

SB 151 SD 1

testimony

From: Ken Conklin [ken_conklin@yahoo.com]
Sent: Sunday, February 10, 2008 9:14 PM
To: testimony
Subject: Testimony for Wednesday re SB 151 PROPOSED SD1

testimony@capitol.hawaii.gov

Senate of the State of Hawaii

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS COMMITTEE ON WATER AND LAND

Testimony for
Hearing on SB 151 PROPOSED SD1 RELATING TO BIOPROSPECTING

DATE: Wednesday, February 13, 2008
TIME: 2:45 p.m.
PLACE: Conference Room 414

by
Kenneth R. Conklin, Ph.D.
46-255 Kahuhipa St. Apt. 1205
Kane'ohe, HI 96744
tel/fax (808) 247-7942
e-mail Ken_Conklin@yahoo.com

Greetings to committee chairs Tokuda and Hee, members of the committees, and members of the public.

Remember the story about the emperor who had no clothes? Everyone clearly saw he had no clothes, but nobody dared to say so. Finally a child with no inhibitions impolitely pointed and shouted "Look! He has no clothes!" That broke the taboo. Everyone started pointing, shouting, and laughing at the emperor who had no clothes.

My dear Senators, the only way to seriously consider passing this bill is to close your eyes and ignore its shocking contents. Let me pry open your eyelids.

This bill will do the following things, as its language clearly says:

1. Confiscate ownership of all naturally-occurring plants and animals on private lands by arbitrarily declaring that they now belong to the State of Hawaii; [If you think I'm exaggerating, see language from the bill, page 7, lines 1-19]
2. Deny private landowners and government agencies controlling public lands the right to invite any researcher onto their land for the purpose of collecting a leaf, a snail, or a spoonful of pond scum; unless and until the landowner and researcher get a permit issued by a government commission and agree to file periodic reports describing what they do, what biota they remove, and what use was made of the biota; [bill language page 7 line 20 through page 8 line 4; also p. 10 line 18 through p. 15 line 6]
3. Establish that government commission with selection criteria guaranteeing that a majority of commissioners must be of one particular racial group; [bill language pp. 8-9 specifies a total of 11 commission members, of whom the OHA chair is in fact an ethnic Hawaiian, plus an additional racially-designated "five members of the native Hawaiian community" having backgrounds in specified areas -- the specified areas of expertise are reasonable and helpful to the regulation of bioprospecting, but the racial requirement is unnecessary, demeaning, pernicious, and illegal for a government commission.]
4. Confiscate a substantial portion of the money paid to private landowners and to government agencies by researchers or by corporations using the research, for the purpose of giving the confiscated money to the same racial group having the guaranteed majority on the commission. [p. 10 line 18 through p. 12 line 8]

This is not a bill to protect the land or its life-forms. This is not a bill to ensure that the general population of Hawaii will share in commercial profits generated from research utilizing Hawaii's biological resources. No, those are smokescreens for the real purpose of the bill.

This is a Hawaiian sovereignty bill. This is a bill to guarantee that not one square inch of Hawaii's lands, streams, or seas -- public or private -- can be used for biological research or commercial profit without the approval of a race-based government commission and without paying money to a racial group. This is a bill to establish racial supremacy in jurisdiction and control of Hawaii's lands and waters, and to legalize extortion through payments for permits, patents, and royalties. This bill would serve as a trojan horse to establish ethnic Hawaiian jurisdiction over the lands and waters of Hawaii, and the uses of their biota, even before the negotiations with a Native Hawaiian Governing Entity envisioned by the Akaka bill have had a chance to begin.

Please stop this nonsense. The government lands of Hawaii (including the "ceded lands") belong to all the people of Hawaii without racial distinction. It is probably illegal, and certainly immoral, to set up an allocation of government revenue or decision-making authority based on race. The private lands of Hawaii and the fruits of those lands belong to the private landowners. It is illegal to use government regulation to seize private lands, or the products of research on private lands, for government use; or to diminish the value of private lands through excessive government regulation; without market-value compensation.

For further in-depth discussion I refer you to the testimony I submitted to the informational briefing of the Senate Committee on Agriculture and Hawaiian Affairs on January 29, 2008, as expanded in a webpage at <http://tinyurl.com/yud9gw> .

I also refer you to my book describing the broad outlines of the challenge we face in trying to protect unity and equality for Hawaii's future:
"Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State." See Chapter 1, and detailed Table of Contents, at <http://tinyurl.com/2a9fqa> .

