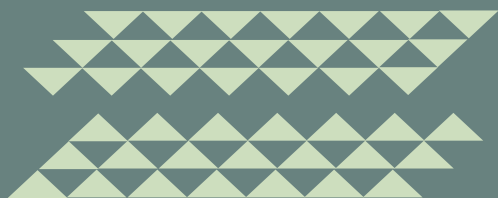




PROTECTING CULTURE, RESOURCES + RIGHTS
MAUKA TO MAKAI



photos: Miwa, Tamaha (top), Michael Hanscom (bottom)



KAHEA

THE HAWAIIAN-ENVIRONMENTAL ALLIANCE

ISSUE 1, 2010

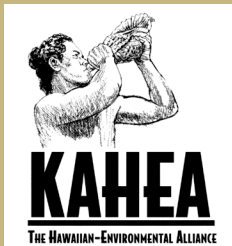
ABOUT

Ten years ago, in response to ongoing threats and the systematic destruction of Hawai'i's natural and cultural resources, a small group of conservation advocates and Native Hawaiian cultural practitioners united their efforts. Together, they called for the strongest possible protections for some of Hawai'i's most ecologically unique and culturally sacred places. Today, KAHEA: The Hawaiian-Environmental Alliance is a network of thousands of individuals islands-wide and around the world, answering and amplifying this call to action.

At the heart of our mission is a deep belief in the power of community and collective action. Together, we are successfully pushing towards real, meaningful and system-wide change.

Mauka to Makai is a publication of KAHEA. Each year, we ask friends and 'ohana to share their mana'o on pressing cultural rights and environmental issues. In this pocket-size volume, we bring you their stories--unique perspectives on efforts to protect natural areas and defend cultural rights, from those on the front lines--from the hearing rooms to the lo'i.

Mahalo for taking the time to share in our vision for a thriving, healthy, and just Hawai'i.



logo illustration by Herb Kane

PRESIDENT'S MESSAGE

From the low lying corals of Kure Atoll to the snowy summit of Mauna Kea, KAHEA is celebrating 10 years of defending culture, resources, and rights: mauka to makai.

10 years in existence

100,000+ public comments submitted

over 100 community meetings held

500+ hearings attended

3 major investigations of mismanagement of public trust natural resources

2 county-wide bans on genetic modification of taro

2 critical habitat petitions

5 wins in court upholding legal protections for public lands and waters

1 first-of-its-kind federal prohibition on commercial bioprospecting

close to 10,000 individuals supporting

permanent protections for more than 140,000 square miles of oceans

permanent protections for more than 110,000 acres of lands

learn more + join in action at
www.KAHEA.org

Aloha Kākou,

This year, we celebrate 10 years at KAHEA: The Hawaiian-Environmental Alliance. In 10 years, KAHEA has evolved as an important force in our community. Today, we remain as committed as ever to the protecting Hawai'i's natural and cultural resources.

Mounting assaults on the rights of Kanaka Maoli and our 'āina make this work ever more critical. The indigenous people of Hawai'i rely on the health and integrity of our native plants, animals, and ecosystems. The quality of life of all people in Hawai'i is impacted by the choices being made about the future of Hawaiian lands and waters.

Over the years, our unique approach as an alliance of Kanaka Maoli and non-Hawaiians concerned with protecting Hawai'i's environment and traditional and customary cultural rights has resonated with thousands of people who have found a place in supporting the work we do.

On behalf of the Board and staff, mahalo nui loa for your support and commitment over the years. I strongly encourage you to join with us as we work together--kākou--for the next ten years and beyond, in KAHEA's efforts on priority issues critical to the long-term health and well-being of Hawai'i and all its people.

Vicky Holt-Takamine
Board President

KAHEA Board of Directors

Vicky Holt-Takamine
Louis "Buzzy" Agard
Mark Glick
Colleen Kelly
Don May
Jon Osorio
Kealoha Pisciotta
Cha Smith



MAHALO PUMEHANA

Mahalo to our 2009/2010 supporting foundations: Keith Campbell Foundation for the Environment, Hawai'i Community Foundation, Hawai'i People's Fund, Marisa Foundation, Earth Friends Wildlife Fund, Patagonia Foundation, SIMA Environmental Fund, Acorn Foundation/Common Counsel Foundation, Margaret Mellon Hitchcock Foundation, Sidney Stern Memorial Trust, The Seventh Generation Fund, Groundwork Opportunities, and our amazing 1% for the Planet 'ohana,

And mahalo pumehana to the hundreds of individuals whose heartfelt giving makes the work of KAHEA possible!

the simple act of remembering

Can present-day Hawai'i remember its way to a new kind of sustainability? Author Claire Hope Cummings writes on the choices we are making today about the future of these islands. The following are excerpts from her book, "Uncertain Peril: Genetic Engineering and the Future of Seeds." Might the secret to our healing lie in the simple act of remembering who we are?

KAUA'I IS A SMALL ISLAND, AND YET IT HAS an array of alternatives for the future already on display. If a road went around the entire island, you could make the drive in a few hours. Starting on the dry west side, at one end of the Nā Pali coast, the existing road begins at the U.S. military's Pacific Missile Range and testing grounds. Then it continues past miles of GMO seed production and testing grounds before skirting the remains of rusting sugar mills. Then it turns toward the tourist resorts and condominiums of Po'ipū Beach. In less than an hour, you could tour all three mainstays of the current Hawaiian economy: the military, plantation agriculture, and tourism.

