

106TH CONGRESS
2D SESSION

H. R. 4904

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2000

Mr. ABERCROMBIE introduced the following bill; which was referred to the Committee on Resources

A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, 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 finds that—

5 (1) the Constitution vests Congress with the au-
6 thority to address the conditions of the indigenous,
7 native people of the United States;

8 (2) Native Hawaiians, the native people of the
9 State of Hawaii are indigenous, native people of the
10 United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;

4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;

15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;

21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

1 (7) approximately 6,800 Native Hawaiian les-
2 sees and their family members reside on Hawaiian
3 Home Lands and approximately 18,000 Native Ha-
4 waiians who are eligible to reside on the Home
5 Lands are on a waiting list to receive assignments
6 of land;

7 (8) the Hawaiian Home Lands continue to pro-
8 vide an important foundation for the ability of the
9 Native Hawaiian community to maintain the prac-
10 tice of Native Hawaiian culture, language, and tradi-
11 tions, and Native Hawaiians have maintained other
12 distinctly native areas in Hawaii;

13 (9) on November 23, 1993, Public Law 103-
14 150 (107 Stat. 1510) (commonly known as the Apol-
15 ogy Resolution) was enacted into law, extending an
16 apology on behalf of the United States to the Native
17 people of Hawaii for the United States role in the
18 overthrow of the Kingdom of Hawaii;

19 (10) the Apology Resolution acknowledges that
20 the overthrow of the Kingdom of Hawaii occurred
21 with the active participation of agents and citizens
22 of the United States and further acknowledges that
23 the Native Hawaiian people never directly relin-
24 quished their claims to their inherent sovereignty as
25 a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;

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

12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

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

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;

8 (17) the United States has declared that—

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

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

17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;

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

23 (A) the enactment of the Act entitled “An
24 Act to provide for the admission of the State of

1 Hawaii into the Union”, approved March 18,
2 1959 (Public Law 86–3; 73 Stat. 4) by—

3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and

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

22 (19) the United States continually has recog-
23 nized and reaffirmed that—

24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;

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

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

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

16 **SEC. 2. DEFINITIONS.**

17 In this Act:

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

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

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

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

19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 “indigenous, native people” means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.

23 (6) NATIVE HAWAIIAN.—

24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
2 the term “Native Hawaiian” means the indige-
3 nous, native people of Hawaii who are the lineal
4 descendants of the aboriginal, indigenous, na-
5 tive people who resided in the islands that now
6 comprise the State of Hawaii on January 1,
7 1893, and who occupied and exercised sov-
8 ereignty in the Hawaiian archipelago, including
9 the area that now constitutes the State of Ha-
10 waii, as evidenced by (but not limited to)—

11 (i) genealogical records;

12 (ii) Native Hawaiian kupuna (elders)
13 verification or affidavits;

14 (iii) church or census records; or

15 (iv) government birth or death certifi-
16 cates or other vital statistics records;

17 (B) Following the recognition by the
18 United States of the Native Hawaiian gov-
19 erning body under section 7(d) of this Act, the
20 term “Native Hawaiian” shall have the mean-
21 ing given to such term in the organic governing
22 documents of the Native Hawaiian governing
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
25 term “Native Hawaiian governing body” means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING
6 COUNCIL.—The term “Native Hawaiian Interim
7 Governing Council” means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

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

13 (10) SECRETARY.—The term “Secretary”
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) TASK FORCE.—The term “Task Force”
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

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

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

3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—

7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);

9 (B) the Act entitled “An Act to provide for
10 the admission of the State of Hawaii into the
11 Union”, approved March 18, 1959 (Public Law
12 86–3; 73 Stat. 4); and

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

15 (4) Native Hawaiians have—

16 (A) an inherent right to autonomy in their
17 internal affairs;

18 (B) an inherent right of self-determination
19 and self-governance; and

20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and

22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) **IN GENERAL.**—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) **DUTIES OF THE OFFICE.**—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;

19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, reg-
3 ular, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
2 under the authority of Federal law;

3 (6) be responsible for continuing the process of
4 reconciliation with the Native Hawaiian people, and
5 upon the recognition of the Native Hawaiian gov-
6 erning body by the United States as provided for in
7 section 7(d) of this Act, be responsible for con-
8 tinuing the process of reconciliation with the Native
9 Hawaiian governing body; and

10 (7) assist the Native Hawaiian people in facili-
11 tating a process for self-determination, including but
12 not limited to the provision of technical assistance in
13 the development of the roll under section 7(a) of this
14 Act, the organization of the Native Hawaiian In-
15 terim Governing Council as provided for in section
16 7(b) of this Act, and the reorganization of the Na-
17 tive Hawaiian governing body as provided for in sec-
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
22 official within the Department of Justice to assist the Of-
23 fice of the Special Trustee for Native Hawaiian Affairs
24 in the implementation and protection of the rights of Na-
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United 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 appointed 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 Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; 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 the lead agen-
25 cies.