Never miss a thing. Make Yahoo your home page.
<http://www.yahoo.com/r/hs>

testimony

From: garry p smith [garrypsmith@juno.com]
Sent: Monday, February 11, 2008 6:28 PM
To: testimony
Subject: testimony

Senate of the State of Hawaii

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS COMMITTEE ON WATER AND LAND

Testimony for
Hearing on SB 151 PROPOSED SD1 RELATING TO BIOPROSPECTING

DATE: Wednesday, February 13, 2008
TIME: 2:45 p.m.
PLACE: Conference Room 414

I am submitting testimony opposing SB 151 SD1 relating to bioprospecting. To give preference to one racial group in determining bioprospecting is not constitutional. The U.S. Constitution demands that all racial groups be given equal protection. To provide bioprospecting rights to Hawaiians, either native or Native is unconstitutional both from the standpoint of the Hawaii state constitution and the U.S. constitution. We all have rights to bioprospecting as citizens of the State of Hawaii. As a citizen of the United States and a resident of the State of Hawaii, I request that we all be treated with equality regardless of our ancestry or race.

Therefore, I oppose SB 151 SD1 to give special rights to Hawaiians.

Garry P. Smith
91=321 Puppu Place
Ewa Beach, Hi 96706
392=5559

TO: Senator Jill Tokuda, Chair
Committee on Agriculture and Hawaiian Affairs

FROM: Mary Ikagawa, Kailua

RE: AGAINST SB151 proposed SD1, Establishes a permanent bioprospecting advisory commission to address issues relating to bioprospecting. Appropriates funds for commission to fulfill its mandate.

Aloha Senator Tokuda and members of the Committee,

Although the intent of this bill has merit, the bill is badly flawed and will take time-consuming work and broad input to fix. Please do not pass it.

Society relies on good science for so much, we cannot afford to place enormous barriers in the way.

Mahalo.

Testimony on SB 151

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair

Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair

Senator J. Kalani English, Vice Chair

Wednesday February 13, 2008

Opposition to SB 151 RELATING TO BIOPROSPECTING.

Dear Members of the Committee:

I am David Duffy, a professor of Botany at UH Manoa. I also run the Pacific Cooperative Studies Unit which employs 250 people on all the islands but Niihau. PCSU brought in 14 million dollars in grants last year, for conservation and restoration of native species and ecosystems and to control invasive species such as miconia and coqui frogs. PCSU also is responsible for the personnel and logistics of the invasive species committees and most of the watershed partnerships. After 9-11 we also ran the Emergency Workforce with the Research Corporation of UH.

I see numerous practical and legal problems with this bill, among others:

1. As the bill is written, many or most of our conservation and natural resource management activities will be considered bioprospecting and our work will be slowed by

what one member of the bioprospecting commission confessed would be "a costly bureaucracy", as all our work will have to be reviewed to see it "does not infringe on the knowledge, innovations, traditional or cultural practices of Hawaiians".

2. The review process will also add considerable and costly paper work as we will have to track genetic samples of rare plants and seek the commission's permission "before transferring any samples to another party, for any reason"

3. The commission is charged with "establishing an efficient tracking system relating to the samples". Who is going to pay for that? And since when has the state ever had any efficient computer tracking system?

4. No scientist will be on the commission and given the arcane and fast moving world of genetics, the commission won't have much idea what is involved. This leads to interesting problems, the simpler ones being:

a. Many genetic samples are now simply binary computer data on the internet.

b. Would the commission try to restrict bioprospecting by scientists going through the published scientific literature?

c. Would the commission try to enforce its rules against out of state, foreign or federal scientists? If not we would just be putting local scientists at a disadvantage and not stopping anything.

5. The bill requires international agencies to seek permission from the commission before transferring *ex situ* material under their control. This law is *ultra vires* as such organizations are run by the UN or in the case of GenBank by the Japanese, US and European governments.

6. Scientists will also have to turn down many federal grants, as the federal government requires us to make genetic material freely available to the scientific community.

7. The bill is in violation of the Migratory Bird Treaty Act and possibly other biodiversity acts.

7. I am not a lawyer but I am told that this bill ll represents an interesting approach to patent law that may attract litigation simply because the patent system can not have states essentially pre-emptively permanently patenting unspecified things.

8. Similarly the bill probably has commerce clause problems.

The commission could have taken a more constructive approach to bioprospecting and included scientists (especially geneticists), lawyers and compliance specialists so that things could have been discussed and worked out in the open, leading to a workable solution that could stand up in practice and the courts.

I urge the committee not to pass SB 151. Thank you for this opportunity to testify.

With Aloha,

David Cameron Duffy
Professor of Botany and Unit Leader
Pacific Cooperative Studies Unit (PCSU)
University of Hawai'i
3190 Maile Way St. John 410
Honolulu, HI 96822-2279

testimony

From: Karen Selph [selph@hawaii.edu]
Sent: Tuesday, February 12, 2008 12:12 PM
To: testimony
Subject: VERY URGENT: testimony for State bioprospecting hearing TOMORROW

Please forward this testimony to the Senate Committees on Water and Land and on Agriculture and Hawaiian Affairs for the hearing at 2:45 tomorrow. Thank you.

