

# Biotech

## In focus

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## GMOs on Hawaii Island, Part 2: Laws, Lawsuits, and Machetes

As reported in our last bulletin, the Hawaii County Council banned genetically modified (GM) taro and coffee in late 2008. Conflicts persisted over Papaya Ringspot Virus-resistant GM papaya, which make up most of the Big Island's papaya crop.

In June 2010, 8,500 GM papaya plants worth \$100,000 were chopped down by vandals in Kapoho, a farming community in the Puna district of Hawaii Island's. This act of vandalism—not theft, as the fruits were left behind—was probably carried out by a small group of individuals with machetes. It followed a similar incident on Oahu where about 400 GM papaya plants were cut down. The Kapoho farmer, who had grown papaya for 30 years, did not believe the motive was opposition to GM crops, but was of the opinion that it was a personal attack on his property. He did not replant, and passed away in 2012.



Subsequent attacks left growers fearful that planting GM papaya might make them targets of vandalism. In July 2011, about ten acres of GM papaya were vandalized in Kapoho on adjacent plots belonging to three different farmers. Again, thousands of plants were cut down, and the fruits were left in the fields. Papaya growers collected donations and offered a reward that totaled \$30,000. Despite this, the crimes remain unsolved.

In May 2013, Hawaii County Council member Margaret Wille introduced Bill 79, which proposed a ban on the growing or selling of transgenic organisms. Big Island farmers and ranchers who produced GM corn as cattle feed prior to the ban's effective date could continue growing GM crops on lands already used for that purpose. However, they would henceforth be required to report annually on the location of their GM crops and demonstrate that the crops were physically contained. Medical and agricultural research institutions would be exempt, and sale of products containing GM ingredients would not be regulated. Each violation of the new law would be subject to a \$1,000 fine, and guilty parties could also be held responsible for enforcement costs.



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# Testimony & Stigma Lead To Revisions

Public hearings for Bill 79 evoked impassioned testimony. Papaya farmers, already struggling, worried that the law would stigmatize their product; many blamed the bad publicity for steep declines in demand. Cattle businesses that did not qualify for an exemption reported that the inability to grow GM feed would put them at a competitive disadvantage. Most agricultural organizations opposed the bill, while the majority of public comments submitted as testimony were in favor of it.



Council member Wille withdrew Bill 79 in August 2013 and introduced a revised version one month later. The new measure, Bill 113, limited the ban to open-air production of GM crops. Physical containment of exempted GM crops was no longer required, but the locations of these exempted plantings were to be registered with the county each year, and an annual registration fee of \$100 paid for each location. Potential fines were increased to \$1,000 per day that the guilty party did not comply with the law.

## Stringent Bills

A second measure (Bill 109) introduced in September 2013 by Hawaii County Council member Brenda Ford was even more stringent. Bill 109 required that all GM crops, including papaya, be destroyed within 30 months of the law's effective date; it also added jail time to the possible penalties.

That same September 2013, unknown vandals chopped down another 100 GM papaya plants in Puna, and the act was widely reported as likely eco-terrorism.



## Signed Into Law



The final draft of Bill 113 included provisions for the emergency use of GM crops if no other solution was available to prevent substantial harm and yield loss due to plant pestilence. The bill passed on a 6-3 vote in November and was signed into law in December 2013 by Mayor Billy Kenoi.

## Suit to Overturn

In March 2014, coinciding with the GM crop registration deadline set by Bill 113 (now Ordinance 13-121), an unnamed papaya grower sued Hawaii County in Hilo's Third Circuit Court, seeking relief from the law's registration requirements. The lawsuit cited fear of vandalism and the need to protect confidential information as reasons for the request. In U.S. District Court, a suit to overturn the ban was filed in June by local industry groups, individual farmers and ranchers, and the Biotechnology Industry Organization.



**INVALID**

Judge Barry Kurren ruled on the district court suit in November 2014, declaring the Big Island GM crop ban invalid because state and federal laws preempt the county ordinance. The Hawaii County Council voted 6-3 in February 2015 to accept legal assistance from EarthJustice (Head office - San Francisco, CA Local Office) and the Center for Food Safety (Head Office - Washington DC, Local Office) in appealing Judge Kurren's decision to the Ninth Circuit of the U.S. Court of Appeals. The appeal was waiting to be heard at the time of writing this bulletin.