

106TH CONGRESS
2D SESSION

H. R. 4904

AN ACT

To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

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To express the policy of the United States regarding the United States relationship with Native Hawaiians, to provide a process for the reorganization of a Native Hawaiian government and the recognition by the United States of the Native Hawaiian government, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress makes the following findings:

5 (1) The Constitution vests Congress with the
6 authority to address the conditions of the indige-
7 nous, native people of the United States.

8 (2) Native Hawaiians, the native people of the
9 Hawaiian archipelago which is now part of the
10 United States, are indigenous, native people of the
11 United States.

12 (3) The United States has a special trust rela-
13 tionship to promote the welfare of the native people
14 of the United States, including Native Hawaiians.

15 (4) Under the treaty making power of the
16 United States, Congress exercised its constitutional
17 authority to confirm a treaty between the United
18 States and the government that represented the Ha-
19 waiian people, and from 1826 until 1893, the United
20 States recognized the independence of the Kingdom
21 of Hawaii, extended full diplomatic recognition to
22 the Hawaiian government, and entered into treaties
23 and conventions with the Hawaiian monarchs to gov-
24 ern commerce and navigation in 1826, 1842, 1849,
25 1875, and 1887.

1 (5) Pursuant to the provisions of the Hawaiian
2 Homes Commission Act, 1920 (42 Stat. 108, chap-
3 ter 42), the United States set aside 203,500 acres
4 of land in the Federal territory that later became
5 the State of Hawaii to address the conditions of Na-
6 tive Hawaiians.

7 (6) By setting aside 203,500 acres of land for
8 Native Hawaiian homesteads and farms, the Act as-
9 sists the Native Hawaiian community in maintaining
10 distinct native settlements throughout the State of
11 Hawaii.

12 (7) Approximately 6,800 Native Hawaiian les-
13 sees and their family members reside on Hawaiian
14 Home Lands and approximately 18,000 Native Ha-
15 waiians who are eligible to reside on the Home
16 Lands are on a waiting list to receive assignments
17 of land.

18 (8) In 1959, as part of the compact admitting
19 Hawaii into the United States, Congress established
20 the Ceded Lands Trust for five purposes, one of
21 which is the betterment of the conditions of Native
22 Hawaiians. Such trust consists of approximately
23 1,800,000 acres of land, submerged lands, and the
24 revenues derived from such lands, the assets of

1 which have never been completely inventoried or seg-
2 regated.

3 (9) Throughout the years, Native Hawaiians
4 have repeatedly sought access to the Ceded Lands
5 Trust and its resources and revenues in order to es-
6 tablish and maintain native settlements and distinct
7 native communities throughout the State.

8 (10) The Hawaiian Home Lands and the Ceded
9 Lands provide an important foundation for the abil-
10 ity of the Native Hawaiian community to maintain
11 the practice of Native Hawaiian culture, language,
12 and traditions, and for the survival of the Native
13 Hawaiian people.

14 (11) Native Hawaiians have maintained other
15 distinctly native areas in Hawaii.

16 (12) On November 23, 1993, Public Law 103-
17 150 (107 Stat. 1510) (commonly known as the Apol-
18 ogy Resolution) was enacted into law, extending an
19 apology on behalf of the United States to the Native
20 people of Hawaii for the United States role in the
21 overthrow of the Kingdom of Hawaii.

22 (13) The Apology Resolution acknowledges that
23 the overthrow of the Kingdom of Hawaii occurred
24 with the active participation of agents and citizens
25 of the United States and further acknowledges that

1 the Native Hawaiian people never directly relin-
2 quished their claims to their inherent sovereignty as
3 a people over their national lands to the United
4 States, either through their monarchy or through a
5 plebiscite or referendum.

6 (14) The Apology Resolution expresses the com-
7 mitment of Congress and the President to acknowl-
8 edge the ramifications of the overthrow of the King-
9 dom of Hawaii and to support reconciliation efforts
10 between the United States and Native Hawaiians;
11 and to have Congress and the President, through the
12 President's designated officials, consult with Native
13 Hawaiians on the reconciliation process as called for
14 under the Apology Resolution.

15 (15) Despite the overthrow of the Hawaiian
16 government, Native Hawaiians have continued to
17 maintain their separate identity as a distinct native
18 community through the formation of cultural, social,
19 and political institutions, and to give expression to
20 their rights as native people to self-determination
21 and self-governance as evidenced through their par-
22 ticipation in the Office of Hawaiian Affairs.