>
>COMMITTEE ON WATER AND LAND
>
>Senator Clayton Hee, Chair
>
>Senator Russell S. Kokubun, Vice Chair
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>
>COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
>
>Senator Jill N. Tokuda, Chair
>
>Senator J. Kalani English, Vice Chair
>
>
>Wednesday February 13, 2008
>
>Opposition to SB 151 RELATING TO BIOPROSPECTING.
>

>Dear Members of the Committee:
>
>My name is Dr. Karen Selph, and I am a biological oceanographer in
>the Department of Oceanography at the University of Hawaii at Manoa.
>This bill does not define "bioprospecting" in specific enough terms
>to be followed in good faith by a researcher such as myself. I am
>interested in forwarding knowledge about the ocean, including
>coastal, ecosystems -- not in profiting materially from such
>research. However, the effect of this bill will be to stop genuine
>research which has no monetary benefit to the researcher, which
>surely is not the intent of the bill. If this bill passes, I would
>be afraid to pursue extramural funds to study our local ecosystems,
>in the event I could be sued for profiteering. A better bill needs
>to be written that exempts pure research activities from litigation.
>
>I urge the committee not to pass SB 151. Thank you for this
>opportunity to testify.

--

Dr. Karen E. Selph
Director
SOEST Flow Cytometry Facility
Department of Oceanography
University of Hawaii

testimony

From: Creighton M. Litton [litton@hawaii.edu]
Sent: Tuesday, February 12, 2008 1:11 PM
To: testimony
Subject: hearing 245

Please forward to the Senate Committees on Water and Land and on Agriculture and Hawaiian Affairs for hearing 245 on 12/13/08.

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair

Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair

Senator J. Kalani English, Vice Chair

Wednesday February 13, 2008

Opposition to SB 151 RELATING TO BIOPROSPECTING.

Dear Members of the Committee:

I am an assistant professor of forest ecology at the University of Hawaii at Manoa. I regularly conduct field research throughout Hawaii on such topics as ecological impacts of invasive species, quantification of the structure and function of native and non-native forest ecosystems, and restoration of degraded native forest ecosystems. I applaud your efforts at establishing bioprospecting legislation to protect the natural resources of Hawaii for the people of Hawaii. However, I have several serious reservations with the legislation as it is written: (1) As currently written, all field work in Hawaii will potentially be considered as a bioprospecting activity and will, thus, be subject to the regulations outlined within. Many researchers, such as myself, regularly conduct field work that has no implications for bioprospecting whatsoever. Rather, we seek to better understand ecological systems in Hawaii to advance goals and priorities in the realms of conservation and restoration, and at times utilization. (2) In turn, the permanent panel that will review "bioprospecting" has no scientists and, thus, it is difficult to believe that it will be effective at differentiating true bioprospecting research from all other activities.

(3) There is a complete failure to explain how this legislation will effectively balance the potential conflict between "protection of proprietary information" and "wide sharing of information with an outside community". (4) There is a strong potential that such legislation will deter external funding from government and private funding sources, further exacerbating an already tenuous balance between the need for studies specific to the Hawaiian archipelago and lack of funding from national funding agencies for research not readily applicable outside of Hawaii.

In summary, I urge the committee not to pass SB 151 in its current form. Thank you for this opportunity to testify.

Aloha,

Creighton

Creighton M. Litton, Ph.D.
Assistant Professor, Forest Ecology

Department of Natural Resources and Environmental Management University of Hawaii at Manoa
Sherman Lab 240 1910 East-West Rd.
Honolulu, HI 96822

email: litton@hawaii.edu
phone: 808-956-6004
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Temporary Advisory Commission on Bioprospecting
Legislative Testimony

SB151 proposed SD1, Relating to Bioprospecting

Committee on Water and Land
Committee on Agriculture, and Hawaiian Affairs

February 13, 2008 (2:45pm)
Room: 414

The Temporary Advisory Commission on Bioprospecting is in **SUPPORT** of S.B. No. 151 proposed S.D. 1, which establishes ownership of biological resources, defines bioprospecting, establishes a permanently funded commission on bioprospecting, and requires the Department of Land and Natural Resources to adopt administrative rules pursuant to Chapter 91, Hawaii Revised States, establishing requirements for obtaining a permit to conduct bioprospecting activities.

Currently, the State of Hawai'i has no statutory or administrative rule protections against the exploitation of its biological diversity or to provide remuneration for its use. Additionally, no such protection is afforded for the traditional and cultural knowledge that is more often than not associated with the use of that biological diversity. Such traditional knowledge is truly an element of the biological diversity of our 'āina.

The Commission was established by House Concurrent Resolution No. 193, House Draft 1, adopted by the legislature in its 2006 regular session, to provide policy recommendations for legislation concerning bioprospecting. After rigorous research and scrutiny, the commission issued a report on February 5, 2008. This bill is intended to implement the report's recommendations.

S.B. No. 151, proposed S.D. 1, seeks to appropriately regulate bioprospecting in Hawai'i so that its fruits could be enjoyed by the citizens of Hawai'i, and at the same time, facilitate the advancement of science. Thank you for this opportunity to submit testimony.

