

Sprouting Up...

Hawaii's bold bid for a bioprospecting bill

GRAIN

The US – home of many of the world's biggest and brawniest biopirates – is the last place most people would expect to see drawing up bioprospecting legislation. But that is exactly what is going on in Hawaii. Because of its geographical isolation, Hawaii has a high level of unique biological diversity, which makes its lands, waters and indigenous peoples appealing targets for bioprospectors. The Hawaii Audubon Society states that of more than 22,000 known species on the islands, 8,850 are found nowhere else in the world.

This fact was not lost on Diversa, a US corporation involved in bioprospecting activities all over the world and its oceans, and it wasted no time in drawing up a bioprospecting agreement with the University of Hawaii in 2002. Under the agreement, Diversa was given exclusive rights to discoveries based on genes drawn from existing material collections at the university and from new samples isolated from ocean resources in the future.

This agreement, set against a backdrop of a legal vacuum regarding rights to biological resources in the state, prompted a number of native Hawaiian and other civil society organisations to push for legislation governing bioprospecting. The first bioprospecting bill, HB 2034, was passed by the House of Representatives on March 9, 2004. This Bill calls for a three-year prohibition on conveyance of rights, interests, and title to Hawaii's genetic resources on all public lands, to allow time to develop more permanent regulations. Parties pushing the bill were initially hoping for a full moratorium, but were relatively happy with the compromise agreed. While the bill wouldn't prohibit bioprospecting research or contracts, it would prevent the transfer of rights to those resources.

Meanwhile, the Senate was considering a different bill (SB643) in which the wording had been amended (under pressure from the University of Hawaii) to exempt the university from the prohibitions outlined in the house bill and to specifically exclude ocean resources from the definition of trust lands. According to Le'a Kanehe of the Native Hawaiian Legal Corporation, these changes make the bill completely ineffective, especially as the University of Hawaii is by far the biggest actor in the state with respect to bioprospecting. In early 2004, The House Water, Land and Hawaiian Affairs Committee removed these exemptions, but within one week, the Economic Development and Business Concerns Committee put them right back in.

This action was based on testimony from the agriculture industry that the bill would negatively impact on sales of genetically modified (GM) food crops, despite the fact that the bill has no impact on agricultural research or operations whose products are neither indigenous nor endemic to the state. Hawaii is viewed as something of a GM playground by industry, because



Taro (Colocasia esculenta) being harvested from pond fields in Hawaii. Taro is thought to be one of the earliest domesticated crops, originating in Malaysia. It spread widely but has many secondary centres of diversity, Hawaii being an important one.

its geographical isolation makes contamination less of an issue than in other places and because of its year-round growing cycle. The only GM crop that could be affected by the bill is taro, 300+ varieties of which are grown on the island. Research is being undertaken at the university on GM taro, and local groups are concerned about its impact on local varieties of this traditional staple. Native Hawaiian rights advocates who had spent many months successfully negotiating mutually agreeable language with the University of Hawaii in relation to the bioprospecting bill, were dismayed by the agriculture industry's power to influence the legislation.

With no agreement between House and Senate, at the end of the legislative session, all that was agreed was to create a commission to review the issue of bioprospecting in the light of existing laws, and taking into account traditional and indigenous knowledge. But the House bill can be reintroduced next session and local groups are hoping that they will have sufficient influence to prevent the Diversa contract from being renewed by the University of Hawaii in 2005.

Main sources: Personal communication with Le'a Kanehe of the Native Hawaiian Legal Corporation; Jennifer Hamilton, "State sees 'green' in bioprospecting", *Pacific Business News*, May 7, 2004, <http://pacific.bizjournals.com/pacific/stories/2004/05/10/story3.html>; latest version of Senate Bill SB643: www.capitol.hawaii.gov/sessioncurrent/bills/sb643_hd3_.htm; and House Bill HB 2034: www.capitol.hawaii.gov/sessioncurrent/bills/HB2034_HD2_.htm.

