

PAOKALANI DECLARATION



PALAPALA KŪLIKE O KA 'AHA PONO PAOAKALANI DECLARATION

BACKGROUND

On October 3-5, 2003, Kanaka Maoli of Ka Pae `Āina Hawai`i gathered at Ka `Aha Pono – Native Hawaiian Intellectual Property Rights Conference – and united to express our collective right of self-determination to perpetuate our culture under threat of theft and commercialization of the traditional knowledge of Kanaka Maoli, our wahi pana and nā mea Hawai`i.

Attending as participants were Kanaka Maoli who are Hawai`i's foremost kumu hula; elders skilled in lā`au lapa`au, traditional and contemporary artists; and individuals who engage in all cultural expressions, including spiritual and ceremonial practice, subsistence agronomy, marine economic pursuits, and the maintenance and transmission of Hawai`i's oral traditions; teachers and academics; and attorneys. Several non-Hawaiian participants made significant contributions throughout the conference.

PREAMBLE

Inspired by this historical meeting at Paoakalani, upon the lands of our Queen Lili`uokalani, we celebrate the mana of our akua, `aumakua, kupuna, `āina, and lāhui. Cognizant of our kuleana as guardians of our culture and land, we endorse the following Declaration as our collective responsibility to determine a pono future for Hawai`i nei, her culture, and indigenous peoples.

Throughout the Pacific Basin and Ka Pae `Āina Hawai`i, the territories, lands, submerged lands, marine resources and seas of our peoples are being subjected to commercial exploitation. This exploitation is perpetrated by state and national governments, international agencies, private corporations, academic institutions and associated research corporations.

Commercialization has profoundly and adversely impacted Kanaka Maoli spiritual practices, sacred sites, and associated objects, preventing our ceremonial undertakings, encouraging the selling of sacred ceremonial artifacts, and advertising the images of sacred ceremony and wahi pana. The creative cultural expressions of Kanaka Maoli are being stolen and commercialized for the advertising of commercial products and for the sale of our lands and natural resources in total disregard for and in derogation of our rights as creators of these artistic cultural expressions.

In Hawai`i, bioprospecting and biotechnology institutions and industries are imposing western intellectual property rights over our traditional, cultural land-based resources. This activity converts our collective cultural property into individualized property for purchase, sale, and development. The biogenetic materials of our peoples, taken for medical research for breast cancer and other diseases attributable to western impact, have been obtained through misrepresentation and without the free, prior and informed consent of our peoples. We view these activities as biopiracy and condemn these acts as biocolonialism.

In recognition of the Pacific `ohana and the global family of indigenous peoples who have previously produced unifying statements, we incorporate and support the statements contained in the Kari-Oca Declaration, Indigenous Peoples' Earth Charter, Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, UNDP Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights (Suva, Fiji, 1995), and the Treaty For a Lifeforms Patent-Free Pacific and Related Protocols.

KAUOHA: DECLARATION

1. Kanaka Maoli have the right of self-determination. By virtue of that right we freely determine our political status and freely pursue our economic, social, and cultural development, which includes determining appropriate use of our traditional knowledge, cultural expressions and artforms, and natural and biological resources.
2. The lands, submerged lands, waters, oceans, airspace, territories, natural resources of Ka Pae `Āina Hawai`i and associated Kanaka Maoli traditional knowledge are, by our inherent birth right, the kuleana and property of Kanaka Maoli and the inheritance of future generations of our peoples. As such, the standards and criteria for consumption, development, and utilization of these resources shall be there for Kanaka Maoli to promote our culture through principles of pono, aloha `āina and mālama `āina.
3. We reaffirm that colonialism is perpetuated through the intellectual property regimes of the west and call upon all peoples residing on our territories to acknowledge, adopt, and respect the cultural protocols of our peoples to maintain and protect Hawai`i and its great wealth of biodiversity.
4. We declare our willingness to share our knowledge with humanity provided that we determine when, why, and how it is used. We have the right to exclude from use those who would exploit, privatize, and unfairly commercialize our traditional knowledge, cultural expressions and artforms, natural resources, biological material, and intellectual properties.

