: data used from Kay and Magruder, 1977)

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

LATE

Concerns  
and  
amendments



The Department does not support the monitoring requirement. The Department estimates it will require two staff per island devoting roughly 50% of their time to the task to meet the proposed monitoring requirement. This will be extremely difficult to achieve given the small size of the Department's Division of Aquatic Resources staff on neighbor islands. The Department recognizes the importance of monitoring, however has concerns as it may affect the Executive biennium budget.

While the Department supports ahupua'a tenants' lawful right to exercise traditional and customary practices, we find that it would be difficult to enforce the proposed exempting of ahupua'a tenants from the proposed restrictions. Ahupua'a tenants would have to be defined and all those who qualify will have to display proof in order to be exempt from the law. In addition, it would be very difficult for enforcement officers in the field to determine who was or was not a legitimate ahupua'a tenant, thus greatly weakening the potential enforcement of the measures proposed in this bill.

LATE

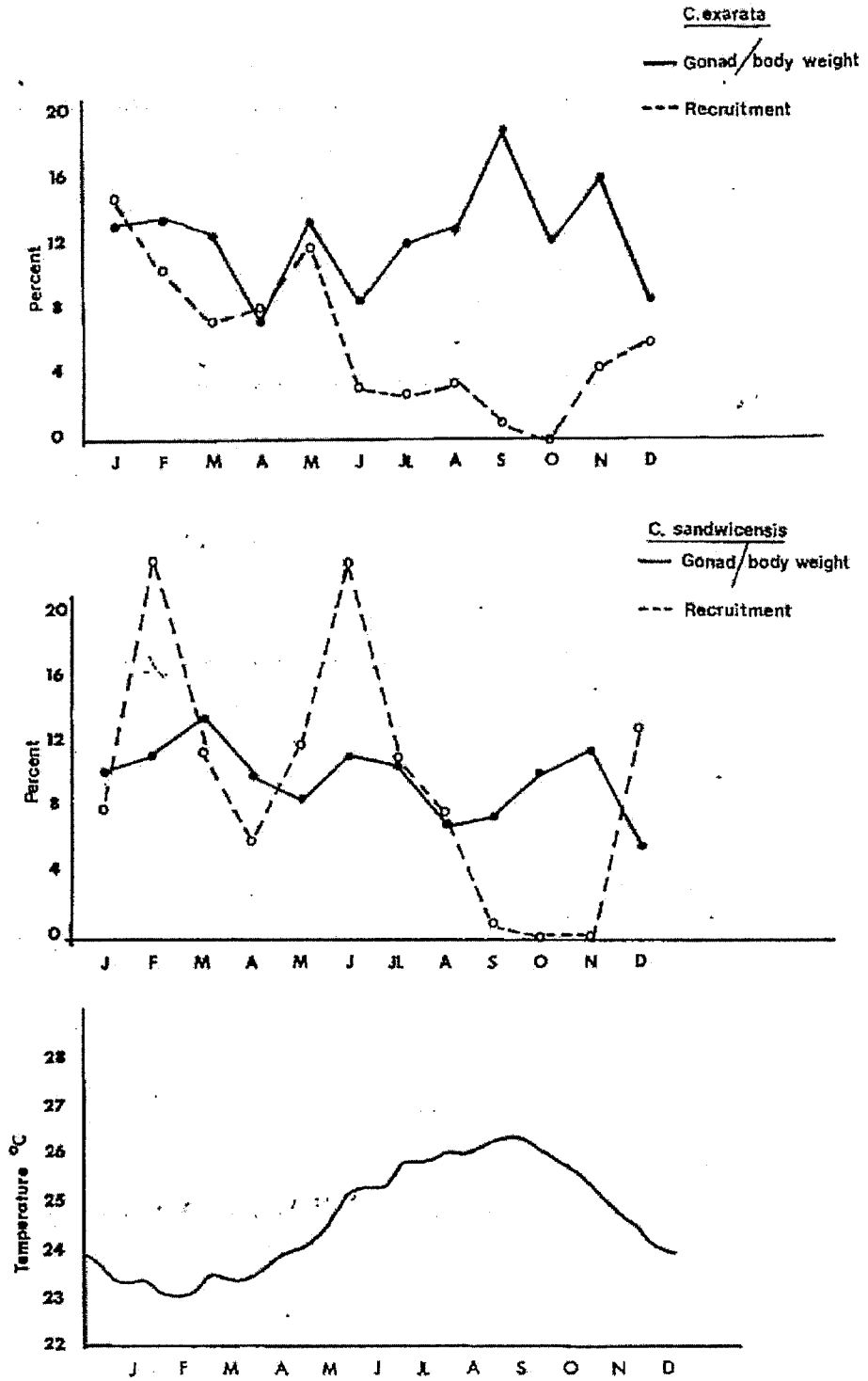
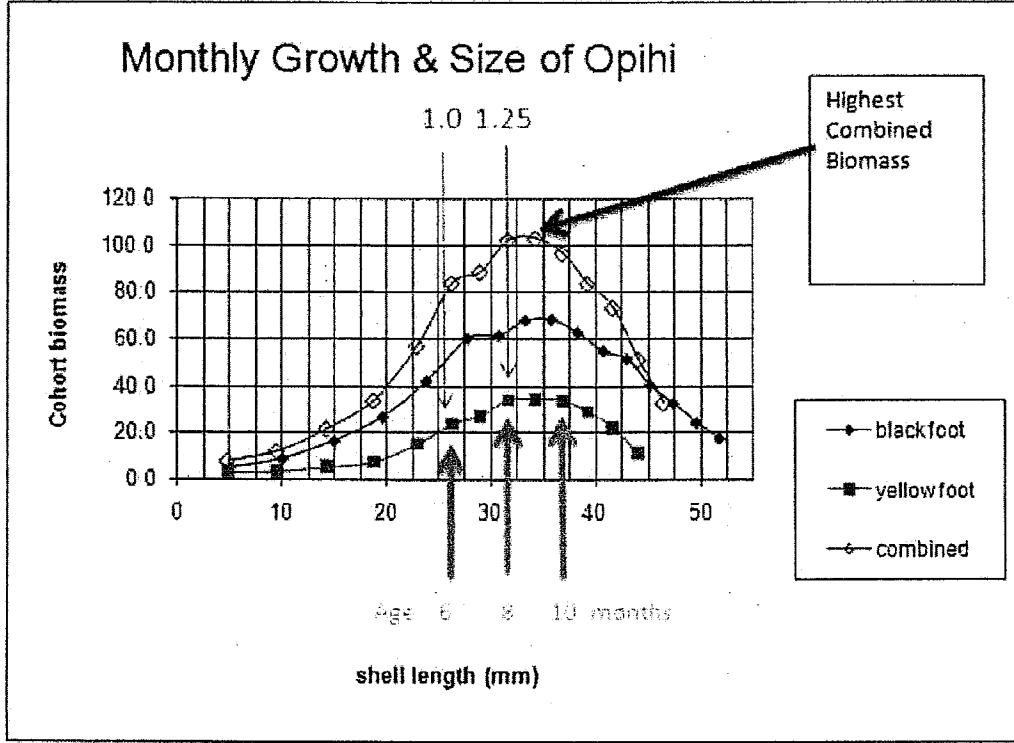


