



To: The Honorable Chairs Gabbard and Inouye, Vice-chairs Richards and Elefante, and members of the Senate Committees on Agriculture and Environment, and Water and Land

From: Hawai'i Reef and Ocean Coalition (by Ted Bohlen)

Re: Hearing SB376 **RELATING TO THE ENVIRONMENT**

Hearing: Monday, January 30, 2023, 1:00 p.m.

Aloha Chairs Gabbard and Inouye, Vice Chairs Richards and Elefante, and members of the Committees:

The Hawai'i Reef and Ocean Coalition (HIROC) is a group of scientists, educators, filmmakers and environmental advocates who have been working since 2017 to protect Hawaii's coral reefs and ocean.

The Hawai'i Reef and Ocean Coalition STRONGLY SUPPORTS SB376!

This Act would prohibit the mining, extraction and removal of minerals from the seabed in all state marine waters.

Seabed mining poses an unacceptably high risk of damage and disruption to the marine environment, including our globally significant ecosystems that host thousands of species. It also may threaten ocean-dependent industries such as

commercial and recreational fishing and tourism. The Legislatures of California, Oregon, and Washington have all passed similar legislation.

We thank the committees for hearing this important measure! We respectfully urge your passage of SB432 in order to protect our marine ecosystems and ocean-dependent industries.

Mahalo!

Hawai'i Reef and Ocean Coalition (by Ted Bohlen)



SB376
RELATING TO THE ENVIRONMENT
Senate Committee on Agriculture and Environment,
Senate Committee on Water and Land

January 30, 2023

1:00 PM

Room 224

The Administration of the Office of Hawaiian Affairs (OHA) intends to recommend to the Board of Trustees to **SUPPORT WITH AMENDMENTS** for SB376, which would prohibit the mining, extraction, and removal of minerals from the seabed in all state marine waters.

Hawaii State Constitution, Article XI, section 1 provides as follows: “For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.”

The seabed in all state marine waters, are a part of the ceded lands¹ to Section 5(f) of the Act refers to the crown and government lands of the Hawaiian Kingdom, which had been designated “ceded” to the Republic of Hawai‘i, and then to the United States. The Act conveyed these lands to the new State of Hawai‘i with the caveat that revenues were to constitute a trust for five purposes. One of these was the betterment of the conditions of Native Hawaiians. By any measure, those conditions were sorely in need of improvement, but, by 1978, they had not changed for the better, as the state’s trust obligation went ignored.

The ceded lands, consisting of crown lands, once property of the Hawaiian monarchy, and of the government lands of the Kingdom of Hawai‘i, totaled 1.8 million acres upon annexation in 1898. Pursuant to the Joint Resolution of Annexation, all of these lands were considered transferred or “ceded” to the United States government “for the benefit of the inhabitants of the Hawaiian Islands.” Underscoring the federal trust responsibility are the findings of the US Congress in the Apology Resolution² (emphasis added):

¹ Note the term “ceded” is used to reference the classification of the lands in discussion and does not imply an acceptance of the illegal overthrow of the Hawaiian monarchy in 1893, the subsequent United States actions of annexation, territorial government and statehood. This testimony notes that the lands were ceded without the consent of or compensation to the Native Hawaiian people of Hawaii or other sovereign government (P.L. 103-15019)

² Public Law 103-150 (1993)

*“Whereas, the Republic of Hawaii also ceded 1,800,000 acres of crown, government, and public lands of the Kingdom of Hawaii, **without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government.**”*

*“Whereas, **the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands** to the United States, either through their monarchy or through a plebiscite or referendum”*

Upon statehood in 1959, the federal government returned to the State of Hawai‘i all ceded lands not set aside for its own use. Section 5(f) of the Admission Act, directed the state to hold the lands in trust, listed the following five purposes: 1. The support of public education; 2. The betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920; 3. The development of farm and home ownership; 4. The making of public improvements; and 5. The provision of lands for public use.

Thus, the Federal Government delegated a portion of its fiduciary duties to the indigenous peoples of Hawai‘i, which courts have found must be “judged by the most exacting fiduciary standards,” to the State of Hawai‘i via the Admissions Act, Section 5(f) of the public trust lands. Yet 63 years after statehood, the State does not have a complete inventory of classified public trust lands. In addition, a complete inventory of ceded lands, including classifications by former Kingdom Government and Crown lands, and by holdings by the federal, state and county governments, is critical for the federal government to uphold its federal trust responsibility to Native Hawaiians.

OHA works to advocate on behalf of the Native Hawaiian community for the protection of the Native Hawaiian culture, language, and people. The ocean and its resources are integral, not only to Native Hawaiian culture, but to the identity of the Native Hawaiian people. Protecting the health and life of the ocean is in essence, tantamount to protecting the health and life of the Native Hawaiians, Hawai‘i, and all those who call Hawai‘i home. Without the ocean, there is no life.