23 (16) Native Hawaiians also maintain a distinct
24 Native Hawaiian community through the provision
25 of governmental services to Native Hawaiians, in-

1 including the provision of health care services, edu-
2 cational programs, employment and training pro-
3 grams, children's services, conservation programs,
4 fish and wildlife protection, agricultural programs,
5 native language immersion programs and native lan-
6 guage immersion schools from kindergarten through
7 high school, as well as college and master's degree
8 programs in native language immersion instruction,
9 and traditional justice programs, and by continuing
10 their efforts to enhance Native Hawaiian self-deter-
11 mination and local control.

12 (17) Native Hawaiians are actively engaged in
13 Native Hawaiian cultural practices, traditional agri-
14 cultural methods, fishing and subsistence practices,
15 maintenance of cultural use areas and sacred sites,
16 protection of burial sites, and the exercise of their
17 traditional rights to gather medicinal plants and
18 herbs, and food sources.

19 (18) The Native Hawaiian people wish to pre-
20 serve, develop, and transmit to future Native Hawai-
21 ian generations their ancestral lands and Native Ha-
22 waiian political and cultural identity in accordance
23 with their traditions, beliefs, customs and practices,
24 language, and social and political institutions, and to

1 achieve greater self-determination over their own af-
2 fairs.

3 (19) This Act provides for a process within the
4 framework of Federal law for the Native Hawaiian
5 people to exercise their inherent rights as a distinct
6 aboriginal, indigenous, native community to reorga-
7 nize a Native Hawaiian government for the purpose
8 of giving expression to their rights as native people
9 to self-determination and self-governance.

10 (20) The United States has declared that—

11 (A) the United States has a special respon-
12 sibility for the welfare of the native peoples of
13 the United States, including Native Hawaiians;

14 (B) Congress has identified Native Hawai-
15 ians as a distinct indigenous group within the
16 scope of its Indian affairs power, and has en-
17 acted dozens of statutes on their behalf pursu-
18 ant to its recognized trust responsibility; and

19 (C) Congress has also delegated broad au-
20 thority to administer a portion of the Federal
21 trust responsibility to the State of Hawaii.

22 (21) The United States has recognized and re-
23 affirmed the special trust relationship with the Na-
24 tive Hawaiian people through—

1 (A) the enactment of the Act entitled “An
2 Act to provide for the admission of the State of
3 Hawaii into the Union”, approved March 18,
4 1959 (Public Law 86–3; 73 Stat. 4) by—

5 (i) ceding to the State of Hawaii title
6 to the public lands formerly held by the
7 United States, and mandating that those
8 lands be held in public trust for five pur-
9 poses, one of which is for the betterment
10 of the conditions of Native Hawaiians; and

11 (ii) transferring the United States re-
12 sponsibility for the administration of the
13 Hawaiian Home Lands to the State of Ha-
14 waii, but retaining the authority to enforce
15 the trust, including the exclusive right of
16 the United States to consent to any actions
17 affecting the lands which comprise the cor-
18 pus of the trust and any amendments to
19 the Hawaiian Homes Commission Act,
20 1920 (42 Stat. 108, chapter 42) that are
21 enacted by the legislature of the State of
22 Hawaii affecting the beneficiaries under
23 the Act.

24 (22) The United States continually has recog-
25 nized and reaffirmed that—

1 (A) Native Hawaiians have a cultural, his-
2 toric, and land-based link to the aboriginal, na-
3 tive people who exercised sovereignty over the
4 Hawaiian Islands;

5 (B) Native Hawaiians have never relin-
6 quished their claims to sovereignty or their sov-
7 ereign lands;

8 (C) the United States extends services to
9 Native Hawaiians because of their unique sta-
10 tus as the aboriginal, native people of a once
11 sovereign nation with whom the United States
12 has a political and legal relationship; and

13 (D) the special trust relationship of Amer-
14 ican Indians, Alaska Natives, and Native Ha-
15 waiians to the United States arises out of their
16 status as aboriginal, indigenous, native people
17 of the United States.