On the south side of the island, the road leads into the town of Līhu'e, where the airport, harbor, and shopping centers keep the import economy humming. Then it turns north along the ocean. Farther along, the small towns thin out and a few farms and Native Hawaiian homesteads appear. Once the road passes the golf courses and resort community of Princeville, you enter Hanalei Valley, spectacularly planted with charentreuse and emerald green taro patches. This the North Shore, a place blessed with heart-breaking beauty and a vibrant, if somewhat fractured, local culture. The pace of life here winds down, and the road ends in the sands of Kē'ē Beach, on the other side of the impassable Nā Pali coast.

The question for Kaua'i, as it will be for all of us, is how to choose the right model for the future. The west side of the island is living under the military-industrial model. The south side of the island supports a kaleidoscopic array of lifestyles, with some local food production and most people shopping at big box

stores. On the north side there is an emerging model for local self-sufficiency.

Traditionally in Hawai'i, everyone had use rights to whatever they needed. The ahupua'a was managed by a konohiki, whose job it was to ensure that all resources were managed sustainably. This was done partly by enforcing the kapu system, which put various resources off-limits from time to time in order to keep them productive. The common people were required to support the ali'i, but unlike European serfs, Hawaiians were not bound to a certain place. They were free to move if they didn't like the way they were treated. That meant that the konohiki was motivated to keep them happy. Everyone's welfare depended on the functioning of the whole, and the distribution of resources functioned as a common property regime.

Very few ahupua'a remain in Hawai'i, and none support a local community in the traditional way. They were eradicated when Native Hawaiian property values were replaced with private property rights. The natural resources of the islands were plundered by

IN DEFENSE OF A SACRED GENEALOGY: Hāloa Nakalaukapalili

Probably best known as poi--eaten at parties and celebrations throughout Hawai'i--is kalo (also known as taro). Central to Hawaiian life in wā kahiko (traditional times), kalo endures as an anchor to a sacred genealogy connecting Hawaiian people to creation, and a vital symbol of culture and resistance in post-contact Hawai'i.



According to the mo'olelo, at the beginning of creation, the gods Wākea and Ho'ohōkūlani sadly lost their firstborn baby. From the baby's burial grew a miraculous plant they named Hāloa Nakalaukapalili--the first kalo plant. The gods later gave birth to a second child, also named Hāloa--the first human.

This sacred family bond of elder and younger brother holds that kalo will provide abundant food for the people of Hawai'i, if we mālama (care for) our elder brother in return. This kuleana (blessed responsibility) has sustained generations in Hawai'i.

The kalo plant also represents a kinolau (living form) of Kāne, the god of life, freshwater, and sunlight. Respect and care for

Hāloa the kalo is at the foundation of much of Hawaiian cultural practice. Indeed, ancient Hawaiians identified so strongly with kalo that the Hawaiian term for family, 'ohana, is derived from the word 'oha, the shoot which grows from the taro corm. Just as the young shoots grow from the corm, so do people grow from the family in the Hawaiian world view.

Reclaiming the traditional agricultural practice of growing kalo was at the heart of the Hawaiian renaissance of the 1970s, as people fought to return water, and restore lands to productive lo'i. This tradition is today threatened by short-sighted agricultural policy in Hawai'i—including poor land use planning, privatization of water rights, and a rush to genetic modification, patenting and profit.



Reclaiming this agricultural past is also reclaiming our stake in our agricultural future. Together, thousands of individuals throughout Hawai'i and the world are calling for a changing tide. We are calling for a new food policy, food sovereignty--towards locally sustainable and culturally respectful solutions for feeding a hungry planet.

**Your generous investment feeds this growing movement! Mahalo for your gift!*

Compiled by Miwa Tamanaha, with research assistance from Bryna Storch and Elizabeth Kane. Photo by Ian Lind, and picture on this page by Solomon Enos.

the sandalwood trade, then by whaling, and then by sugar and cattle. Massive tracts of land and traditional water systems were converted to plantation agriculture. Native lands were summarily seized and redistributed, the monarchy was overthrown, and a constitution written by and for American interests was imposed on the islands. And yet despite the ravages of colonialism and its modern cousins tourism and consumerism, some memory of the old ways remains. The land itself remembers. Thousands of small taro plots and water channels await the opportunity to be replanted.

The reason traditional cultures are so important to the world right now is that they still know how to remember. So much of what native people and their oral traditions are about is the simple act of remembering. It may be remembering an ancient ceremony, reenacting a dance, reciting a prayer, or reconnecting to the past through the recitation of genealogies, and, of course, through storytelling. This kind

of remembering is an essential part of ecological restoration. Watershed biologist Brock Dolman says that the word "restoration" should be pronounced "re-story-ation," because it really means to "re-story" something. Many traditional people say that all restoration work begins with a prayer. It begins in our hearts, because that's where the stories are kept; then we must re-

If we want to save places, people, or plants, we have to remember their stories. In their stories are the details of their natural and social history and, most important, the meaning they have for our lives.

think the story before we begin the work of planning restoration. Even in an age when commercial media seem to have taken over storytelling in our lives, this age-old art survives as one of the most important tools of social transformation that we have, and it is the key to achieving sustainability as well. Stories can mend our broken world.

Reestablishing communities, both social and biological, begins with the simple act of telling the stories of the inhabitants. Storytelling is remembering. To re-member is to put back together. Remembering means bringing something back to

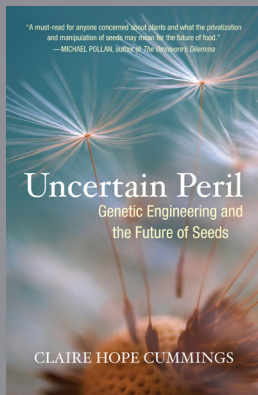
mind rather than letting it be forgotten. If we want to save places, people, or plants, we have to remember their stories. In their stories are the details of their natural and social history and, most important, the meaning they have for our lives. We have just about engineered the world to the point of extinction because we fail to understand what things mean and see how they are

connected. That blindness is caused by forgetting. And the remedy is remembering. As writer Milan Kundera has said, "The struggle of man against power is the struggle of memory against forgetting."

