

111TH CONGRESS
1ST SESSION

H. R. 862

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. ABERCROMBIE (for himself, Ms. HIRONO, Ms. BORDALLO, Mr. FALEOMAVAEGA, Mr. COLE, Mr. MORAN of Virginia, Mr. YOUNG of Alaska, and Mr. KILDEE) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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,*

1 **SECTION 1. FINDINGS.**

2 Congress makes the following findings:

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

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

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

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

24 (5) Pursuant to the provisions of the Hawaiian
25 Homes Commission Act, 1920 (42 Stat. 108, chap-
26 ter 42), the United States set aside 203,500 acres

1 of land in the Federal territory that later became
2 the State of Hawaii to address the conditions of Na-
3 tive Hawaiians.

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

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

15 (8) In 1959, as part of the compact admitting
16 Hawaii into the United States, Congress established
17 the Ceded Lands Trust for 5 purposes, one of which
18 is the betterment of the conditions of Native Hawai-
19 ians. Such trust consists of approximately 1,800,000
20 acres of land, submerged lands, and the revenues de-
21 rived from such lands, the assets of which have
22 never been completely inventoried or segregated.

23 (9) Throughout the years, Native Hawaiians
24 have repeatedly sought access to the Ceded Lands
25 Trust and its resources and revenues in order to es-

1 tablish and maintain native settlements and distinct
2 native communities throughout the State.

3 (10) The Hawaiian Home Lands and the Ceded
4 Lands provide an important foundation for the abil-
5 ity of the Native Hawaiian community to maintain
6 the practice of Native Hawaiian culture, language,
7 and traditions, and for the survival of the Native
8 Hawaiian people.

9 (11) Native Hawaiians have maintained other
10 distinctly native areas in Hawaii.

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

17 (13) The Apology Resolution acknowledges that
18 the overthrow of the Kingdom of Hawaii occurred
19 with the active participation of agents and citizens
20 of the United States and further acknowledges that
21 the Native Hawaiian people never directly relin-
22 quished their claims to their inherent sovereignty as
23 a people over their national lands to the United
24 States, either through their monarchy or through a
25 plebiscite or referendum.

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

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

18 (16) Native Hawaiians also maintain a distinct
19 Native Hawaiian community through the provision
20 of governmental services to Native Hawaiians, in-
21 cluding the provision of health care services, edu-
22 cational programs, employment and training pro-
23 grams, children’s services, conservation programs,
24 fish and wildlife protection, agricultural programs,
25 native language immersion programs and native lan-

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

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

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

22 (19) This Act provides for a process within the
23 framework of Federal law for the Native Hawaiian
24 people to exercise their inherent rights as a distinct
25 aboriginal, indigenous, native community to reorga-

1 nize a Native Hawaiian government for the purpose
2 of giving expression to their rights as native people
3 to self-determination and self-governance.

4 (20) The United States has declared that—

5 (A) the United States has a special respon-
6 sibility for the welfare of the native peoples of
7 the United States, including Native Hawaiians;

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

13 (C) Congress has also delegated broad au-
14 thority to administer a portion of the Federal
15 trust responsibility to the State of Hawaii.

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

19 (A) the enactment of the Act entitled “An
20 Act to provide for the admission of the State of
21 Hawaii into the Union”, approved March 18,
22 1959 (Public Law 86–3; 73 Stat. 4) by—

23 (i) ceding to the State of Hawaii title
24 to the public lands formerly held by the
25 United States, and mandating that those

lands be held in public trust for 5 purposes, one of which is for the betterment of the conditions of Native Hawaiians; and

(ii) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

(22) The United States continually has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

1 (C) the United States extends services to
2 Native Hawaiians because of their unique sta-
3 tus as the aboriginal, native people of a once
4 sovereign nation with whom the United States
5 has a political and legal relationship; and

6 (D) the special trust relationship of Amer-
7 ican Indians, Alaska Natives, and Native Ha-
8 waiians to the United States arises out of their
9 status as aboriginal, indigenous, native people
10 of the United States.