18 **SEC. 2. DEFINITIONS.**

19 In this Act:

20 (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**
21 **PLE.**—The term “aboriginal, indigenous, native peo-
22 ple” means those people whom Congress has recog-
23 nized as the original inhabitants of the lands and
24 who exercised sovereignty prior to European contact

1 in the areas that later became part of the United
2 States.

3 (2) ADULT MEMBERS.—The term “adult mem-
4 bers” means those Native Hawaiians who have at-
5 tained the age of 18 at the time the Secretary pub-
6 lishes the final roll, as provided in section 7(a)(3) of
7 this Act.

8 (3) APOLOGY RESOLUTION.—The term “Apol-
9 ogy Resolution” means Public Law 103–150 (107
10 Stat. 1510), a joint resolution offering an apology to
11 Native Hawaiians on behalf of the United States for
12 the participation of agents of the United States in
13 the January 17, 1893 overthrow of the Kingdom of
14 Hawaii.

15 (4) CEDED LANDS.—The term “ceded lands”
16 means those lands which were ceded to the United
17 States by the Republic of Hawaii under the Joint
18 Resolution to provide for annexing the Hawaiian Is-
19 lands to the United States of July 7, 1898 (30 Stat.
20 750), and which were later transferred to the State
21 of Hawaii in the Act entitled “An Act to provide for
22 the admission of the State of Hawaii into the
23 Union” approved March 18, 1959 (Public Law 86–
24 3; 73 Stat. 4).

1 (5) COMMISSION.—The term “Commission”
2 means the commission established in section 7 of
3 this Act to certify that the adult members of the Na-
4 tive Hawaiian community contained on the roll de-
5 veloped under that section meet the definition of Na-
6 tive Hawaiian, as defined in paragraph (7)(A).

7 (6) INDIGENOUS, NATIVE PEOPLE.—The term
8 “indigenous, native people” means the lineal de-
9 scendants of the aboriginal, indigenous, native peo-
10 ple of the United States.

11 (7) NATIVE HAWAIIAN.—

12 (A) Prior to the recognition by the United
13 States of a Native Hawaiian government under
14 the authority of section 7(d)(2) of this Act, the
15 term “Native Hawaiian” means the indigenous,
16 native people of Hawaii who are the lineal de-
17 scendants of the aboriginal, indigenous, native
18 people who resided in the islands that now com-
19 prise the State of Hawaii on or before January
20 1, 1893, and who occupied and exercised sov-
21 ereignty in the Hawaiian archipelago, including
22 the area that now constitutes the State of Ha-
23 waii, and includes all Native Hawaiians who
24 were eligible in 1921 for the programs author-
25 ized by the Hawaiian Homes Commission Act

1 (42 Stat. 108, chapter 42) and their lineal de-
2 scendants.

3 (B) Following the recognition by the
4 United States of the Native Hawaiian govern-
5 ment under section 7(d)(2) of this Act, the
6 term “Native Hawaiian” shall have the mean-
7 ing given to such term in the organic governing
8 documents of the Native Hawaiian government.

9 (8) NATIVE HAWAIIAN GOVERNMENT.—The
10 term “Native Hawaiian government” means the citi-
11 zens of the government of the Native Hawaiian peo-
12 ple that is recognized by the United States under
13 the authority of section 7(d)(2) of this Act.

14 (9) NATIVE HAWAIIAN INTERIM GOVERNING
15 COUNCIL.—The term “Native Hawaiian Interim
16 Governing Council” means the interim governing
17 council that is organized under section 7(c) of this
18 Act.

19 (10) ROLL.—The term “roll” means the roll
20 that is developed under the authority of section 7(a)
21 of this Act.

22 (11) SECRETARY.—The term “Secretary”
23 means the Secretary of the Interior.

24 (12) TASK FORCE.—The term “Task Force”
25 means the Native Hawaiian Interagency Task Force

1 established under the authority of section 6 of this
2 Act.

