

**TEMPORARY ADVISORY COMMISSION ON BIOPROSPECTING
MEETING**

**Office of Hawaiian Affairs Board Room
711 Kapi'olani Blvd., Suite 500
Friday, November 30, 2007**

MINUTES

PRESENT:

Walter M. Heen, Chair, Office of Hawaiian Affairs
Lawrence P. A. Burgess, Hawaiian Community
Elizabeth Corbin, Dept. Business, Economic Development & Tourism
Betsy Gagne, Dept. Land & Natural Resources
Lisa Gibson, Biotechnology Industry
Kevin Kelly, University of Hawaii
Wayne Kaho'onei Panoke, Hawaiian Community
Vicky Holt Takamine, Hawaiian Community
David Watumull, Biotechnology Industry

ABSENT:

Keiki-Pua Dancil, Hawaiian Community
Oswald Stender, Hawaiian Community

STAFF:

Yuko Chiba, Project Manager

I. CALL TO ORDER

9:09 AM. Chair Walter Heen convened the meeting. The pule wehe was offered by Wayne Kaho'onei Panoke.

II. The Commission unanimously approved the minutes of November 16 on motion by Kaho'onei Panoke, second by Liz Corbin. The Chair ordered the vote recorded.

The Chair requested amendment of the agenda to include a proposal to schedule a full-day meeting. Motion by Kaho'onei Panoke, amending the agenda to include the Chair's proposal for a day-long meeting, second by Betsy Gagne, was approved. The Chair ordered the unanimous vote recorded. The morning session of the meeting will be held in the OHA Boardroom on Tuesday, December 18. Yuko is to follow up on other afternoon meeting sites at the UH Manoa Innovation Center and the State Capitol.

III. DISCUSSION OF DRAFT REPORT

DEFINING BIOPROSPECTING

The following three definitions were placed on the Smart Board by Yuko Chiba:

a. THE COLLECTION OF SAMPLES FROM PLANTS, ANIMALS, AND MICRO-ORGANISMS TO SEARCH FOR COMMERCIALY VALUABLE BIOCHEMICAL OR GENETIC RESOURCES.

b. THE COLLECTION OF SAMPLES FROM PLANTS, ANIMALS, AND MICRO-ORGANISMS TO SEARCH FOR VALUABLE BIOCHEMICAL OR GENETIC RESOURCES.

c. ANY INTRUSION INTO THE 'AINA OF THE KANAKA MAOLI, WHICH INCLUDES THE LAND, THE AIR AND WIND, SUBTERRANEAN AND SURFACE WATERS, AND THE KAI AND THE SUBMERGED LANDS BENEATH IT, THAT SEEKS TO REMOVE ANY PLANT OR ANIMAL LIFE, OR ANY MICROORGANISM, OR ANY BITS, PIECES, OR SAMPLES, OF WHATEVER SIZE, FROM ANY PORTION OF THAT 'AINA OR FROM ANY ANIMAL OR PLANT LIFE, OR ANY OTHER FORMS OF LIFE FOUND OR EXISTING WITHIN THE 'AINA.

From the standpoint of western thought the last definition is rather harsh, the Chair said, but I think it incorporates the thinking of some native Hawaiians.

Discussion

We need to figure out whether a continuing entity will be concerned with scientific research. What we would have is a situation where researchers would have four agencies to contend with, where they now have three. That would make things tougher. For those of good faith, we don't want the process to be so difficult.

We could recommend that all of scientific research permits and all other permits go through one agency and take DLNR out of the picture.

One of the issues that we need to consider is what we are looking at when the other parts of the application kick in. If we use Definition #2, that's a long list of things for scientific researchers to go through. There needs to be some place where the two will be separated. It seems that the definition is where it should be.

We already have an existing set of administrative rules, and all applications ultimately go to the DLNR Board. We need a legal definition, a process for the review body and a website indicating how the applications are filed.

If every permit application were reviewed by the bioprospecting entity, the first cut would have to be a yea or nay. At some point the difference surfaces. We may need to have two tracks.

The number of permits for bioprospecting will be very small; the exception to the rule. Are we trying to set up a system that makes bioprospecting possible? We can set up rules and regulations to have it happen in a certain way.