The opposite of remembering is severing. To sever is to cut off. The act of severing that is most disturbing to the integrity of life on earth is the cutting of DNA. This is what genetic engineering does. It cuts into life at the molecular level. It severs something from its ancestors and changes its story. When DNA is taken from one organism and inserted into another, that new

organism has a new evolutionary path, a new story, one created for it by human beings. Some people think that we have the right to control evolution and reproduction of other organisms and that there's nothing wrong with a technology that severs our relationships to nature and our past. I believe that the use of genetic technologies to re-create the world is the defining moral issue of our time. This technology, more than any that came before it, redefines who we are, what makes us human, and how we see ourselves in relation to the rest of the natural world.

Now we are faced with a choice. Do we accept the triumph of the techno-elites, meaning do we let them decide what's best for us, or do we use our common sense and moral compass to restore the public role of humanity in evaluating and governing technology? To do the latter, we need to understand our place in the larger world and in the communities where we live. And for that we need myth and story, because they help us remember who we are and affirm our reverence for life and for the human condition. The one thing native people consistently say is that our survival depends on returning to a sense of the sacred. That means acting with respect--toward each other and the natural world. And the one thing traditional native people consistently do is engage in acts of remembering the sacred. ♡



By Claire Hope Cummings, from her book *Uncertain Peril: Genetic Engineering and the Future of Seeds*. Claire was an environmental lawyer for 20 years, four of the with the U.S. Department of Agriculture. As a public radio and television reporter, and as a writer for a number of national magazines, Cummings has been honored for her coverage of food and farming. She is herself a farmer and was a 2001 Food and Society Policy Fellow.

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THERE IS A GROWING MOVEMENT, as people across Hawai'i join in rejecting genetic modification of taro. Genetic modification (GMO) and patenting of taro endangers health, threatens ecosystems, disrespects culture, and harms the local economy.

GMO-taro is being promoted as a misguided "magic bullet" for one type of plant disease. But, agricultural scientists and farmers throughout the Pacific have proven the best way to protect taro from diseases is to improve soil quality, provide adequate water, grow many varieties of taro with different natural disease resistance, and prevent imports of diseased taro into Hawai'i. In fact, the true intention of GMO-taro is **patents for private profit**--at great expense to farmers, consumers, and native ecologies.

Better, sustainable alternatives are available. Innovative efforts are underway to perpetuate the tradition of taro farming--without GMO.

- In March 2009, hundreds gathered at the State Capitol in Honolulu to celebrate Hāloa with the Hawaiian Caucus, Na Kahu o Hāloa, and KAHEA. To date, over 8,000 individual pieces of testimony have been gathered in support of a statewide ban on genetic modification of taro.

- In October 2008, Hawai'i Island County Council unanimously passed a visionary law to ban GMO-taro and coffee on Hawai'i Island. Over 1,200 testified in favor of the bill. Hawaii Island taro growers were in unified support and 80% of Kona coffee farmers favored the ban.

- In October 2009, Maui County followed suit, with their own ban on GMO-taro. This vision was supported unanimously by the County Council and signed into law by the Mayor shortly after.

- During the 2009 legislative session, sustained grassroots advocacy prevented passage of a dangerous bill supporting "pre-emption." This bill would have stripped local counties of the authority to regulate the presence of GMOs in their own communities.

In 2010, the movement continues! This year, we remain committed as ever to furthering this vision of food sovereignty and the protection of Hāloa. Please join us! I mua!

Photo of Taro Festival at State Capitol by Ian Lind.



"I had a dream last night about being here at the Capitol for this event. We were all gathered to pound poi, but instead we started pounding the walls of the building, chipping away at the concrete with each swipe. As the building began to fall away, kalo leaves emerged from the holes. It's not about bringing down the building. It's about revitalizing our traditions; unearthing the true value of taro." - Monica Wai'au

learn more + join in action at
www.KAHEA.org

Mauna Kea, kuahiwi kuhao i ka malie

Mauna Kea, standing alone in the calm
- Mary Kawena Pukui, 2147

For 15 years, advocates for Mauna Kea have kept bulldozers off the summit of this sacred mountain. Today, new proposals for aggressive development are again on the table. Long-time activist Kealoha Pisciotta speaks here on what it means for our future when we sacrifice a sacred place from our past. In a modern world, what is the place of the sacred?

THE KUMULIPO IS a song of creation, recounting the birth of Hawai'i nei from the heavenly realms and mountains above, to the expansive beaches, reefs and depths of the sea below and all life contained therein. From the Kumulipo, we learn that before man was created, nearly all other life forms were created, giving us understanding of our place in the world. When creation was complete, the gods too were complete and walked the earth with man.

The Kumulipo, the chant which tells our Hawaiian creation story, is also the Hawaiian version of the songs of aloha sung to us by the earth daily, the world over, ever inviting us to join in the great dance of creation.

Just as hidden meanings are encoded in our language, encoded in the earth's songs are the teachings of aloha. The earth's songs are love songs

sung softly, so that only an open heart can hear them and a calm mind can perceive them as they flow and envelop us in the beauty that surrounds us.

The akua are the great composers, for they sang the first songs setting the law of this land--which is aloha in motion. When we enter the for-

their process of creation and its abundant bounty.