PAPA: THE FOUNDATION

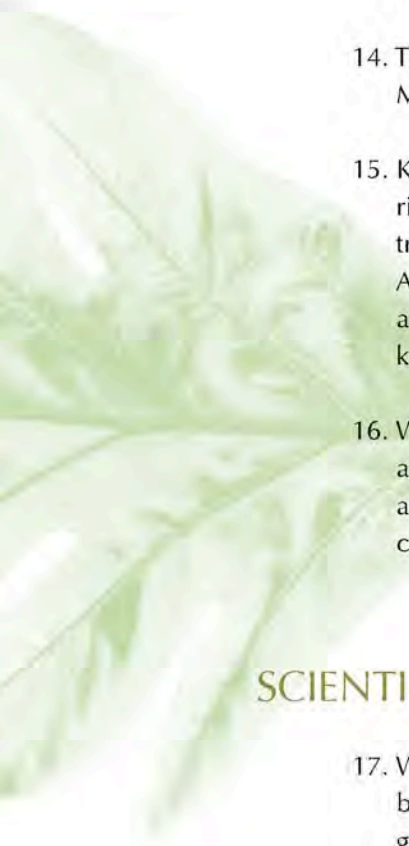
5. According to the Kumulipo, a genealogical chant of creation, Pō gave birth to the world. From this female potency was born Kumulipo and Pō`ele. And from these two, the rest of the world unfolded in genealogical order. That genealogy teaches us the land is the elder sibling and the people are the younger sibling meant to care for each other in a reciprocal, interdependent relationship. Humanity is reminded of his place with the order of genealogical descent. The foundational principle of the Kumulipo is that all facets of the world are related by birth. And thus, the Hawaiian concept of the world descends from one ancestral genealogy.
6. From time immemorial, Kanaka Maoli have understood the evolution of the world, its life forms, and our cultural place within the cosmic worldview. All life forms of the honua, arising first from the kai with counterparts on the `āina, the naming of our `ohana and the identification of our mo`okū`auhau in the Kumulipo, impress upon our peoples the obligation to act as the kia`i of the honua and its life forms. Through pono behavior, we perpetuate the life of our lands and our peoples.

7. We emphasize that the Kanaka Maoli worldview is governed by the cultural principles of pono, mālama `āina, and kuleana. Within this worldview, the Earth and her myriad lifeforms (biological diversity) are kinolau, the earthly body forms of the Akua. Every life form possesses living energy that sustains each other creating a familial, interdependent, reciprocal relationship between the Akua, the `āina, and the kanaka in fine balance and harmony.
 - 7.1 Pono governs the cosmos, guiding and informing the behavior among the Akua, the `āina, and the kanaka, and their interaction at and between the microcosmic and macrocosmic levels, ensuring proper maintenance and development of our society, our culture, and our existence in all forms and in all dimensions.
 - 7.2 Mālama `Āina is the operating cultural principle that maintains pono. The people and the land are of the same integrated ancestral lineage, the `āina and all of her life forms, our ancestor, and the Hawaiian people, the younger.
 - 7.3 Each aspect of the trilogy of the Akua, the `āina, and the kanaka share familial, interdependent, and reciprocal responsibilities to each other expressed in kuleana. Kuleana encompasses both the rights and corresponding sacred responsibility with accountability to maintain, conserve, and protect the Akua, the `āina, and the kanaka in perpetuity.
8. As Kanaka Maoli, we maintain our inalienable rights to, jurisdiction over, and management of our `āina mai uka a i kai, mai kahi pae a kahi pae and assert our kuleana for future generations.
9. We maintain our inherent right of self-determination, despite the oppression of colonization and illegal occupation of our land base since January 17, 1893 when our sovereign Kingdom of Hawai`i was overthrown by the military force of the United States.

TRADITIONAL KNOWLEDGE, CULTURAL EXPRESSIONS AND ARTFORMS

10. Our culture is living and evolves over time with the Kanaka Maoli peoples. The embodiment of Kanaka Maoli identity manifests in both traditional and contemporary artforms and cultural expressions. Authenticity, quality, and cultural integrity of Kanaka Maoli cultural expressions and artforms are, therefore, maintained through Kanaka Maoli genealogy.