COMMITTEE ON WATER AND LAND
Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

Wednesday February 13, 2008
Conference Room 414
2:45 PM

Testimony in Opposition to SB151
RELATING TO BIOPROSPECTING
Submitted by:
Donald Thomas

I am a member of the research faculty at the University of Hawaii and have conducted both applied as well as basic research in the field of earth sciences for 35 years. I present the following testimony in opposition to SB151.

The proposed process in SB151 for protecting Hawaii's claimed interests in its biological resources will, I believe, have the unintended consequence of inhibiting research on these resources. The process will unnecessarily delay and increase the cost of legitimate scientific investigation on any plant or animal within the state. Research today is an extremely competitive process; in any research endeavor, the successful scientist makes a determination as to the costs and scientific benefits of a proposed course of study and pursues that course that imposes the least cost for the greatest gain in knowledge and insight. Rather than expend the time and take on the administrative responsibilities for complying with the proposed regulations, many in the research community – whether funded publicly or privately – will simply redirect their research toward locales that are less burdensome and less costly. The reduction in basic research in Hawaii's biological resources will almost certainly reduce the likelihood that beneficial applications of these resources will be found. However, of even greater concern, is that the limitation on our knowledge base, resulting from a reduction in research activity, will hinder our ability to respond to threats towards Hawaii's ecosystems that are posed by future, inadvertent, importation to Hawaii of deleterious or invasive organisms.

I would also suggest that the benefits that are claimed likely to occur with the proposed limitations on bioprospecting are greatly overstated while the costs are unrecognized. Although it is true that some discoveries from basic life sciences (or any other) research can generate tremendous economic returns, there is little recognition or understanding that the

majority of research activities bring no near term financial benefit. Basic research, in most cases, provides small, incremental insights that, after many years of effort by many scientists, enable the “grand” discoveries that are popularized in the media. When these small incremental insights are hindered, the “grand” discoveries are delayed or denied. The proposed protections of Hawaii’s biodiversity in this legislation will not only deny the world of the occasional “grand” discoveries, it will deny Hawaii of the many millions of dollars a year that are brought to the University to conduct the small incremental studies that make the “grand” discoveries possible.

As proposed, SB151 will provide few benefits to Hawaii’s residents, at great costs to all.

This testimony reflects my views alone and is not an official statement of the University of Hawaii. Thank you for this opportunity to offer testimony.

testimony

From: Rob Toonen [toonen@hawaii.edu]
Sent: Tuesday, February 12, 2008 2:14 PM
To: testimony
Cc: Jo-Ann C Leong; Brian Bowen
Subject: WTL/AHW Testimony in regard to SB 151

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

Wednesday February 13, 2008
Opposition to SB 151 RELATING TO BIOPROSPECTING.

Dear Members of the Committee:

I am an assistant researcher at the University of Hawaii, in the School of Ocean & Earth Sciences & Technology. I was recruited by the University of Hawaii to develop molecular genetic techniques to answer questions of resource management and conservation of interest to the State and Federal agencies in Hawaii. Since my arrival in 2003, I have developed extensive relationships with local, State and federal agencies tasked with management and conservation of natural resources in Hawaii, and I generally focus my research on issues that inform sound management of our natural resources.

While I feel that the goal of trying to structure bioprospecting in Hawaii is an admirable one, I do not believe that SB 151 succeeds in that effort. In particular, the stated goal of benefit sharing suggests that there is some material compensation that is being sought by bioprospecting, and that is not true of basic research in which knowledge is the goal. However, the definition of what constitutes "bioprospecting" is so broadly construed in SB 151 that any collection of natural samples for any purpose could be included under this bill, such that all scientific research would now be considered bioprospecting. Further, the requirement that international organizations (such a GenBank) refer all requests for transfer of specimens acquired under the act to the committee is in direct violation of the requirements of federal funding (such as NIH or NSF) which require that all sequences generated under such funds be submitted to public databases. If those data were not shared, we should not expect federal agencies to support any future research requests from our institution. Even if the committee never rejected such a request, the process itself would greatly slow the publication of research conducted in the State, which would inevitably decrease our productivity and our competitiveness for extramural research grants.

As written, this bill essentially makes it impossible to conduct biological research that will be competitive in a national arena within the State of Hawaii, regardless of the intent or benefit of that research. Thus, if this bill is passed into law, I expect that we will see a precipitous decrease in research funding coming into the State, which is likely to be followed by an exodus of our most active researchers from the University and the State of Hawaii.

SUMMARY:

2/12/2008

A bill on bioprospecting that will prevent commercial interests from infringing on the knowledge, innovations, traditional or cultural practices of Hawaiians without stopping all biological research in the State can certainly be written, but SB 151 is not that bill. I urge the committee to consider the dire consequences of SB 151 and not pass it into law.