Mauna Kea represents the zenith of our ancestral tie to creation. What makes a sacred place sacred is that it has certain properties that magnify aloha and life surrounding them flourishes. Mauna Kea is where many songs of aloha originate, are

When we ascend the summits or descend into the depths of the sea, we travel back in time towards our beginning--the Pō--and are transformed as the sounds are resounding.

est or the sea, we sing our own love songs to the akua, not so that we can find the best flowers for making leis or to ensure the best catch, but as a way to celebrate and participate in

magnified and can be heard most clearly. When we ascend the summits or descend into the depths of the sea, we travel back in time towards our beginning--the Pō--and are trans-

THE CORDS THAT BIND from Mauna Kea, Mountains to the Sea, Na Maka o Ka 'Āina

WATER CAPTURED IN THE PIKO (the center) of a taro leaf, the nodes of bamboo or the coconut is considered pure and sacred water because it has not touched the ground. Similarly and even more so, the water of Lake Waiau, suspended high above in the realm of Wākea, is considered the most sacred.

Water from Waiau continues to be used in rituals of dedication, such as the blessing of a new canoe. Waiau is also an area where families take the piko, or umbilical cords of their

babies, to bury, and where the bones or ashes of deceased family members are placed.



"BECAUSE OF THE PROFOUND INTEREST OF THE HAWAIIANS in navigation, the stars, the planets, we believe that the discipline of architectural astronomy will reveal the place of astronomy in the ancient value system, the place that astronomy has in the intellectual and cultural organization of the Hawaiian past. ...It's this type of thing that needs intensive investigation by our best minds. And in this way we will find the cords that bind. The heiau complexes complement a celestial plan. Often they are exact reflections on earth of the star constellations. We cannot select single shrines or heiau and draw a little circle around them and say "save that."

We look to the whole complex of shrines and heiau, because the complex is an integration of a culture and value system that has developed over centuries." - Francis Warther, Interview



Photos: Lake Waiau (left) from Jeremy Kimura, 1999 Gemini Telescope construction (middle) and Pu'u Hau Kea by Lee Hibert (right).

formed as the songs are resounding. Mauna Kea and the other sacred places of Hawai'i join ranks with many such places on earth where the different peoples of the world--each with their own language and special love songs--continue to honor creation too.

Mauna Kea is where the life giving waters of the god Kāne originate. These waters belong to the land, the people, and the fishes of the sea that need that them to survive--as

Mauna Kea is where the life giving waters of the god Kane originate. These waters belong to the land, the people, and the fishes of the sea that need that them to survive-- as above so below.

above so below. It is where plant and animal species found nowhere else on the planet reside under the threat of extinction. It is where our most revered ancestors are buried, and where the ancestors learned the ways of the heavens, allowing them to navigate the vast Pacific Ocean thousands of years before GPS. It is where our Kūpuna direct us to go and honor creation.

In a modern age, there are modern songs. The industrial revolution produced new songs, often amplified into a pounding, grinding... deafening cacophony and sung in the name of empire, progress, profit and greed. *Produce! Consume!* The machine sings, as those in power

seek to sever our connections between our ancient songs, akua, and our very identity. "Progress must not be questioned," they admonish, as things ancient are relegated to the past, to be forgotten and replaced by these new songs.

Deconstructed, these modern songs do not always tell a story of progress, success or greatness. Too often they tell a story of de-creation... heralding the destruction of the land, sea, and even life itself.

We are told not to question, but we *must* question. And continue to question. The alternative is to blindly accept the machine and its modern song, and accept the claims of those who would rule over us--no matter how outrageous. They claim: *In the name of freedom, oppression. In the name of peace, violence. In the name of progress, destruction. My profit, my right.* These are their songs.

Yet, despite their frequency and self perpetuating nature, these modern songs can't drown out the earth's songs--and we are called to remember aloha. We question: Is life perpetuated and protected with this "progress"? Are the outcomes just?

Pō. Waka lived with Papa, begetter of islands. Begotten was Hawai'i, an island. Mele Kumu Honua

Pele (goddess of fire) engages and Poli'ahu and her fellow kapua, Lili'noe, Waiau, and Kahoupokane, in epic battle on Mauna Kea, sending rivers of lava down the hillside and forming masses that comprise Laupahoehoe and Onomea on Hawai'i Island's east side.

1778. Cook Arrives. 1893. Overthrow.

1880s. In competition for the position of ruling chief for the kingdom of Hawai'i, Emma, wife of the late Alexander Liholiho Kamehameha, and David La'amea Kalākaua, both make pilgrimage to Mauna Kea to prove their connection to the senior line and connect back to a wahi pana.

1968. The state Board of Land and Natural Resources (BLNR) issues a general lease to the University of Hawai'i to build **one** observatory on the summit of Mauna Kea. Over the next 20 years, they build a total of 6, without proper permits. Despite protests by the Native Hawaiian community, BLNR issues "after the fact" permits for the unauthorized buildings. By 1999, there are a total of 24 telescope structures and infrastructure for up to 36.

1979. The Wēkiu bug is discovered. Naturally rare and geographically restricted to the summit of Mauna Kea, this highly specialized Hawaiian species can only live in cinder cone habit above 11,000 feet.

1968: UH Hilo builds .6 meter telescope
1970: UH IFA builds 2.2 meter telescope
1979: Canada/France telescope: 3.8 m
1979: UK infrared telescope: 3.8m
1987: Caltech submillimeter observatory: 10.4m
1987: James Clerk Maxwell telescope built: 15m

1983-1985. Mauna Kea Complex Development Plan prepared and approved by BLNR in 1985. This plan allows up to thirteen (13) telescopes by the year 2000. BLNR restricts telescope built atop Mauna Kea to 125 feet (37 meters) in height or diameter.