3 **SEC. 3. UNITED STATES POLICY AND PURPOSE.**

4 (a) POLICY.—The United States reaffirms that—

5 (1) Native Hawaiians are a unique and distinct
6 aboriginal, indigenous, native people, with whom the
7 United States has a political and legal relationship;

8 (2) the United States has a special trust rela-
9 tionship to promote the welfare of Native Hawaiians;

10 (3) Congress possesses the authority under the
11 Constitution to enact legislation to address the con-
12 ditions of Native Hawaiians and has exercised this
13 authority through the enactment of—

14 (A) the Hawaiian Homes Commission Act,
15 1920 (42 Stat. 108, chapter 42);

16 (B) the Act entitled “An Act to provide for
17 the admission of the State of Hawaii into the
18 Union”, approved March 18, 1959 (Public Law
19 86–3; 73 Stat. 4); and

20 (C) more than 150 other Federal laws ad-
21 dressing the conditions of Native Hawaiians;

22 (4) Native Hawaiians have—

23 (A) an inherent right to autonomy in their
24 internal affairs;

1 (B) an inherent right of self-determination
2 and self-governance;

3 (C) the right to reorganize a Native Ha-
4 waiian government; and

5 (D) the right to become economically self-
6 sufficient; and

7 (5) the United States shall continue to engage
8 in a process of reconciliation and political relations
9 with the Native Hawaiian people.

10 (b) PURPOSE.—It is the intent of Congress that the
11 purpose of this Act is to provide a process for the reorga-
12 nization of a Native Hawaiian government and for the rec-
13 ognition by the United States of the Native Hawaiian gov-
14 ernment for purposes of continuing a government-to-gov-
15 ernment relationship.

16 **SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE**
17 **FOR NATIVE HAWAIIAN AFFAIRS.**

18 (a) IN GENERAL.—There is established within the
19 Office of the Secretary the United States Office for Native
20 Hawaiian Affairs.

21 (b) DUTIES OF THE OFFICE.—The United States Of-
22 fice for Native Hawaiian Affairs shall—

23 (1) effectuate and coordinate the special trust
24 relationship between the Native Hawaiian people

1 and the United States through the Secretary, and
2 with all other Federal agencies;

3 (2) upon the recognition of the Native Hawai-
4 ian government by the United States as provided for
5 in section 7(d)(2) of this Act, effectuate and coordi-
6 nate the special trust relationship between the Na-
7 tive Hawaiian government and the United States
8 through the Secretary, and with all other Federal
9 agencies;

10 (3) fully integrate the principle and practice of
11 meaningful, regular, and appropriate consultation
12 with the Native Hawaiian people by providing timely
13 notice to, and consulting with the Native Hawaiian
14 people prior to taking any actions that may affect
15 traditional or current Native Hawaiian practices and
16 matters that may have the potential to significantly
17 or uniquely affect Native Hawaiian resources, rights,
18 or lands, and upon the recognition of the Native Ha-
19 waiian government as provided for in section 7(d)(2)
20 of this Act, fully integrate the principle and practice
21 of meaningful, regular, and appropriate consultation
22 with the Native Hawaiian government by providing
23 timely notice to, and consulting with the Native Ha-
24 waiian people and the Native Hawaiian government
25 prior to taking any actions that may have the poten-

1 tial to significantly affect Native Hawaiian re-
2 sources, rights, or lands;

3 (4) consult with the Native Hawaiian Inter-
4 agency Task Force, other Federal agencies, and with
5 relevant agencies of the State of Hawaii on policies,
6 practices, and proposed actions affecting Native Ha-
7 waiian resources, rights, or lands;

8 (5) be responsible for the preparation and sub-
9 mittal to the Committee on Indian Affairs of the
10 Senate, the Committee on Energy and Natural Re-
11 sources of the Senate, and the Committee on Re-
12 sources of the House of Representatives of an an-
13 nual report detailing the activities of the Interagency
14 Task Force established under section 6 of this Act
15 that are undertaken with respect to the continuing
16 process of reconciliation and to effect meaningful
17 consultation with the Native Hawaiian people and
18 the Native Hawaiian government and providing rec-
19 ommendations for any necessary changes to existing
20 Federal statutes or regulations promulgated under
21 the authority of Federal law;

22 (6) be responsible for continuing the process of
23 reconciliation with the Native Hawaiian people, and
24 upon the recognition of the Native Hawaiian govern-
25 ment by the United States as provided for in section

1 7(d)(2) of this Act, be responsible for continuing the
2 process of reconciliation with the Native Hawaiian
3 government; and

4 (7) assist the Native Hawaiian people in facili-
5 tating a process for self-determination, including but
6 not limited to the provision of technical assistance in
7 the development of the roll under section 7(a) of this
8 Act, the organization of the Native Hawaiian In-
9 terim Governing Council as provided for in section
10 7(c) of this Act, and the recognition of the Native
11 Hawaiian government as provided for in section 7(d)
12 of this Act.