Fig. 6. Three year averages of gonad-body weight ratios, recruitment and average seawater temperatures around Keaau, Hawaii, (seawater temperatures from Seckel and Yong, 1976).

LIFE





OFFICE OF HAWAIIAN AFFAIRS  
Legislative Testimony  
**SB 1, RELATING TO OPIHI**

LATE TESTIMONY

Senate Committee on  
Water, Land, Agriculture, and Hawaiian Affairs  
January 30, 2009 3:00 p.m.  
Room: 229

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The Office of Hawaiian Affairs (OHA) SUPPORTS S.B. 1, which would establish a five-year moratorium on harvesting ʻopihi from anywhere on Oʻahu and a statewide ban on harvesting ʻopihi 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 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 ʻopihi 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 ʻopihi, above the water line, for conscientious Native Hawaiian subsistence, cultural and religious purposes.

OHA respectfully suggests, however, that the last phrase of §188-\_\_ (h) be amended for clarity to read, "...; provided that this

subsection shall not apply to the taking of opihi from below the waterline at any\_time."

We also suggest that Section 2 include a baseline study of existing stocks of the various ōpihi 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, with the above suggested amendments. Thank you for the opportunity to provide testimony.

MOOKAH NO KA ĀINA A ME NA KĀNAKA

# KAHEA

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LATE

Marti  
Townsend

supports

SB 1: Opihi Prohibition  
WTL, rm 229, 3:00 pm  
January 30, 2009

Aloha Chairman Senator Clayton Hee and members of the Committee on Water, Land, Agriculture, and Hawaiian Affairs,

Mahalo nui loa for hearing SB 1 relating to the rehabilitation and protection of Hawaiian 'opihi species. KAHEA: The Hawaiian Environmental Alliance **supports** every effort to protect imperiled native resources throughout Hawai'i nei.

KAHEA is a network of over 6,000 people representing kupuna, cultural practitioners, scientists, educators, and concerned citizens working to protect Hawaii's unique natural and cultural resources.

'Opihi, the Hawaiian limpet, has been a part of the diet of Native Hawaiians' for centuries. The Native Hawaiians from the island of Ni'ihau depend on the gathering of 'opihi not just for subsistence purposes but also economically to bring some money to the island. Unfortunately, as the popularity of 'opihi as a delicacy grows, the populations of 'opihi in the Hawaiian Islands have dramatically decreased. The population of the 'opihi has been halved; there has also been a great shortage of 'opihi on the island of O'ahu, with three of the 'opihi species ('opihi makaiauli, 'opihi 'alinalina, and 'opihi ko'ele) being extremely difficult to find. Prolonged over-harvesting has made it difficult to continue traditional gathering practices.

To allow Hawai'i's 'opihi populations to rejuvenate, KAHEA supports amending Hawai'i Revised Statutes Chapter 188 to prohibit the taking of opihi. This prohibition is especially important to protect 'opihi found below the shoreline. KAHEA also supports exempting traditional and customary gathering rights from this 'opihi prohibition, in order to allow the continued perpetuation of Native Hawaiian cultural practice.

The **prohibition, however, should also be lifted to allow regulated harvesting of 'opihi after populations have rebounded.** In order to revitalize the population of 'opihi populations, it is best to sustain part of the population in a fishery management reserve in order to allow the 'opihi to reproduce in a protected area. The 'opihi will be able to breed in a non-threatening environment, and in accords with 'opihi life history, adults will stay in the protected environment while the 'opihi larvae will be able to leave the protected area to breed also in other areas. The use of the protected management of 'opihi production will enable long-term 'opihi populations in the state of Hawai'i to increase.



**TESTIMONY**

**SB 1**

**LATE**

**(END)**