Thank you for this opportunity to testify.

Sincerely,

Robert J. Toonen, Ph.D.
Assistant Research Professor,
University of Hawaii at Manoa,
School of Ocean and Earth Science and Technology,

Testimony on SB 151

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair

Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair

Senator J. Kalani English, Vice Chair

Wednesday February 13, 2008

Opposition to SB 151 RELATING TO BIOPROSPECTING.

Dear Members of the Committee:

I am Tom A. Ranker, Professor and Chair of the Department of Botany, UH Manoa. Our department is the primary provider of formal education for botanists in the State of Hawai'i. Many of the botanists and land managers employed by both public and private agencies and organizations in our state received bachelors, masters, and/or doctoral degrees from our department. Personally, I have been conducting research on Hawaiian plants for 20 years.

I join my colleague Dr. David Duffy of the Pacific Cooperative Studies Unit, housed in the Department of Botany, in opposing SB 151. I reiterate here and completely concur with the many problems that he has identified with this bill, in the testimony that he submitted:

1. As the bill is written, many or most of our conservation and natural resource management activities will be considered bioprospecting and our work will be slowed by what one member of the bioprospecting commission confessed would be "a costly bureaucracy", as all our work will have to be reviewed to see it "does not infringe on the knowledge, innovations, traditional or cultural practices of Hawaiians".
2. The review process will also add considerable and costly paper work as we will have to track genetic samples of rare plants and seek the commission's permission "before transferring any samples to another party, for any reason"
3. The commission is charged with "establishing an efficient tracking system relating to the samples". Who is going to pay for that? And since when has the state ever had any efficient computer tracking system?

4. No scientist will be on the commission and given the arcane and fast moving world of genetics, the commission won't have much idea what is involved. This leads to interesting problems, the simpler ones being:

a. Many genetic samples are now simply binary computer data on the internet.

b. Would the commission try to restrict bioprospecting by scientists going through the published scientific literature?

c. Would the commission try to enforce its rules against out of state, foreign or federal scientists? If not we would just be putting local scientists at a disadvantage and not stopping anything.

5. The bill requires international agencies to seek permission from the commission before transferring *ex situ* material under their control. This law is *ultra vires* as such organizations are run by the UN or in the case of GenBank by the Japanese, US and European governments.

6. Scientists will also have to turn down many federal grants, as the federal government requires us to make genetic material freely available to the scientific community.

7. The bill is in violation of the Migratory Bird Treaty Act and possibly other biodiversity acts.

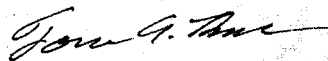
7. I am not a lawyer but I am told that this bill represents an interesting approach to patent law that may attract litigation simply because the patent system can not have states essentially preemptively permanently patenting unspecified things.

8. Similarly the bill probably has commerce clause problems.

The commission could have taken a more constructive approach to bioprospecting and included scientists (especially geneticists), lawyers and compliance specialists so that things could have been discussed and worked out in the open, leading to a workable solution that could stand up in practice and the courts.

I urge the committee not to pass SB 151. Thank you for this opportunity to testify.

Aloha,



Tom A. Ranker, Professor & Chair
University of Hawai'i
Department of Botany
3190 Maile Way St. John 101
Honolulu, HI 96822-2279

testimony

From: Aaron Shiels [ashiels4@hotmail.com]
Sent: Tuesday, February 12, 2008 2:33 PM
To: testimony
Subject: S.B. No. 151, S.D. 1, Relating to Bioprospecting

To: THE SENATE, THE TWENTY-FOURTH LEGISLATURE

COMMITTEE ON WATER AND LAND
Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

AND

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

From: Aaron Shiels, PhD Student University of Hawaii at Manoa, and Hawaiian resident

RE: S.B. No. 151, S.D. 1, Relating to Bioprospecting

Dear Sir/Madam,

I submit testimony herein against support of the Bill S.B. No. 151, S.D. 1, relating to Bioprospecting. I am a PhD student at the University of Hawaii at Manoa and I have dedicated the majority of my adult life to resource conservation and preservation in natural areas in Hawaii and in similar island localities. Clearly, there are a large number of threats to our Hawaiian ecosystem, such as the pronounced negative effects of non-native biota, the introduction of disease, human pollution, and habitat destruction. These negative aspects pose threat to our islands, and in particular to the remaining natural areas that exist in our State. These are serious threats, as they directly affect our livelihood as inhabitants of both the Hawaiian Islands and this planet. Support of the Bill S.B. No. 151, S.D. 1, relating to Bioprospecting, would block our fight against the negative impacts to our terrestrial and aquatic environments in Hawaii. More specifically, support of Bill S.B. No. 151, S.D. 1 would block the necessary biological research that is needed for this fight against environmental degradation, and it would block our critical conservation and management practices in the State of Hawaii. I do not support the Bill S.B. No. 151, S.D. 1, relating to Bioprospecting, and I strongly urge you NOT to pass this Bill.