13 (c) AUTHORITY.—The United States Office for Na-
14 tive Hawaiian Affairs is authorized to enter into a contract
15 with or make grants for the purposes of the activities au-
16 thorized or addressed in section 7 of this Act for a period
17 of 3 years from the date of the enactment of this Act.

18 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**

19 **RESENTATIVE.**

20 The Attorney General shall designate an appropriate
21 official within the Department of Justice to assist the
22 United States Office for Native Hawaiian Affairs in the
23 implementation and protection of the rights of Native Ha-
24 waiians and their political, legal, and trust relationship
25 with the United States, and upon the recognition of the

1 Native Hawaiian government as provided for in section
2 7(d)(2) of this Act, in the implementation and protection
3 of the rights of the Native Hawaiian government and its
4 political, legal, and trust relationship with the United
5 States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) ESTABLISHMENT.—There is established an inter-
8 agency task force to be known as the “Native Hawaiian
9 Interagency Task Force”.

10 (b) COMPOSITION.—The Task Force shall be com-
11 posed of officials, to be designated by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the United States Office for Native Hawai-
18 ian Affairs established under section 4 of this Act;
19 and

20 (3) the Executive Office of the President.

21 (c) LEAD AGENCIES.—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of either of the
25 lead agencies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the United States Office for Native Hawaiian Affairs es-
3 tablished under the authority of section 4 of this Act and
4 the Attorney General’s designee under the authority of
5 section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The responsibilities of the Task Force
8 shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 government by the United States as provided in sec-
18 tion 7(d)(2) of this Act, consultation with the Native
19 Hawaiian government; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
5 **TERIM GOVERNING COUNCIL AND A NATIVE**
6 **HAWAIIAN GOVERNMENT, AND FOR THE REC-**
7 **OGNITION OF THE NATIVE HAWAIIAN GOV-**
8 **ERNMENT.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The United
11 States Office for Native Hawaiian Affairs shall as-
12 sist the adult members of the Native Hawaiian com-
13 munity who wish to participate in the reorganization
14 of a Native Hawaiian government in preparing a roll
15 for the purpose of the organization of a Native Ha-
16 waiian Interim Governing Council. The roll shall in-
17 clude the names of the—

18 (A) adult members of the Native Hawaiian
19 community who wish to become citizens of a
20 Native Hawaiian government and who are—

21 (i) the lineal descendants of the ab-
22 original, indigenous, native people who re-
23 sided in the islands that now comprise the
24 State of Hawaii on or before January 1,
25 1893, and who occupied and exercised sov-
26 ereignty in the Hawaiian archipelago; or

1 (ii) Native Hawaiians who were eligi-
2 ble in 1921 for the programs authorized by
3 the Hawaiian Homes Commission Act (42
4 Stat. 108, chapter 42) or their lineal de-
5 scendants; and

6 (B) the children of the adult members list-
7 ed on the roll prepared under this subsection.

8 (2) CERTIFICATION AND SUBMISSION.—

9 (A) COMMISSION.—

10 (i) IN GENERAL.—There is authorized
11 to be established a Commission to be com-
12 posed of nine members for the purpose of
13 certifying that the adult members of the
14 Native Hawaiian community on the roll
15 meet the definition of Native Hawaiian, as
16 defined in section 2(7)(A) of this Act.

17 (ii) MEMBERSHIP.—

18 (I) APPOINTMENT.—The Sec-
19 retary shall appoint the members of
20 the Commission in accordance with
21 subclause (II). Any vacancy on the
22 Commission shall not affect its powers
23 and shall be filled in the same manner
24 as the original appointment.

1 (II) REQUIREMENTS.—The mem-
2 bers of the Commission shall be Na-
3 tive Hawaiian, as defined in section
4 2(7)(A) of this Act, and shall have ex-
5 pertise in the certification of Native
6 Hawaiian ancestry.

7 (III) CONGRESSIONAL SUBMIS-
8 SION OF SUGGESTED CANDIDATES.—
9 In appointing members of the Com-
10 mission, the Secretary may choose
11 such members from among—

12 (aa) five suggested can-
13 didates submitted by the Major-
14 ity Leader of the Senate and the
15 Minority Leader of the Senate
16 from a list of candidates provided
17 to such leaders by the Chairman
18 and Vice Chairman of the Com-
19 mittee on Indian Affairs of the
20 Senate; and

21 (bb) four suggested can-
22 didates submitted by the Speaker
23 of the House of Representatives
24 and the Minority Leader of the
25 House of Representatives from a

1 list provided to the Speaker and
2 the Minority Leader by the
3 Chairman and Ranking member
4 of the Committee on Resources
5 of the House of Representatives.