1992: Keck I telescope: 10m
1992: NRAO/NSF Very Long Baseline array: 25m
1996: Keck II telescope: 10m

1999: Subaru telescope built by Japan: 8.3m
1999: Gemini Northern Telescope built by US/ UK/ Canada/ Argentina/ Brazil/ Chile: 8.1m

2002: Sub-millimeter array built by Smithsonian Astrophysical Observatory/ Taiwan: 8 telescopes x 6m

1998. Hawai'i State Auditor releases critical report documenting 30 years of mismanagement of Mauna Kea by the BLNR and University of Hawai'i.

2000. The 2000 Master Plan is developed by UH and adopted by the UH Board of Regents. The plan establishes an Office of Mauna Kea Management (OMKM), located and administered through UH-Hilo with all members chosen by the UH administration. Described as a "compromise" calling for an overall reduction of telescope development, in reality this plan allows a minimum of 40 new telescopes and support structures to be built on the sacred mountain.

1999. NASA and UH propose four to six more telescopes, finding no significant impact to the natural and cultural resources of Mauna Kea based on a short environmental assessment (EA). The Office of Hawaiian Affairs (OHA) files suit to require NASA and UH complete a full environmental impact statement, as required by federal law.

By 1999, 90% of the Wēkiu's habitat has been destroyed.

Is it unreasonably destructive to the land, sea and or life? Does it support long-term sustainability or is it just temporary? It is good for all or will only a few profit?

The questions we have asked the international astronomy community regarding Mauna Kea are simple. We have asked them to consider working in a co-operative way. To consider restoration and remediation in lieu of further destruction. We have asked them to respect our burial grounds, to protect the life forms of Mauna Kea, to refrain from using hazardous materials over our principle aquifer, to refrain from injecting hundreds of thousands of gallons of human waste per year into the ground. We ask they not block public access to Mauna Kea. It is a plea to recall the songs of aloha which highlight that astronomy is not in danger and is allowed to continue in a less destructive way—and that is good for *all*.

Aloha is a state of being. The Aloha `Āina movement is about keeping the songs of aloha alive. Without them, a power vacuum is allowed to take hold—whereby the din of a modern machine overpowers the songs of aloha. Just as we cannot be in a state of war and peace at the same time, we cannot be in a state of aloha and a state of de-creation simultaneously. The new songs may have the power to attenuate the ancient songs, but it cannot replace nor ever silence them.

When we sing the ancient songs of creation, aloha flows within us and across the land. When aloha prevails over the power of destruction, we are free. The process of creation continues and the land is perpetuated in righteousness. Aloha! 📍



Contributed by Kealoha Pisciotta. A Hilo girl, respected cultural practitioner and former telescope tech, Kealoha is the president of Mauna Kea Anaina Hou and a member of KAHEA's Board. She has testified before the United Nations Committee on Human Rights through UNPO.

* Make the difference by contributing to the Mauna Kea Legal Defense Fund at KAHEA! We are up against well-funded developers and some of the highest paid attorneys in the state. Your every dollar helps!

No part of this work may be reproduced or used in any way, without the express written consent of Kealoha Pisciotta.

June 2003. U.S. District Court Judge Susan Oki Mollway rules in favor of OHA, finding that the NASA-UH EA was "**markedly lacking in detail and analysis**" and "**failed to properly assess the cumulative impacts of past, present, and reasonably foreseeable telescope activity on the summit.**" The decision prompts the first-ever environmental impact statement (EIS) for telescope activity on the summit.

February 2005. NASA issues its final EIS, concluding that the cumulative impact of 30 years of astronomy activity has caused "**significant, substantial and adverse**" harm to both the cultural and natural resources of Mauna Kea. State law prohibits permits to be issued for projects in conservation districts that cause significant and adverse harm.

January 2007. After a protracted legal battle, the Third Circuit Court rules in favor of the plaintiffs (Mauna Kea Anaina Hou, et al). Judge Hara's decision revokes the Conservation District Use Permit issued by BLNR for the Keck Outrigger Telescope Project and invalidates UH's 2000 Master Plan. He orders the BLNR to prepare and approve a comprehensive management plan for the entire conservation district at the summit of Mauna Kea.

Today. Despite the wins of Mauna Kea advocates in court, UH and telescope developers continue to push an agenda of aggressive development. Again, UH has proposed a plan for allowing expanded telescope development, and again the BLNR has approved it. **And again, advocates of Mauna Kea's sacred summit are going to court to enforce compliance with federal and state environmental and cultural protections.**

Proposals for new telescopes are again on the table, including the development of the UC/Caltech Thirty Meter Telescope, or TMT. This massive new observatory complex (a new road, office building, parking lot, possible gift shop, and stadium-sized telescope) will level the last remaining undeveloped plateau on the Northern slope of the summit.

October 2004. Before UH and NASA complete the environmental review, the BLNR grants a permit to UH and NASA to build the Keck Outrigger Telescope Project in the one-of-a-kind conservation district on the summit of Mauna Kea.

November 2004. Mauna Kea Anaina Hou, Royal Order of Kamehameha I, Sierra Club, Hanalei Fergestrom and Clarence Kukuakahi Ching file suit against BLNR for violating the laws that protect Mauna Kea as a conservation district.

A BETTER FUTURE is possible. Together, people in Hawai'i and around the world are demanding just solutions for the sacred summit:

A Pono Plan. A community-driven, comprehensive management plan with appropriate limits on development, which addresses current environmental & cultural degradation.

Independent Managers. An independent management authority led by a director with experience in cultural and natural resource management; one not controlled by the UH system.

Fair Representation. Hawaiian and environmental representation on the board of directors of the independent management authority, with meaningful participation beyond an "advisory" role.

Fair Compensation. Appropriate payment to the people of Hawai'i for use of the ceded lands on Mauna Kea.

learn more + join in action at
www.KAHEA.org

In Hawai'i, the law is mostly silent on the practice of bioprospecting. KAHEA legal intern Andrea Aseff writes on why this policy of silence may cost us in the end.