The global consensus on seabed mining has been moving toward a prohibition on the exploitation of seabed minerals to protect the health of the ocean, with indigenous peoples across the world leading the charge. Following a meeting of the International Group of Seven (G7) in Berlin from May 26-27, 2022, the G7 Ministers of Climate, Energy, and the Environment released a Communiqué highlighting the G7’s position that deep-sea mining could have ***“potentially devastating impacts on marine ecosystems and the functioning of the ocean as a climate regulator”*** and stated that the international regulation of deep-sea mining is necessary.³ During the 2022 UN Ocean Conference in Lisbon, the nations of Palau and Fiji launched an alliance advocating for a moratorium on deep sea mining.⁴ the Prime Minister of Fiji called for a ban on deep seabed mining

³ International Group of Seven, “G7 Climate, Energy and Environment Ministers’ Communiqué”, G7 Germany 2022, May 27, 2022 (available at https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Europa_International/g7_climate_energy_environment_ministers_communique_bf.pdf)

⁴ Catarina Demony et al, “‘Not worth the risk’: Palau, Fiji call for deep-sea mining moratorium”, Reuters, June 27, 2022 (available at <https://www.reuters.com/business/environment/not-worth-risk-palau-fiji-call-deep-sea-mining->

by 2030, and it was noted by the conference that “[c]ivil society representatives almost uniformly advocated a moratorium on deep seabed mining.”⁵ Prior to the UN-affiliated International Seabed Authority Council in Kingston, Jamaica, from October 31 – November 11, 2022, 10 of the Council’s 36 member states took positions against deep sea mining, with *Germany, France, Spain, Costa Rica, New Zealand, Chile, Panama, Fiji, and the Federated States of Micronesia demanding “a moratorium on mining due to a lack of scientific data on the areas of the seabed targeted for exploitation”*, while at the 2022 United Nations Climate Change Conference, *President Emmanuel Macron of France “called for an outright ban on deep sea mining”*.⁶

While OHA supports the purpose of this measure, the proposed prohibition on the mining, extraction, and removal of minerals from the seabed, “carve out”, not applying to “scientific research or collections conducted by, or on behalf of, an educational, scientific, or research institution[.]” concerns OHA for two reasons: 1) This measure gives overriding deference to a very broad range of practitioners and practices under the umbrella of ‘scientific research,’ while remaining silent on the observation and experience -based traditional and customary practices of the Native Hawaiian people, whose indigenous ecological knowledge has been widely recognized for their contribution to sustainable advancements still applicable throughout the pae ‘āina, today; and 2) Educational, scientific, or research institutions actual “scientific research or collections” could be interpreted and classified as “mining, extraction, and removal of minerals” activities. For this reason, the OHA offers the following amendment in support of this measure’s purpose, and operationally recommends a mechanism to monitor the activities in the “carve out” language:

(f) Nothing contained in this section shall diminish, alter, or amend any existing rights, privileges or practices of the Native Hawaiian people; nor shall the obligations of the State to the Native Hawaiian people be absolved.

OHA appreciates the opportunity to support this measure and asks the Legislature to **PASS SB376 with the recommended amendments** to preserve and protect Native Hawaiian cultural rights, practices, and traditions, for our precious natural environment. Mahalo nui loa.

[moratorium-2022-06-27/](#)

⁵ United Nations, “Report of the 2022 United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development”, UN Ocean Conference in Lisbon, Portugal, June 27 – July 1, 2022, (available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/454/51/PDF/N2245451.pdf?OpenElement>)

⁶ Woody, Todd, “More Governments Are Turning Against the Rush to Mine the Deep Sea”, Bloomberg News, November 7, 2022 (available at <https://www.bloomberg.com/news/articles/2022-11-07/more-governments-are-turning-against-the-rush-to-mine-the-deep-sea>)

SB-376

Submitted on: 1/27/2023 5:03:58 PM

Testimony for AEN on 1/30/2023 1:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--------------------------------------|---------------------------|------------------------|
| Kahi Pacarro | Testifying for Parley for the Oceans | Support | Written Testimony Only |

Comments:

As the lead for Parley in Hawaii I am representing our company in full support for this bill. We believe that protecting our oceans is for the betterment of all and that deep seabed mining would cause detrimental impacts to the specific areas of the mining and the areas surrounding the mining due to the transient nature of the plumes excreted during the process. We are against DSM globally but we are concerned even more due to the proximity to Hawaii.

We do not need to be mining the ocean floor. It has been proven that we can recycle existing batteries, improve efficiencies and infrastructure, and support up and coming along with to come technologies that do not require us to mine the ocean floor.

We applaud the introducers and supporters of this Bill and are behind it 100%.