6 (iii) EXPENSES.—Each member of the
7 Commission shall be allowed travel ex-
8 penses, including per diem in lieu of sub-
9 sistence, at rates authorized for employees
10 of agencies under subchapter I of chapter
11 57 of title 5, United States Code, while
12 away from their homes or regular places of
13 business in the performance of services for
14 the Commission.

15 (B) CERTIFICATION.—The Commission
16 shall certify that the individuals listed on the
17 roll developed under the authority of this sub-
18 section are Native Hawaiians, as defined in sec-
19 tion 2(7)(A) of this Act.

20 (3) SECRETARY.—

21 (A) CERTIFICATION.—The Secretary shall
22 review the Commission's certification of the
23 membership roll and determine whether it is
24 consistent with applicable Federal law, includ-
25 ing the special trust relationship between the

1 United States and the indigenous, native people
2 of the United States.

3 (B) PUBLICATION.—Upon making the de-
4 termination authorized in subparagraph (A),
5 the Secretary shall publish a final roll.

6 (C) APPEAL.—

7 (i) ESTABLISHMENT OF MECHA-
8 NISM.—The Secretary is authorized to es-
9 tablish a mechanism for an appeal of the
10 Commission’s determination as it
11 concerns—

12 (I) the exclusion of the name of
13 a person who meets the definition of
14 Native Hawaiian, as defined in section
15 2(7)(A) of this Act, from the roll; or

16 (II) a challenge to the inclusion
17 of the name of a person on the roll on
18 the grounds that the person does not
19 meet the definition of Native Hawai-
20 ian, as so defined.

21 (ii) PUBLICATION; UPDATE.—The
22 Secretary shall publish the final roll while
23 appeals are pending, and shall update the
24 final roll and the publication of the final

1 roll upon the final disposition of any ap-
2 peal.

3 (D) FAILURE TO ACT.—If the Secretary
4 fails to make the certification authorized in
5 subparagraph (A) within 90 days of the date
6 that the Commission submits the membership
7 roll to the Secretary, the certification shall be
8 deemed to have been made, and the Commis-
9 sion shall publish the final roll.

10 (4) EFFECT OF PUBLICATION.—The publication
11 of the final roll shall serve as the basis for the eligi-
12 bility of adult members listed on the roll to partici-
13 pate in all referenda and elections associated with
14 the organization of a Native Hawaiian Interim Gov-
15 erning Council and the Native Hawaiian govern-
16 ment.

17 (b) RECOGNITION OF RIGHTS.—The right of the Na-
18 tive Hawaiian people to organize for their common welfare
19 and to adopt appropriate organic governing documents is
20 hereby recognized by the United States.

21 (c) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
22 TERIM GOVERNING COUNCIL.—

23 (1) ORGANIZATION.—The adult members listed
24 on the roll developed under the authority of sub-
25 section (a) are authorized to—

1 (A) develop criteria for candidates to be
2 elected to serve on the Native Hawaiian Interim
3 Governing Council;

4 (B) determine the structure of the Native
5 Hawaiian Interim Governing Council; and

6 (C) elect members to the Native Hawaiian
7 Interim Governing Council.

8 (2) ELECTION.—Upon the request of the adult
9 members listed on the roll developed under the au-
10 thority of subsection (a), the United States Office
11 for Native Hawaiian Affairs may assist the Native
12 Hawaiian community in holding an election by secret
13 ballot (absentee and mail balloting permitted), to
14 elect the membership of the Native Hawaiian In-
15 terim Governing Council.

16 (3) POWERS.—

17 (A) IN GENERAL.—The Native Hawaiian
18 Interim Governing Council is authorized to rep-
19 resent those on the roll in the implementation
20 of this Act and shall have no powers other than
21 those given to it in accordance with this Act.