Owning Life: Who Profits? Who Pays?

MODERN BIOPROSPECTING involves searching for, collecting, and deriving genetic material from samples of biodiversity—or life—for use in any technology, usually products ranging from pharmaceuticals to cosmetics. In a “wild west” where the law is silent on this practice, unregulated bioprospecting poses serious risks to a healthy environment and traditional cultures. These risks are wide ranging, but can include compromised ecosystem functioning, loss of traditional knowledge of biological resources, indeterminate complications from unsustainable harvesting, exploitation of indigenous communities, desecration of cultural resources, and loss of biodiversity—or more precisely, accelerated loss of biodiversity already well underway. Each day, approximately fifty species become extinct, with experts predicting that 15% of biodiversity worldwide will be lost by 2020.

Though beneficial products have resulted from the practice of bioprospecting, recent human experience also provides myriad examples of institutions unable to draw the line, unclear on when to stop taking

resources from Earth for purposes of profit and prestige.

Owning Life Forms

Ultimately, bioprospectors seek to patent the genetic material that they derive from biodiversity for use in products like drugs and cosmetics. A patent grants a property right to the “inventor,” issued by the U.S. Patent and Trademark Office. With patent in hand, the bioprospector may commercially exploit their “invention” exclusively.

Genetically derived material has been interpreted as patentable by U.S. patent laws, which generally hold that man-altered genetic materials, “compositions of matter,” can be patented (and essentially owned) by a single person or corporation. While business interests have increasingly sought to use U.S. patent law to seize ownership of plants and animals for use in pharmaceuticals and other biomedical industries, some federal judges have pushed back and said such ownership of life forms is inappropriate. Nonetheless, policymakers are still struggling to sort through the issues, and the dust has hardly settled.

Cultural rights advocates have long recognized threats posed by bioprospecting and have opposed bioprospecting of Hawaiian resources. This opposition was articulated at the 2003 Native Hawaiian Intellectual Property Rights Conference, where community leaders expressed opposition to bioprospecting through the Paoakalani Declaration.

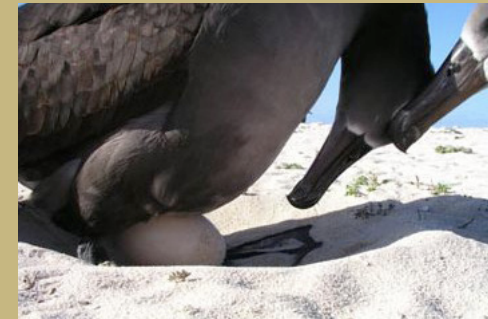
The Paoakalani Declaration asserts the profound and adverse impact to native biological resources resulting from bioprospecting and commercialization without informed consent. It also expresses a willingness to “share with humanity,” so long as rights for appropriate consent and self-determination of appropriate use are upheld. In this view of the world, commercial exploitation is not a right. In fact, cultural rights advocates point to an opposing legal principle—that protection of public trust resources and a clean and healthful environment are rights under the Hawai'i's Constitution.

Regulating Bioprospecting

In the early 1990s, objections to uncompensated bioprospecting that does not share benefits with the

BIOPROSPECTING BAN WON FOR THE Northwestern Hawaiian Islands

WE RANG IN 2009 WITH news of an astounding victory—the adoption of a federal ban on bioprospecting for the Papahānaumokuākea Marine Monument in the Northwestern Hawaiian Islands (NWHI). The ban is the first of its kind in a federally-protected marine area, and ostensibly the first-ever prohibition on bioprospecting by the U.S. federal government.



The remote coral atolls of the Northwestern Hawaiian Islands are among the few remaining predator-dominated ocean ecosystems remaining on the planet. The area is home to 3.5 million acres of some of the world's oldest living coral colonies and encompasses tremendous biodiversity. More than 7,000 marine species have been recorded in the Northwestern Hawaiian Islands, including reef fish, bottom fish, sharks, corals, anemones, jellyfish, mollusks, sea grasses, algae and over 14 million sea birds.

In 2006, after years of committed grassroots advocacy by KAHEA, cultural advocates and conservation groups, the Northwestern Hawaiian Islands were set aside as the Papahānaumokuākea Marine

Monument in 2006. KAHEA remains the key advocate for upholding the legal protections promised for this uniquely Hawaiian ocean region.

After winning a bioprospecting ban in state waters of the Northwestern Hawaiian Islands in 2003, KAHEA has continued to urge the feds to prohibit all bioprospecting in this fragile ecosystem.

Now, thanks to this forward-looking new rule, all who enter the Northwestern Hawaiian Islands must comply with the bioprospecting prohibition. The result: the entire area is today safe from commercial exploitation and the theft of cultural property. The action protects not only the Monument but also sets a precedent for bioprospecting bans in other protected areas.

Worldwide, in cosmetics, food additives, pharmaceuticals, and general industrial processes, more than 18,000 marine compounds are currently used. Patents for over 4,900 DNA sequences of aquatic organisms have already been requested.

Today, advocates from around Hawai'i are demanding transparency, accountable oversight, and protections for public rightholders in bioprospecting activity.

In 2010, KAHEA will continue pushing for protections for Hawai'i's natural and cultural abundance in Papahānaumokuākea, and throughout Ka Pae 'Āina.

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By Marti Townsend, with research assistance from Andrea Aseff. Photo by Mark Alexander MacDonald.

source country and indigenous peoples raised international concern. As a result, the Convention on Biological Diversity (CBD) was enacted, embodying the principles of compensated bioprospecting and prior, informed consent for indigenous peoples on the international level. The United States has declined to be party to the CBD.