11 **SEC. 2. DEFINITIONS.**

12 In this Act:

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

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

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

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

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

24 (6) INDIGENOUS, NATIVE PEOPLE.—The term
25 “indigenous, native people” means the lineal de-

1 scendants of the aboriginal, indigenous, native peo-
2 ple of the United States.

3 (7) NATIVE HAWAIIAN.—

4 (A) Prior to the recognition by the United
5 States of a Native Hawaiian government under
6 the authority of section 7(d)(2) of this Act, the
7 term “Native Hawaiian” means the indigenous,
8 native people of Hawaii who are the lineal de-
9 scendants of the aboriginal, indigenous, native
10 people who resided in the islands that now com-
11 prise the State of Hawaii on or before January
12 1, 1893, and who occupied and exercised sov-
13 ereignty in the Hawaiian archipelago, including
14 the area that now constitutes the State of Ha-
15 waii, and includes all Native Hawaiians who
16 were eligible in 1921 for the programs author-
17 ized by the Hawaiian Homes Commission Act
18 (42 Stat. 108, chapter 42) and their lineal de-
19 scendants.

20 (B) Following the recognition by the
21 United States of the Native Hawaiian govern-
22 ment under section 7(d)(2) of this Act, the
23 term “Native Hawaiian” shall have the mean-
24 ing given to such term in the organic governing
25 documents of the Native Hawaiian government.

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

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

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

14 (11) SECRETARY.—The term “Secretary”
15 means the Secretary of the Interior.

16 (12) 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 AND PURPOSE.**

21 (a) POLICY.—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;

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

22 (D) the right to become economically self-
23 sufficient; and

1 (5) the United States shall continue to engage
2 in a process of reconciliation and political relations
3 with the Native Hawaiian people.

4 (b) PURPOSE.—It is the intent of Congress that the
5 purpose of this Act is to provide a process for the reorga-
6 nization of a Native Hawaiian government and for the rec-
7 ognition by the United States of the Native Hawaiian gov-
8 ernment for purposes of continuing a government-to-gov-
9 ernment relationship.

10 **SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE**
11 **FOR NATIVE HAWAIIAN AFFAIRS.**

12 (a) IN GENERAL.—There is established within the
13 Office of the Secretary the United States Office for Native
14 Hawaiian Affairs.

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

17 (1) effectuate and coordinate the special trust
18 relationship between the Native Hawaiian people
19 and the United States through the Secretary, and
20 with all other Federal agencies;

21 (2) upon the recognition of the Native Hawai-
22 ian government by the United States as provided for
23 in section 7(d)(2) of this Act, effectuate and coordi-
24 nate the special trust relationship between the Na-
25 tive Hawaiian government and the United States

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

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

21 (4) consult with the Native Hawaiian Inter-
22 agency Task Force, other Federal agencies, and with
23 relevant agencies of the State of Hawaii on policies,
24 practices, and proposed actions affecting Native Ha-
25 waiian resources, rights, or lands;

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

15 (6) be responsible for continuing the process of
16 reconciliation with the Native Hawaiian people, and
17 upon the recognition of the Native Hawaiian govern-
18 ment by the United States as provided for in section
19 7(d)(2) of this Act, be responsible for continuing the
20 process of reconciliation with the Native Hawaiian
21 government; and

22 (7) assist the Native Hawaiian people in facili-
23 tating a process for self-determination, including but
24 not limited to the provision of technical assistance in
25 the development of the roll under section 7(a) of this

1 Act, the organization of the Native Hawaiian In-
2 terim Governing Council as provided for in section
3 7(c) of this Act, and the recognition of the Native
4 Hawaiian government as provided for in section 7(d)
5 of this Act.

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

11 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
12 **RESENTATIVE.**

13 The Attorney General shall designate an appropriate
14 official within the Department of Justice to assist the
15 United States Office for Native Hawaiian Affairs in the
16 implementation and protection of the rights of Native Ha-
17 waiians and their political, legal, and trust relationship
18 with the United States, and upon the recognition of the
19 Native Hawaiian government as provided for in section
20 7(d)(2) of this Act, in the implementation and protection
21 of the rights of the Native Hawaiian government and its
22 political, legal, and trust relationship with the United
23 States.