11. Kanaka Maoli traditional knowledge encompasses our cultural information, knowledge, uses, practices, expressions and artforms unique to our way of life maintained and established across Ka Pae `Āina Hawai`i since time immemorial. This traditional knowledge is based upon millennia of observation, habitation, and experience and is a communal right held by the lāhui and in some instances by `ohana and traditional institutions and communities. The expression of traditional knowledge is dynamic and cannot be fixed in time, place or form and therefore, cannot be relegated to western structures or regulated by western intellectual property laws. We retain rights to our traditional knowledge consistent with our Kanaka Maoli worldview, including but not limited to ownership, control, and access. We also retain the right to protect our traditional knowledge from misuse and exploitation by individuals or entities who act in derogation of and inconsistent with our worldview, customs, traditions, and laws. Our traditional knowledge includes, but is not limited to, the following:
- a. knowledge of histories and traditions transmitted through Kanaka Maoli traditional and contemporary means;
 - b. details of cultural landscapes and particularly sites of cultural significance;
 - c. records of contemporary events of historical and cultural significance;
 - d. sacred ceremonies, images, sounds, knowledge, material, culture or anything that is deemed sacred by the lāhui, `ohana, and traditional institutions and communities;
 - e. cultural property, including but not limited to expressions, images, sounds, objects, crafts, art, symbols, motifs, names, and performances;
 - f. knowledge of current use, previous use, and/or potential use of plant and animal species, soils, minerals, and objects;
 - g. knowledge of planting methods, care for, selection criteria, and systems of taxonomy of individual species;
 - h. knowledge of preparation, processing, or storage of useful species and formulations involving more than one ingredient;
 - i. knowledge of ecosystem conservation (methods of protecting or maintaining a resource);
 - j. biogenetic resources that originate (or originated) in Ka Pae `Āina Hawai`i and consistent with the Kumulipo;
 - k. tissues, cells, biogenetic molecules, including DNA, RNA, and proteins, and all other substances originating in the bodies of Kanaka Maoli, in addition to genetic and other information derived therefrom;

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12. Our oral traditions transmitted from generation to generation through our kupuna have sustained our people, culture and natural resources. Therefore, we must look to our kupuna for guidance to the rights and responsibilities inherited with this knowledge.
 13. We recognize our traditional methods of expression, including oral modes, as valid forms of documentation.
 14. The use of traditional knowledge is inseparable from the kuleana to comply with the Kanaka Maoli worldview, whether operating within traditional, contemporary, or western structures.
 15. Kanaka Maoli, as the inherent owners and guardians of our traditional knowledge, are the rightful beneficiaries of the privileges of western intellectual property rights when our traditional knowledge is used. We retain all rights to the use of our traditional knowledge. Accordingly, western intellectual property rights holders who use such knowledge do not attain ownership rights to that knowledge. Those who use our traditional knowledge have the kuleana to properly accord Kanaka Maoli the benefits and rights derived from such use.
 16. We oppose the theft of our traditional knowledge by entities, including the pharmaceutical, agricultural and chemical industries, the United States military, academic institutions and associated research corporations, for scientific and biotechnology research and further commercialization and granting of patents on all life forms.

SCIENTIFIC RESEARCH

17. We have the right to free, prior and informed consent before research relating to our biological resources commences. Researchers, corporations, educational institutions, government or others conducting such research must fully and entirely inform Kanaka Maoli regarding the purposes of their research and recognize our right to refuse to participate.
18. Biological samples are being transferred, traded, bought, and sold without the agreement or consent of our peoples, in violation of our inherent human rights.
19. Although biological and genetic samples have been transferred, sold, patented or licensed, Kanaka Maoli never relinquished our rights to our biological and genetic materials and, therefore, call for the rightful repatriation of such samples and due compensation.
20. Kanaka Maoli human genetic material is sacred and inalienable. Therefore, we support a moratorium on patenting, licensing, sale or transfer of our human genetic material.
21. We further support a moratorium on patenting, licensing, sale or transfer of any of our plants, animals and other biological resources derived from the natural resources of our lands, submerged lands, waters, and oceans until indigenous communities have developed appropriate protection and conservation mechanisms.

KŪ I KA PONO: ASSERTING THE BALANCE

22. In accordance with our right of self-determination, we are determined to take future action to bring pono and protect our culture, ʻāina and lāhui from exploitative use and commercialization of our traditional knowledge, cultural expressions and artforms, natural and biological resources, and intellectual properties. Recognizing that existing laws are insufficient to protect our cultural and intellectual property, we call upon Kanaka Maoli, our ʻohana, and supporters to join in the following future action:

- 22.1 Develop a code of conduct/standards for best practices, which private industries, academics and academic institutions, and government must observe before and during the use (such as visual, audio or written recording) of our traditional knowledge, cultural expressions and artforms, and natural and biological resources.
- 22.2 Develop a sui generis system for protection of our intellectual property and related traditional knowledge and biological diversity and support its enactment into law.
- 22.3 Advocate for adoption of a policy that recognizes our rights to our traditional knowledge, cultural expressions and artforms, or natural and biological resources and ensures a system of equitable benefit sharing by those conducting research relating to, or using or seeking to use our traditional knowledge, cultural expressions and artforms, or natural and biological resources.
- 22.4 Continue to educate Kanaka Maoli, the public, the private sector and government about our cultural and intellectual property rights through Kanaka Maoli-produced forums, video works, and publications.
- 22.5 Continue Ka ʻAha Pono as an annual conference to gather, discuss, educate about, and take action to protect Kanaka Maoli intellectual property rights, traditional knowledge, culture, arts, and natural and biological resources.