Hawai'i's legislature has considered regulating bioprospecting on public lands, but last legislative session, the bill fizzled off the agenda.

In 2006, at the request of the state House of Representatives, the Legislative Reference Bureau produced a report titled "Bioprospecting: Issues and Policy Considerations." The report identified some concerns that were expressed in the Paoakalani Declaration, such as prior informed consent, rights of indigenous knowledge holders to be protected, the sharing and distribution of benefits, and the promotion of conservation and sustainable use of biodiversity.

But the report ultimately punted the ball to the Attorney General Mark Bennett, who concluded the Legislature cannot regulate bioprospecting until the issue of title to so-called "ceded" public lands is settled.

The Attorney General's opinion is correct in asserting the State does not hold title to genetic material in public lands. But that's not the issue. Diamond v. Chakrabarty, a Supreme Court case, made clear that no one

holds property rights to naturally occurring organisms. Ownership is the wrong question. The question the Legislature should be asking is: what is the impact of bioprospecting, and how do we mitigate that impact? The issue is whether the State will regulate bioprospecting on public lands, *not* whether the State "owns" the genetic material in public lands. It does not.

Says Vicky Holt-Takamine, KAHEA Board President, "Hawaiian lands and resources are collectively owned by Native Hawaiians and managed by the State. The State has the kuleana to manage those resources for the benefit of all of Hawai'i's people. They are avoiding that responsibility."

As Hawaii's Constitution Article XI, Section I, makes clear, "all public natural resources are held in trust by the State for the benefit of the people." The State is fiduciary trustee of the natural resources, meaning it has the responsibility to manage and regulate the land for the benefit of the people.

Protecting Abundance

In a place renowned for its abundance of valuable natural and cultural resources, this gap in the law is a concern. Hawai'i boasts unique natural resources of varied ecosystems, biodiverse flora and fauna, rich soils, geologic features, geothermal steam, plentiful sunshine, agreeable climate, life-filled ocean, shoreline, and cultural resources. Though abundant, Hawai'i's millions of unique, often endemic, resources are irreplaceable. On one side of this deep gap stand Hawai'i's abundant resources, ripe for exploitation, and, on the other, the people of Hawai'i who object to such exploitation, as expressed in the Paoakalani Declaration.

While the recent prohibition on bioprospecting in the Northwestern Hawaiian Islands is much-needed progress, the Hawai'i Legislature should act to fill this regulatory gap, prohibiting bioprospecting in all protected or sacred sites. The imperative debates should focus on impacts and mitigation, not ownership. Similar to the development of other areas of public land and natural resources law, such as grazing and mining, regulation is needed to check bioprospecting, the modern day, genetically-engineered tragedy of Hawai'i's public trust commons. 📍

Contributed by Andrea Aseff, Summer 2009 legal intern at KAHEA. Andrea served at our offices as a Hawai'i Bar Association Diversity Fellow and is currently a student at the University of Colorado Boulder School of Law.

This is an abridged version of an article written during her internship with us. You can find the full piece and more information on bioprospecting at www.KAHEA.org.



Our community is home to O'ahu's only major municipal landfill and only construction waste landfill, four of six power plants, and the island's only live fire military training range. It is also home for one of Hawai'i's largest communities of Native Hawaiians.



Uncle John Felisi speaking on the bus about the impacts of the PVT landfill on his home and family. When he first bought his home in 1968, developers promised a park in the site where the landfill was later built.



Taro lo'i at Ka'ala Cultural Learning Center, Wai'anae Valley. Despite the unjust siting of many LULUs (Locally Unwanted Land Uses) in our community, Wai'anae is at the center of efforts to reclaim culture and traditional practice—indigenous and innovative approaches to sustainability.



Environmental Justice connects the impacts of overconsumption and unsustainable lifestyles with communities—like ours—whose health and well-being are the most affected. Together, we can work towards a greener, more abundant, and more just future.

photos by Alana Tamuning, captions by Kamuela Enos

ALL ABOARD FOR ENVIRONMENTAL JUSTICE

In 2009, the Environmental Justice Working Group turned the Waikiki-style bus tour on its side, in a ride through environmental justice hotspots on O'ahu's Leeward Coast. Here, rider **Lauren Ballesteros** shares her experience.

I JUMPED AT THE CHANCE to take a ride on the first Environmental Justice Bus Tour of Wai'anae. Although it is my best friend's home, I have had very little experience there. I have made that long drive along the coast before and always been struck -- as many are -- by the visual disjunction: On one side a gleaming sunset I have ever seen. On the other side, just a few feet inland, lines of abandoned cars, debris, and makeshift shelters line the road. I soon realized, however, this is a very superficial reaction to Wai'anae.

My greatest realization from the bus tour came in hearing each speaker give an impassioned and logical account of how and why Waianae residents have been unfairly burdened by military and industrial contamination in their community, but can be successful in building a healthy,

self-sustaining community.

It was bewildering and disheartening to learn that the dust from an industrial facility was contributing to the illnesses of nearby children; that the military dumped thousands of tons of hazardous materials into the ocean where residents fish for food; that a private landfill has created a mountain of industrial waste just mauka of an otherwise beautiful neighborhood. I was shocked by this recklessness, this complete disregard for human life and the environment.

But at the same time, I was inspired by examples of resilience in Wai'anae. MA'O Farms and Ka'ala Farms are two impressive sustainable agriculture ventures started in Wai'anae by Wai'anae residents. These farms work towards improved sustainable farming methods and food independence, while giv-

ing young people a culturally based education and job training. Wai'anae residents, like my best friend and her neighbors, are investing in themselves and their environment by gardening on their land and sharing with one another as they talk-story over their fences.