22 (B) FUNDING.—The Native Hawaiian In-
23 terim Governing Council is authorized to enter
24 into a contract or grant with any Federal agen-
25 cy, including but not limited to, the United

1 States Office for Native Hawaiian Affairs with-
2 in the Department of the Interior and the Ad-
3 ministration for Native Americans within the
4 Department of Health and Human Services, to
5 carry out the activities set forth in subpara-
6 graph (C).

7 (C) ACTIVITIES.—

8 (i) IN GENERAL.—The Native Hawai-
9 ian Interim Governing Council is author-
10 ized to conduct a referendum of the adult
11 members listed on the roll developed under
12 the authority of subsection (a) for the pur-
13 pose of determining (but not limited to)
14 the following:

15 (I) The proposed elements of the
16 organic governing documents of a Na-
17 tive Hawaiian government.

18 (II) The proposed powers and
19 authorities to be exercised by a Native
20 Hawaiian government, as well as the
21 proposed privileges and immunities of
22 a Native Hawaiian government.

23 (III) The proposed civil rights
24 and protection of such rights of the
25 citizens of a Native Hawaiian govern-

1 ment and all persons subject to the
2 authority of a Native Hawaiian gov-
3 ernment.

4 (ii) DEVELOPMENT OF ORGANIC GOV-
5 ERNING DOCUMENTS.—Based upon the
6 referendum, the Native Hawaiian Interim
7 Governing Council is authorized to develop
8 proposed organic governing documents for
9 a Native Hawaiian government.

10 (iii) DISTRIBUTION.—The Native Ha-
11 waiian Interim Governing Council is au-
12 thorized to distribute to all adult members
13 of those listed on the roll, a copy of the
14 proposed organic governing documents, as
15 drafted by the Native Hawaiian Interim
16 Governing Council, along with a brief im-
17 partial description of the proposed organic
18 governing documents.

19 (iv) CONSULTATION.—The Native Ha-
20 waiian Interim Governing Council is au-
21 thorized to freely consult with those mem-
22 bers listed on the roll concerning the text
23 and description of the proposed organic
24 governing documents.

25 (D) ELECTIONS.—

1 (i) IN GENERAL.—The Native Hawai-
2 ian Interim Governing Council is author-
3 ized to hold elections for the purpose of
4 ratifying the proposed organic governing
5 documents, and upon ratification of the or-
6 ganic governing documents, to hold elec-
7 tions for the officers of the Native Hawai-
8 ian government.

9 (ii) ASSISTANCE.—Upon the request
10 of the Native Hawaiian Interim Governing
11 Council, the United States Office of Native
12 Hawaiian Affairs may assist the Council in
13 conducting such elections.

14 (4) TERMINATION.—The Native Hawaiian In-
15 terim Governing Council shall have no power or au-
16 thority under this Act after the time at which the
17 duly elected officers of the Native Hawaiian govern-
18 ment take office.

19 (d) RECOGNITION OF THE NATIVE HAWAIIAN GOV-
20 ERNMENT.—

21 (1) PROCESS FOR RECOGNITION.—

22 (A) SUBMITTAL OF ORGANIC GOVERNING
23 DOCUMENTS.—The duly elected officers of the
24 Native Hawaiian government shall submit the

1 organic governing documents of the Native Ha-
2 waiian government to the Secretary.

3 (B) CERTIFICATIONS.—Within 90 days of
4 the date that the duly elected officers of the
5 Native Hawaiian government submit the or-
6 ganic governing documents to the Secretary,
7 the Secretary shall certify that the organic gov-
8 erning documents—

9 (i) were adopted by a majority vote of
10 the adult members listed on the roll pre-
11 pared under the authority of subsection
12 (a);

13 (ii) are consistent with applicable Fed-
14 eral law and the special trust relationship
15 between the United States and the indige-
16 nous native people of the United States;

17 (iii) provide for the exercise of those
18 governmental authorities that are recog-
19 nized by the United States as the powers
20 and authorities that are exercised by other
21 governments representing the indigenous,
22 native people of the United States;

23 (iv) provide for the protection of the
24 civil rights of the citizens of the Native
25 Hawaiian government and all persons sub-

1 ject to the authority of the Native Hawai-
2 ian government, and to assure that the
3 Native Hawaiian government exercises its
4 authority consistent with the requirements
5 of section 202 of the Act of April 11, 1968
6 (25 U.S.C. 1302);

7 (v) prevent the sale, disposition, lease,
8 or encumbrance of lands, interests in
9 lands, or other assets of the Native Hawai-
10 ian government without the consent of the
11 Native Hawaiian government;

12 (vi) establish the criteria for citizen-
13 ship in the Native Hawaiian government;
14 and

15 (vii) provide authority for the Native
16 Hawaiian government to negotiate with
17 Federal, State, and local governments, and
18 other entities.