Sincerely,

Aaron Shiels
PhD Student
University of Hawaii at Manoa
Hawaiian Resident
1504J Palolo Ave
Honolulu, HI 96816

Need to know the score, the latest news, or you need your Hotmail®-get your "fix". [Check it out.](#)

2/12/2008

testimony

From: wegmannaalex@gmail.com on behalf of alexander wegmann [wegmann@hawaii.edu]
Sent: Tuesday, February 12, 2008 2:47 PM
To: testimony
Subject: Bioprospecting in Hawaii

To: THE SENATE, THE TWENTY-FOURTH LEGISLATURE

COMMITTEE ON WATER AND LAND
Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

AND

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

From: Aaron Shiels, PhD Student University of Hawaii at Manoa, and Hawaiian resident

RE: S.B. No. 151, S.D. 1, Relating to Bioprospecting

Dear Sir/Madam,

I submit testimony herein against support of the Bill S.B. No. 151, S.D. 1, relating to Bioprospecting. I am a PhD student at the University of Hawaii at Manoa and I have dedicated the majority of my adult life to resource conservation and preservation in natural areas in Hawaii and in similar island localities. Clearly, there are a large number of threats to our Hawaiian ecosystem, such as the pronounced negative effects of non-native biota, the introduction of disease, human pollution, and habitat destruction. These negative aspects pose threat to our islands, and in particular to the remaining natural areas that exist in our State.

These are serious threats, as they directly affect our livelihood as inhabitants of both the Hawaiian Islands and this planet. Support of the Bill S.B. No. 151, S.D. 1, relating to Bioprospecting, would block our fight against the negative impacts to our terrestrial and aquatic environments in Hawaii. More specifically, support of Bill S.

B. No. 151, S.D. 1 would block the necessary biological research that is needed for this fight against environmental degradation, and it would block our critical conservation and management practices in the State of Hawaii. I do not support the Bill S.B. No. 151, S.D. 1, relating to Bioprospecting, and I strongly urge you to NOT pass this Bill.

Sincerely,

--
Alexander Wegmann
Botany Dept. U. Hawaii - Manoa
3190 Maile way
Honolulu Hawaii
wegmann@hawaii.edu

2/12/2008

Mililani B. Trask
Convener, Na Koa Ikaika o Ka Lahui Hawaii
Director, Indigenous World Association
400 Hualani Street, Suite 194
Hilo, HI 96720

February 12, 2008

To: Senate Committee on Water & Land
Clayton Hee, Chair
Russ Kokubun, Vice Chair

Senate Committee on Agriculture & Hawaiian Affairs
Jill Tokuda, Chair
J. Kalani English, Vice Chair

Hearing Date: February 13, 2008
Time: 2:45 p.m.
Place: Room 414

Re: SB151 – Relating to Bio-prospecting
Testimony in Strong Opposition

Aloha Senators:

I am disappointed in the revisions to HCR 193 H.D.1 which appear in SB 151. If SB 151 passes it will result in litigation and strong opposition from Hawaiians and others who are beneficiaries of the public trust. SB 151 does not meet the requirements of HCR 193 HD1 in my estimation it violates the state's trust obligation to the public and native Hawaiians, confuses and diminishes Hawaiian cultural rights and illegally and unwisely divests the State Legislature of its authority to set state policy and establish state law.

Na Koa and IWA have worked on this legislation with the Hawaiian Civic Clubs for over 6 years. We brought the issue to the legislature, we drafted the Resolution for the LRB report and we have tried to work with the State Temporary Advisory Commission (STAC) established under HCR 193 H.D. 1.

It appears that our best efforts have been ignored by the STAC and that they have instead decided to usurp the legislation function and power for the benefit of a few who want to commercialize our trust assets.

1. In order to facilitate the theft of our biogenetic resources the Commission has redefined our rights to accommodate research and corporate commercialization. An example of this is in the definition section. SB 151 says:

“Prior informed consent” means a set of administrative procedures for deciding on whether to grant access to genetic resources on defined terms.”

Based on the SB 151 definition prior informed consent is the right of the DLNR to give away our genetic resources as they see fit, without any restriction or protective mechanism for the general fund, the public on native Hawaiians (See Section 1(4), pg. 4:

The accurate and international definition of “prior informed consent” is in the Paoakalani Declaration. It says:

“Free, prior and informed consent: Principle of fully informed consent after full disclosure and consultation. Full disclosure is on the full range of potential benefits and harms of the research, all relevant affiliations of the person(s) or organizations(s) seeking to undertake the research, and all sponsors of the researcher(s).”

Free, prior and informed consent is a human right of indigenous peoples collectively and individually. The international legal standards of the UN Declaration on the Rights of Indigenous Peoples relating to our human rights in this area state:

“Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with the indigenous peoples States shall take effective measures to recognize and protect the exercise of these rights.”

“Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other

- resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”

“Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

In considering this legislation there is an affirmative obligation on the State to consult and cooperate with indigenous peoples.

“Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”

“Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”

The State, the Commission and OHA have failed in obtain the free prior and informed consent of our peoples and (like the Ceded Land Settlement) have initiated legislation before and without meeting with or consulting with the Hawaiian peoples.

2. There have been significant problems in our community because UH, private and State researchers and corporations have taken our Hawaiian foods and medicines and patented and converted our endemic species – thereby converting trust property into private property (patent and copyright) - (This is why there is a kalo controversy).

SB 151 will provide more anger and resistance among the Hawaii community and the organic and coffee industries.

3. The State Temporary Advisory Commission was created to perform a task – to examine and identify issues relating to bioprospecting and to recommend to the State Legislature policy in 5 areas. The commission has failed miserably in its task and has redrafted the original measure to suit the needs of scientific researchers and private corporations.

4. I strongly disagree with Section ___ 3, pg. 7. The State does authority to regulate bioprospecting and the commercial use of the State's biodiversity nor does the State have the exclusive right to determine how and if our knowledge, innovations and traditional and customary practices are protected.

- a. The State is bound to uphold its fiduciary responsibility to native Hawaiians as set forth in our laws, constitution and judicial opinions.
- b. Under the HFDC ruling of January 31, 2008, the State cannot transfer or sell Ceded Lands trust assets. This ruling applies broadly and would include biodiversity and biological and genetic resources of the Trust.

Recommendations:

- 1. Kill SB 151 and disband the Lingle appointed STACB;
- 2. Go back to HCR 193 H.D.1 and have the legislature appoint a new commission that is balanced (Hawaiian and non) and that will recommend policy as required by the LRB.

Mililani B. Trask

testimony

From: david foote [foote@hawaiiantel.net]
Sent: Tuesday, February 12, 2008 3:00 PM
To: testimony
Cc: Sen. Russell Kokubun
Subject: Testimony in opposition to SB 151 hearing 245 13 February 2008

To: Hawaii State Senate

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

From: David Foote
PO Box 743
Volcano, HI 96785

Re: Opposition to SB 151 relating to bioprospecting

Dear Committee Members:

I am a biologist who has been carrying out survey work in Hawaii for the past 24 years. The surveys I have undertaken have generated scientific data that has helped contribute to the understanding, conservation and preservation of Hawaii's natural resources. I have not received any financial gain (beyond a biologist's salary) for my work. However, under Hawaii State Senate Bill 151 now before your committee, much of the work I have done could have been considered some form of prospecting and evaluated by a state commission that potentially includes no one with a scientific background who could interpret the nature and scope of my research.

As it is presently defined, the bioprospecting commission established as a consequence of SB 151 would end up in extended conflict with the University of Hawaii and other private, state and federal agencies regarding its authority to regulate biological research. For example, the National Park Service has an established system for collection and tracking of biological specimens found within National Parks in Hawaii. This legislation would pit the federal government against the state over jurisdiction and regulation of bioprospecting on federal lands. Furthermore, the commission would duplicate functions of other regulatory commissions within the Hawaii Department of Land and Natural Resources, such as the Natural Area Reserve Commission. The biologist proposing work would experience significant delays while competing regulatory agencies sought jurisdiction over the research. There are many examples of how bioprospecting is monitored and regulated in other parts of the world and within the United States that adequately protect the financial interests of the government and its people without erecting barriers to research. Many, if not all, of the functions of the bioprospecting commission could be performed by existing regulatory agencies within the state.

I believe that the consequences of passing SB 151 in its present form will be to discourage biological research in the State of Hawaii. New discoveries regarding biodiversity in Hawaii and the distributions of native and endemic species will go unrecorded. Hawaii will gradually lose its prominence as a natural laboratory of evolution and conservation biology in the world. Fewer students will be attracted to conduct research in the islands. The University of Hawaii will be less competitive for national and international grants and federal agencies will reprioritize their work to focus elsewhere.

I'm sure this is not the intent of this proposed legislation.

I strongly urge your committee NOT to pass SB 151.

Thank you for the opportunity to submit testimony regarding this bill.

Sincerely,

David Foote, Ph.D.
Research Ecologist

Senate Committee on Water and Land
Senator Clayton Hee, Chairman

Hearing Date: February 13, 2008

Time: 2:45 pm

Testimony in Support of SB 3211 – Relating to Boating Facilities at Keehi Lagoon

Mr. Chairman and members of the Committee, my name is Brooks Takenaka, Assistant General Manager of United Fishing Agency, the Honolulu fish auction at Pier 38.

SB 3211 will improve the boating facility infrastructure (drydock) at Keehi Lagoon. The improvements to this vacant lot that is owned by the State of Hawaii will provide the foundation of a boat repair facility so desperately needed by Hawaii's commercial fishing fleet.