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

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force 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 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; 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 GOVERNING BODY, AND FOR THE**
7 **RECOGNITION OF THE NATIVE HAWAIIAN**
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-
11 bers of the Native Hawaiian community who wish to
12 participate in the reorganization of a Native Hawai-
13 ian governing body shall prepare a roll for the pur-
14 pose of the organization of a Native Hawaiian In-
15 terim Governing Council. The roll shall include the
16 names of—

17 (A) the adult members of the Native Ha-
18 waiian community who wish to become mem-
19 bers of a Native Hawaiian governing body and
20 who are the lineal descendants of the aborigi-
21 nal, indigenous, native people who resided in
22 the islands that now comprise the State of Ha-
23 waii on January 1, 1893, and who occupied and
24 exercised sovereignty in the Hawaiian archi-
25 pelago, including the area that now constitutes

1 the State of Hawaii, as evidenced by (but not
2 limited to)—

3 (i) genealogical records;

4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;

6 (iii) church or census records; or

7 (iv) government birth or death certifi-
8 cates or other vital statistics records; and

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

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian com-
16 munity on the roll meet the definition of Native
17 Hawaiian, as defined in section 2(6)(A) of this
18 Act. The members of the Commission shall have
19 expertise in the certification of Native Hawaiian
20 ancestry.

21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individ-
23 uals listed on the roll developed under the au-
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or

23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).

6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—

8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an indi-
10 vidual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.

16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—

21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.

4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.

22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and

16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.

22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
2 bership of the Native Hawaiian Interim Gov-
3 erning Council from among the nominees sub-
4 mitted to the Secretary from the general meet-
5 ing. The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-
7 prove the Native Hawaiian Interim Governing
8 Council elected pursuant to this subsection if
9 the requirements of this section relating to the
10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian
13 Interim Governing Council shall represent those
14 on the roll in the implementation of this Act
15 and shall have no powers other than those given
16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian
18 Interim Governing Council shall have no power
19 or authority under this Act after the time which
20 the duly elected officers of the Native Hawaiian
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian
24 Interim Governing Council shall conduct a ref-
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:

3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.

11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOV-
17 ERNING DOCUMENTS.—Based upon the ref-
18 erendum authorized in subparagraph (A), the
19 Native Hawaiian Interim Governing Council
20 shall develop proposed organic governing docu-
21 ments for a Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 waiian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.

4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.

9 (4) ELECTIONS.—

10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.

18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
2 sultation, the Council shall propose changes to
3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the
5 Native Hawaiian Interim Governing Council,
6 the Secretary shall hold a second election for
7 the purpose of ratifying the proposed organic
8 governing documents. If the Secretary fails to
9 act within 45 days of the request by the Coun-
10 cil, the Council is authorized to conduct the sec-
11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of
15 the Native Hawaiian governing body of the indige-
16 nous, native people of Hawaii to organize for its
17 common welfare, and to adopt appropriate organic
18 governing documents is hereby recognized by the
19 United States.

20 (2) RATIFICATION.—The organic governing
21 documents of the Native Hawaiian governing body
22 shall become effective when ratified by a majority
23 vote of the adult members listed on the roll, and ap-
24 proved by the Secretary upon the Secretary's deter-
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—
10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic gov-
12 erning documents are deemed approved, the Sec-
13 retary shall assist the Native Hawaiian Interim Gov-
14 erning Council in holding an election by secret ballot
15 for the purpose of determining the individuals who
16 will serve as governing body officers as provided in
17 the organic governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of
19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-
4 MENTS.—When ratified by a majority vote of the
5 adult members of those listed on the roll, the organic
6 governing documents shall be revocable by an elec-
7 tion open to the adult members of the Native Ha-
8 waiian governing body, and amendments to the or-
9 ganic governing documents may be ratified by the
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
12 dition to all powers vested in the Native Hawaiian
13 governing body by the duly ratified organic gov-
14 erning documents, the organic governing documents
15 shall also vest in the Native Hawaiian governing
16 body the rights and powers to—

17 (A) exercise those governmental authorities
18 that are recognized by the United States as the
19 powers and authorities that are exercised by
20 other governments representing the indigenous,
21 native people of the United States;

22 (B) provide for the protection of the civil
23 rights of the members of the Native Hawaiian
24 governing body and all persons subject to the
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;

10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.

3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—

5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).

16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian gov-
18 erning body to exercise the power to purchase, take
19 by gift, bequest, or otherwise, own, hold, manage,
20 operate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

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

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

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

○