19 (C) FAILURE TO ACT.—If the Secretary
20 fails to act within 90 days of the date that the
21 duly elected officers of the Native Hawaiian
22 government submitted the organic governing
23 documents of the Native Hawaiian government
24 to the Secretary, the certifications authorized in

1 subparagraph (B) shall be deemed to have been
2 made.

3 (D) RESUBMISSION IN CASE OF NON-
4 COMPLIANCE WITH FEDERAL LAW.—

5 (i) RESUBMISSION BY THE SEC-
6 RETARY.—If the Secretary determines that
7 the organic governing documents, or any
8 part thereof, are not consistent with appli-
9 cable Federal law, the Secretary shall re-
10 submit the organic governing documents to
11 the duly elected officers of the Native Ha-
12 waiian government along with a justifica-
13 tion for each of the Secretary’s findings as
14 to why the provisions are not consistent
15 with such law.

16 (ii) AMENDMENT AND RESUBMISSION
17 BY THE NATIVE HAWAIIAN GOVERN-
18 MENT.—If the organic governing docu-
19 ments are resubmitted to the duly elected
20 officers of the Native Hawaiian govern-
21 ment by the Secretary under clause (i), the
22 duly elected officers of the Native Hawai-
23 ian government shall—

24 (I) amend the organic governing
25 documents to ensure that the docu-

1 ments comply with applicable Federal
2 law; and

3 (II) resubmit the amended or-
4 ganic governing documents to the Sec-
5 retary for certification in accordance
6 with subparagraphs (B) and (C).

7 (2) FEDERAL RECOGNITION.—

8 (A) RECOGNITION.—Notwithstanding any
9 other provision of law, upon the election of the
10 officers of the Native Hawaiian government and
11 the certifications (or deemed certifications) by
12 the Secretary authorized in paragraph (1), Fed-
13 eral recognition is hereby extended to the Na-
14 tive Hawaiian government as the representative
15 governing body of the Native Hawaiian people.

16 (B) NO DIMINISHMENT OF RIGHTS OR
17 PRIVILEGES.—Nothing contained in this Act
18 shall diminish, alter, or amend any existing
19 rights or privileges enjoyed by the Native Ha-
20 waiian people which are not inconsistent with
21 the provisions of this Act.

22 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

23 There is authorized to be appropriated such sums as
24 may be necessary to carry out the activities authorized in
25 this Act.

1 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
2 **THORITY; NEGOTIATIONS.**

3 (a) REAFFIRMATION.—The delegation by the United
4 States of authority to the State of Hawaii to address the
5 conditions of Native Hawaiians contained in the Act enti-
6 tled “An Act to provide for the admission of the State
7 of Hawaii into the Union” approved March 18, 1959
8 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

9 (b) NEGOTIATIONS.—Upon the Federal recognition
10 of the Native Hawaiian government pursuant to section
11 7(d)(2) of this Act, the United States is authorized to ne-
12 gotiate and enter into an agreement with the State of Ha-
13 waii and the Native Hawaiian government regarding the
14 transfer of lands, resources, and assets dedicated to Na-
15 tive Hawaiian use under existing law as in effect on the
16 date of the enactment of this Act to the Native Hawaiian
17 government.

18 **SEC. 10. DISCLAIMER.**

19 Nothing in this Act is intended to serve as a settle-
20 ment of any claims against the United States, or to affect
21 the rights of the Native Hawaiian people under inter-
22 national law.

23 **SEC. 11. REGULATIONS.**

24 The Secretary is authorized to make such rules and
25 regulations and such delegations of authority as the Sec-

1 retary deems necessary to carry out the provisions of this
2 Act.

3 **SEC. 12. SEVERABILITY.**

4 In the event that any section or provision of this Act,
5 or any amendment made by this Act is held invalid, it
6 is the intent of Congress that the remaining sections or
7 provisions of this Act, and the amendments made by this
8 Act, shall continue in full force and effect.

Passed the House of Representatives September 26,
2000.

Attest:

Clerk.