23. We call upon government, the private sector, and the public to cooperate with the above future action and undertake to develop and implement policies and practices consistent with this Declaration in full consultation with Kanaka Maoli.

GLOSSARY

HAWAIIAN

ʻĀina: Land (lit. that which feeds)

Akua: Divine manifestations

ʻAumakua: Deified ancestral manifestations

Honua: Earth

Kai: Ocean

Kanaka Maoli: Genealogical descendants born of Ka Pae ʻĀina Hawaiʻi

Ka Pae ʻĀina Hawaiʻi: Hawaiian archipelago from Kure to Kamaʻehu, including waters, submerged lands, air and all life forms, minerals and other resources therein from the depths of the Earth to the zenith of the heavens from the rising of the sun to the setting of the sun.

Kiaʻi: Sacred guardian

Kinolau: Earthly manifestations of Akua

Kumu hula: Master teachers of Kanaka Maoli dance and chant

Kumulipo: Cosmogonic genealogy chant of creation

Kupuna: Kanaka Maoli elders, existing both physically and spiritually, who possess traditional knowledge and serves as conduits ensuring the present and the future of ka lāhui Hawaiʻi.

Lāʻau lapaʻau: Traditional process of Hawaiian healing incorporating the gathering, preparation, and use of Native plants in conjunction with prayer and the Kanaka Maoli worldview.

Lāhui: Collective being of Kanaka Maoli expressed through land, natural resources, and institutions

Moʻokūʻauhau: Inherent Ancestral Genealogy

Mai uka a i kai, mai kahi pae a kahi pae: include lands, waters, submerged lands, air and all life forms, minerals and other resources therein, according to the cultural principle of mālama ʻāina.

Mana: Spiritual strength

Nā Mea Hawaiʻi: All things Kanaka Maoli

ʻOhana: Traditional system of familial relations

Wahi pana: Sites of significance and importance to Kanaka Maoli

ENGLISH

Biogenetic materials: Biological and genetic resources, including plant material, animals, microorganisms, cells, and genes.

Biological diversity (biodiversity): The total variety of life in all its forms. It includes many levels that range from the level of alleles to the biosphere. The major elements of biodiversity include alleles, genes, populations, species, ecosystems, landscapes and the ecological processes of which they are a part.

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

Sui generis: Of its own kind; unique. In the context of Kanaka Maoli, sui generis mechanisms are those we create for particular application to Ka Pae `Āina Hawai`i.

Western intellectual property rights: Includes copyrights, trademarks, and patents. Intellectual property is a legal concept used to “protect” the dissemination of information, derives from capitalism, and is commercial in nature. It is used to insure an author, inventor, or producer of a product the right to monopolize what they have created.

Copyrights

Copyright law protects the expression of an idea, literary, artistic, commercial, or otherwise. The expression is protected when it is original, not copied and “fixed in a tangible medium of expression.” An expression is fixed when it is written or recorded somehow so that it can be communicated again. “Original” means only that the author contribute something more than a mere trivial variation; in other words the author must contribute something recognizable as his own. Works that are protected by copyright law include literature, music, drama, dance, pictures, sculpture, and movies. Copyright does not protect ideas, concepts or procedure. Protection under copyright law lasts for the author’s life plus 70 years. During that time, the author has exclusive rights to reproduction or copying, distribution, adaptation, public performance, and public display. When the term for protection expires, the work becomes part of the public domain and can be used by anyone.

Trademarks

Trademarks are always linked to commercial activity. The purpose of trademarks is to identify goods and products in the mind of the consumer to gain a commercial advantage. Trademarks are often found in names and symbols that identify products.

Patents

Patent law deals with inventions; any new and useful process, machine, manufacture, composition of matter, or any new and useful improvement. Patents exist for things found everywhere: medicine, computers, and cars, just to name a few. Patents are not given for any natural phenomena or abstract ideas, for example mathematical formulas and calculation.