The State of Hawaii needs a ship repair and drydocking facility to service our fishing fleet. Currently many commercial fishing vessels have resorted to transiting to the mainland to take care of required maintenance. Another drydocking facility in the State would provide these boats with the option of staying in Hawaii and would provide additional revenue to Hawaii's maritime economy.

The proposed improvements on the vacant property would also provide additional revenue to the State in way of lease payments for future generations.

Use of State funds for harbor improvements is a practical means for ensuring that the maritime community in this island state continues to thrive in the future; and use of State funds for improvements such as this is consistent with past harbor infrastructure improvements.

We urge your support of this measure. Mahalo for allowing me to share our views.

testimony

From: Sterling Keeley [sterling@hawaii.edu]
Sent: Tuesday, February 12, 2008 3:04 PM
To: testimony
Subject: Opposition to SB 151 RELATING TO BIOPROSPECTING.

Please forward to Senate Committees on Water and Land and Committee on Agricultural and Hawaiian Affairs

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair

Senator Russell S. Kokubun, Vice Chair

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair

Senator J. Kalani English, Vice Chair

Wednesday February 13, 2008

Opposition to SB 151 RELATING TO BIOPROSPECTING.

Dear Members of the Committee:

I am a Professor of Botany at UH Manoa who with my students does basic research on the relationships of Hawaiian plants to relatives in South America, Africa and throughout the Pacific. Conducting this work depends on collaborations with other researchers and the free flow of information typical in the scientific community. The proposed SB 151 would bring my research and that of many others to a halt, cutting Hawaii out of modern international plant science.

My research and that of my students depends on the loan and exchange of herbarium specimens (dried, pressed plants) and preserved material with other scientific institutions, the Smithsonian Institution for example, with whom I frequently work. These most standard exchanges (a scientific practice going back almost 300 years) would become illegal under SB 151, something so clearly unreasonable that no country in the world has done so-and it will stop plant research in Hawaii. It will not, however, prevent other institutions on the mainland or in other countries from doing their research and training their future scientists.

I use DNA sequence data (genetic information) to determine plant relationships. All major scientific journals and national funding agencies such as the National Science Foundation (NSF) and the National Institutes of Health (NIH) require that DNA sequences be made publicly available in a timely fashion. (Most journals will not even accept a manuscript for review without this). Typically these sequences are deposited in GenBank, a worldwide data repository accessible to all. Without the ability to publish and archive sequences in GenBank virtually all genetically based (and much biotech) research will come to a halt in Hawaii. NSF and NIH will deny funding and research will not be published regardless of its relationship or lack of it to "bio-prospecting". This would not benefit Hawaii scientifically or economically.

SB 151 is overly broad. Research, training and funding will be negatively impacted. This bill, as written, does not serve us well.

I urge the committee not to pass SB 151.

Thank you for this opportunity to testify.

2/12/2008

Sterling C. Keeley
Professor
Department of Botany
3190 Maile Way
Honolulu, Hawaii 96822
808 956-8043 ph
808 956-3923 fax

"We keep our knowledge by giving it away"
after Eric Lassiter, Marshall University

testimony

From: Bruce Hoffman [bhoffmanii@gmail.com]
Sent: Tuesday, February 12, 2008 3:07 PM
To: testimony
Subject: RE: S.B. No. 151, S.D. 1, Relating to Bioprospecting

To: The Senate, the 24th Legislature Committee on Water and Land
Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

AND

The Committee on Agriculture and Hawaiian Affairs
Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

From: Bruce Hoffman, PhD Student at the University of Hawaii at Manoa, and Hawai'i resident.

RE: S.B. No. 151, S.D. 1, Relating to Bioprospecting

Dear Sir/Madam,

I submit testimony herein against support of the Bill S.B. No. 151, S.D. 1, relating to Bioprospecting. I am a graduate student at the University of Hawai'i. I have worked in many countries in Latin America where bioprospecting is a contentious issue. It is true that there are some unscrupulous profiteers that have attempted to take advantage of traditional knowledge through bioprospecting. However there are also many well known entities that have been working with respect, openness, and cooperation for years in Hawai'i. It is a gross over-reaction and is a classic case of "shooting oneself in the foot" to label ALL research as bioprospecting. I have seen the results of such short-sighted approaches before. Young, optimistic local students and honest, invaluable researchers are harassed to the point where it is not worth doing research anymore and they must go elsewhere and take their funding with them. The administrative unit (such as Brazil) loses untold amounts of research dollars by closing itself to anything new that might actually be of benefit to a sustainable future. I have yet to meet the billionaire scientist in Hawai'i that made any money from bioprospecting. Not all research is good, but much of it is great. Researchers should be monitored, not shut down across the board as this bill aims to do. Please don't throw the baby out with the bath water!

Sincerely,

Bruce Hoffman

University of Hawaii @ Manoa
Department of Botany
3190 Maile Way, Room 501
Honolulu, HI 96822

2/12/2008

END

SB151 SD1