Wai'anae is home to one of Hawai'i's largest communities of Native Hawaiians, and bears the brunt of our municipal waste, military activity, and use of electricity. Through the tour I had a chance to see how our lives--all around the islands--are connected to one another. Sustainability has to be about just solutions for *everybody*.

I had the chance to participate in the EJ Tour through my internship for UNITE HERE! Local 5, working on a project in housing and land use. Already having an interest in social justice, I was incredibly encouraged by the Waianae residents' work in solidarity to affect change in their

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Contributed by Lauren Ballesteros, UHM student and UNITE HERE! Local 5 intern. Lauren rode in the first EJ Bus Tour on August 14, 2009, where we brought a busload of changemakers from around the island together with 20 Wai'anae activists--to hear their stories, and see their community through their eyes. We continue to promote environmental justice through these tours.

The EJ Working Group is a joint project of the Concerned Elders of Wai'anae, American Friends Service Committee (AFSC), and KAHEA. Mahalo to MA'O Organic Farms for their support.

community. I took the tour because I believe in the vision of Wai'anae as a sustainable community, producing its own goods and caring for its own land. It was empowering to understand the cruelty of some and the fight of so many on behalf of this community. The possibilities are enormous, and within reach. Thank you to the members of this community for sharing with me, and to the EJ working group for providing this opportunity! 📍

*The EJ working group must fundraise \$1,000 for each tour, to cover the cost of the bus and materials. Your gift helps keep the bus running! Mahalo!

This past summer, KAHEA was honored to host the first-ever Casey Jarman fellow in Environmental Law, Stewart Yerton. In his six weeks at KAHEA, he and fellow legal intern Andrea Aseff helped prepare a legal action to uphold promised protections for the Northwestern Hawaiian Islands. Here, his experience, in his own words.

On June 9, two dozen or so people gathered at NOAA's offices in Hawai'i Kai to discuss the future of one of the world's most protected marine reserves--Papahānaumokuākea in the Northwestern Hawaiian Islands (NWHI). Seated around a U-shaped conference table were the members of the Reserve Advisory Council. The council is a panel of government officials, scientists, and Hawaiian cultural practitioners who advise decision-making in the sprawling reserve that encompasses this remote, 1,200-mile chain of atolls, shoals, and reefs extending from the main Hawaiian Islands into the Pacific Ocean.



I was there to observe. I was beginning a six-week internship with KAHEA, and they wanted to ensure that the government agencies were complying with the laws and "do-no-harm" principle that were supposed to guide permitting decisions for activities in the reserve.

Over the next six weeks following that meeting, my fellow legal intern, Andrea Aseff, and I would conclude that the state of Hawai'i was in fact violating the law in the way it granted permits. The division had granted permits for people to take coral samples, kill sharks, anchor devices, and do all sorts of other activities in what is supposed to be one of the most protected marine reserves on the planet. Furthermore, the division had granted these permits, hundreds altogether, **without** assessing the environmental impacts of the activities. In a recent high profile case, the Hawai'i Supreme Court had recently made the laws regarding environmental impact assessment clear when it ruled the state had violated this law by permitting Hawai'i Superferry to go forward without proper assessment of potential environmental impacts. In the NWHI, this was Superferry times a hundred.

The question was whether we would be able to do anything about it.

Could we really sue the state?

From us, the answer: *In fact, suing the state was exactly what we did. For a system which is failing to uphold promised public protections, we are demanding change towards better, more accountable governance. You can read more about this legal action, the amazing Northwestern Hawaiian Islands, and the rest of Stewart's essay at www.KAHEA.org.*

**Legal internships at KAHEA bring important legal capacity to our grassroots work and the communities we serve. For each intern we host, we must raise approximately \$5,000.*

Your giving makes the difference!

Contributed by Stewart Yerton. Stewart is a former reporter for the Honolulu Star Bulletin, and today a law student at the UH Richardson School of Law.

your grassroots gift makes the difference

FOR 10 YEARS, KAHEA HAS BEEN standing up for conservation, cultural rights, and environmental justice--without a single dollar from any corporation or federal agency. A lot of support comes from charitable foundations, but nearly **one quarter of our budget each year comes from individual supporters like you, each giving what they can.**

It takes about \$200,000 annually to keep the doors open and campaigns running here at KAHEA. **If every one of KAHEA's 10,000 supporters gave just \$10 today, we'd be halfway there!**

That's the power of the grassroots--what is possible when people come together and join their voices, their strengths, and their dollars. When we get organized, and get moving, we unleash the power in ourselves to act out our highest principles, and the power to realize a united vision for the future of Hawai'i nei.

You can give your tax-deductible gift online at www.KAHEA.org, or in the envelope provided here. Takes just two minutes! But in that two minutes, you are pushing forward this incredible and growing movement for sustainability and social justice in Hawai'i. To date, KAHEA's efforts have secured permanent protections for over 140,000 square miles of Hawaiian lands and waters. What an amazing legacy!

Please join us, and give today!

www.KAHEA.org

\$35 is the gift of enough paper and toner to deliver 3,000 pieces of testimony to the legislature

\$300 is the gift of one month of e-advocacy. KAHEA's on-line testimony tables allow thousands to weigh in issues, making citizen involvement possible for communities far from Honolulu.

\$1,000 is the gift of one environmental justice bus tour, allowing members of the Wai'anae community to share first-hand with decision-makers and change-makers the experience of their community with environmental injustice.

\$5,000 is the gift of one legal intern. Not only are internships bringing important legal capacity to the cause of cultural rights and environmental protection, but also training young lawyers in Hawai'i through the lens of ecological conservation and indigenous rights.

Every dollar makes a difference! Please give today!



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