There needs to be verification and self-checking. What if it starts as pure research and there is an "aha" moment? Having addressed that in their agreements, applicants would have to go back through the process.

If everything goes through one entity and we have a two-tier path, UH would be OK. That function moves from DLNR to the Bioprospecting entity at the top level.

One central location is needed for "institutional knowledge."

UH has had no known violation. People come back that want to extend the use of the material for another year. A track is being developed right now.

We need to be mindful of what its like to fly in terms of a new institution; the legislature creating a brand new body is a stretch. They would be more inclined to look at how to amend existing rules, providing a smaller, stronger, more uniform body; making sure that reports are done, etc.

If the legislature did nothing more than define bioprospecting, how would DLNR be affected? Existing rules would need to be revised, its processes improved. The question is whether there would be a separate reviewing body!

The Costa Rica situation where a separate institution and process based on their definition was created is a good example. An entity attached to DLNR for administrative purposes might be empowered to be watchdogs for bioprospecting and covered by an agreement, providing all of the conditions have been met.

If the Commission can only do one thing it would be the definition, because everything would follow from that definition. We are now the experts and can come up with the definition...layer it ...have one or two options. That is the best thing that can come out of this. It would be our starting point.

Every scientific endeavor would qualify for this. To be clear, the definition should include something about the researcher's "intent." If the sample taken has indigenous cultural implications, than that casts a different light.

How does "precautionary principle" work and would there be a problem if it is included? Experiments are designed. Scientists don't necessarily use that principle. However, the idea that you don't do something because there might be a hazard is understood by scientists.

If that be the case, how is it that precautionary principle seems to be recognized in the international arena? Isn't this a question of whether the applicant is following all of the laws in the State of Hawaii? Is not the "precautionary principle" embedded in the law? To put that in the definition would be a stretch.

There is underlying mistrust of the research community; that samples can be taken and used outside the scope of bioprospecting. Where is the middle ground?

The commission itself would have to keep track. What will they do? Where would they go?

Let us try for an outcome that is reasonable. The worst thing is to propose something that will give us nothing in the end.

Research is going to get done by an expert and it will sit for years and you won't be able to track that. Let's say that 5 years after the initial work the researcher made all the money and we got robbed. Something needs to be included in the definition.

We should not worry about that level of detail at this time. We need something that is functional.

There will need to be new rules at DLNR and at the University of Hawaii. The report should stress a process for follow-up on research.

The definition should include "knowledge." The Vanuatu definition includes "the knowledge, innovations, and customary practices of local communities associated with those genetic resources."

There is no serious effort to include scientific research. How would we define "intent" if we are to include that in the definition? The definition should include scientific research and the word intent.

Most things will be collected with no intent for them to be commercially viable.

The vast majority of permits that are going to be approved will have nothing to do with the definition of bioprospecting.

In the sorting process, DLNR, will sort and determine whether or not a package is bioprospecting. A good litmus test is "where are the funds coming from, who is funding this research?"

Research is tax dollars at work, all for the purpose of making human conditions better.

There need to be guidelines to go with the definition providing for the review of all sampling permits to determine if there is to be bioprospecting now or in the future.

The commission's report can include examples of bioprospecting in other jurisdictions, what it is and what it is not!

Yuko will e-mail the following draft of the bioprospecting definition to Commissioner's:

BIOPROSPECTING MEANS ANY ACTIVITY, EXCEPT TRADITIONAL AND CUSTOMARY PRACTICES. UNDERTAKEN TO HARVEST OR EXPLOIT FOR COMMERCIAL PURPOSES ALL OR ANY OF THE FOLLOWING;

(A) SAMPLES OR DERIVATIVES, IN SITU OR EX SITU, OF GENETIC OR BIOCHEMICAL RESOURCES FROM PLANTS, ANIMALS OR MICROORGANISMS;

(B) THE KNOWLEDGE, INNOVATIONS, TRADITIONAL AND CUSTOMARY PRACTICES OF NATIVE HAWAIIANS OR OTHER PEOPLES ASSOCIATED WITH THOSE SAMPLES OR DERIVATIVES.

Reminding Commissioners they are to be meet on Friday, December 14, 9-12 noon, and on Tuesday, December 18, 9-4 PM., the Chair adjourned the meeting at 11:50 AM.