Mahalo,

K



CARE

COMMUNITY ADVOCACY RESEARCH EDUCATION

to.

the Senate
Committees
WLT & AEN

Aloha Chairs, Vice Chairs, and the Committees of Water & Land and
Agriculture & Environments,

The Hawaii State
Legislature

Seabed Mining (SBM) is a growing industrial field that involves extracting minerals from the sea floor. Although it should be distinguished from Deep Sea Mining, which occurs at 200 meters and more, it is classified within the same industry. Although there is no comprehensive tally of value of all marine resources, a World Economic forum report in 2014 estimates the gold in international seabeds are worth at least \$150 trillion. Nickel, copper, cobalt, manganese, zinc and other metals & minerals are mined for electronics or batteries.² In the international waters of Hawaii & Mexico, there are metals various companies want to exploit for laptops, phones and electric vehicles. The Metals Company from Australia estimates that in these waters, there is enough cobalt & nickel to power 4.8 billion electric vehicles. ⁴


from

Zhizi Xiong
(Angela
Melody
Young)
Creator

But how does exploitative mining affect marine resources? There are many environmental impacts including destruction of coral reefs, natural land forms and the wildlife that lives there. Noise effects the whales, dolphins and other marine mammals. ³

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CARE

There was a speech to the First Committee of the United Nations General Assembly, in which an ambassador called for the resources of the sea to be designated as the "common heritage of mankind" and urged the creation of a system of international regulation to prevent technologically advanced countries from colonizing and monopolizing marine resources¹ "History is fraught with hard lessons learned about destroying what we do not know or understand." The debate over ethics puts geologists, conservationists, environmentalists against manufacturers & businesses in this argument of clean energy vs. profit. And yet, to find a solution for sustainable energy will require the key industry players to work collaboratively together for a bright new future. A future that won't require us to sacrifice our marine ecosystems and compromise the impact of biodiversity on our planet for faster Macbooks or sleeker Teslas.

Thank you for the opportunity to testify.

Blessings,



ANGELA MELODY YOUNG
Zhizi Xiong

SB-376

Submitted on: 1/27/2023 5:54:46 PM

Testimony for AEN on 1/30/2023 1:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|-------------------|
| Christopher Morris | Individual | Support | Remotely Via Zoom |

Comments:

S.B. No. 376 A Bill For An Act

Dear Members of the thirty second legislature,

My name is Christopher Morris and I am a resident in Kailua-Kona, and a student at UH Manoa.

I would like to express my feelings and position as to why I support Bill 376. This bill denotes some very impactful possibilities given a lack of initiative taken to preemptively block future seabed mining operation in Hawaii. In addition, the choice of the United States to not ratify the United Nations Convention on the Law of the Sea, has placed Hawaii uniquely in the attention of seabed mining operations. This bill through addressing the probability of pollution events during seabed mining operation poses a strong argument to what risk-threshold is acceptable for such a valuable natural resource like the reefs of Hawaii. In regards to the unknown impacts towards deep sea ecosystems brought upon by seabed mining, it is important to consider potentially significant harm to other industries that depend on healthy marine ecosystems for perpetual income and business sustainability. According to Smith in Deep-sea, mentions that open-cut mines for polymetallic sulfides, one of the smallest impact forms of seabed mining is still is associated 10-100 km sized plumes containing ecological toxins (Smith et al., 2020, 855) It is also mentioned that one mining operation can end up affecting up to 32,000 km² over a 20-year time period, all of the affects which are on the forefront of research and not completely understood (Smith et al., 2020, 855)

In consideration of the abundance of water-based recreation, and water based economical systems it would be unwise to take any risks that place Hawaii's residents in jeopardy both in the physical, in the economical and in the spiritual. I agree that seabed mining is essentially unconstitutional and a risk not worth taking.

Mahalo for your time and thought.

Christopher Morris

73-4330 Kakahiaka St.

Kailua-Kona, HI 96740

Reference:

Smith, C. R., Tunnicliffe, V., Colaço, A., Drazen, J. C., Gollner, S., Levin, L. A., Mestre, N. C., Metaxas, A., Molodtsova, T. N., Morato, T., Sweetman, A. K., Washburn, T., & Amon, D. J. (2020). Deep-Sea Misconceptions Cause Underestimation of Seabed-Mining Impacts. *Trends in Ecology & Evolution*, 35(10), 853–857. <https://doi.org/10.1016/j.tree.2020.07.002>

SB-376

Submitted on: 1/29/2023 12:58:07 PM

Testimony for AEN on 1/30/2023 1:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Sherry Pollack | Individual | Support | Written Testimony Only |

Comments:

The rising ocean temperatures and increased acidification have already damaged Hawaii's coral reefs and marine ecosystems. Seabed mining poses an unacceptably high risk of further damage and disruption to the marine environment of the State. It is imperative that action be taken to ensure the protection of our environment for present and future generations. Please support this important measure.

SB-376

Submitted on: 1/29/2023 2:08:03 PM

Testimony for AEN on 1/30/2023 1:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Lisa Bishop | Individual | Support | Written Testimony Only |

Comments:

Aloha, please pass this very important bill!

SB-376

Submitted on: 1/29/2023 5:27:37 PM

Testimony for AEN on 1/30/2023 1:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Virginia Tincher | Individual | Support | Written Testimony Only |

Comments:

Chair Gabbard, Vice Chair Richards and Committee on Agriculture and Environment

Chair Inouye, Vice Chair Elefante and Committee on Water and land

Mahalo for hearing this important bill.

Mining the ocean floor results in long lasting environmental degradation that far outweighs any benefits including disruption to the vertical aquatic animal food chain, releases stored CO2 and impacts water quality.

Hawaii can set a precedent to reject ocean floor mining.