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

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

5 (b) COMPOSITION.—The Task Force shall be com-
6 posed of officials, to be designated by the President,
7 from—

8 (1) each Federal agency that establishes or im-
9 plements policies that affect Native Hawaiians or
10 whose actions may significantly or uniquely impact
11 on Native Hawaiian resources, rights, or lands;

12 (2) the United States Office for Native Hawai-
13 ian Affairs established under section 4 of this Act;
14 and

15 (3) the Executive Office of the President.

16 (c) LEAD AGENCIES.—The Department of the Inte-
17 rior and the Department of Justice shall serve as the lead
18 agencies of the Task Force, and meetings of the Task
19 Force shall be convened at the request of either of the
20 lead agencies.

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

1 (e) DUTIES.—The responsibilities of the Task Force
2 shall be—

3 (1) the coordination of Federal policies that af-
4 fect Native Hawaiians or actions by any agency or
5 agencies of the Federal Government which may sig-
6 nificantly or uniquely impact on Native Hawaiian re-
7 sources, rights, or lands;

8 (2) to assure that each Federal agency develops
9 a policy on consultation with the Native Hawaiian
10 people, and upon recognition of the Native Hawaiian
11 government by the United States as provided in sec-
12 tion 7(d)(2) of this Act, consultation with the Native
13 Hawaiian government; and

14 (3) to assure the participation of each Federal
15 agency in the development of the report to Congress
16 authorized in section 4(b)(5) of this Act.

17 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
18 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
19 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
20 **GANIZATION OF A NATIVE HAWAIIAN IN-**
21 **TERIM GOVERNING COUNCIL AND A NATIVE**
22 **HAWAIIAN GOVERNMENT, AND FOR THE REC-**
23 **OGNITION OF THE NATIVE HAWAIIAN GOV-**
24 **ERNMENT.**

25 (a) ROLL.—

1 (1) PREPARATION OF ROLL.—The United
2 States Office for Native Hawaiian Affairs shall as-
3 sist the adult members of the Native Hawaiian com-
4 munity who wish to participate in the reorganization
5 of a Native Hawaiian government in preparing a roll
6 for the purpose of the organization of a Native Ha-
7 waiian Interim Governing Council. The roll shall in-
8 clude the names of the—

9 (A) adult members of the Native Hawaiian
10 community who wish to become citizens of a
11 Native Hawaiian government and who are—

12 (i) the lineal descendants of the ab-
13 original, indigenous, native people who re-
14 sided in the islands that now comprise the
15 State of Hawaii on or before January 1,
16 1893, and who occupied and exercised sov-
17 ereignty in the Hawaiian archipelago; or

18 (ii) Native Hawaiians who were eligi-
19 ble in 1921 for the programs authorized by
20 the Hawaiian Homes Commission Act (42
21 Stat. 108, chapter 42) or their lineal de-
22 scendants; and

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

25 (2) CERTIFICATION AND SUBMISSION.—

1 (A) COMMISSION.—

2 (i) IN GENERAL.—There is authorized
3 to be established a Commission to be com-
4 posed of 9 members for the purpose of cer-
5 tifying that the adult members of the Na-
6 tive Hawaiian community on the roll meet
7 the definition of Native Hawaiian, as de-
8 fined in section 2(7)(A) of this Act.

9 (ii) MEMBERSHIP.—

10 (I) APPOINTMENT.—The Sec-
11 retary shall appoint the members of
12 the Commission in accordance with
13 subclause (II). Any vacancy on the
14 Commission shall not affect its powers
15 and shall be filled in the same manner
16 as the original appointment.

17 (II) REQUIREMENTS.—The mem-
18 bers of the Commission shall be Na-
19 tive Hawaiian, as defined in section
20 2(7)(A) of this Act, and shall have ex-
21 pertise in the certification of Native
22 Hawaiian ancestry.

23 (III) CONGRESSIONAL SUBMIS-
24 SION OF SUGGESTED CANDIDATES.—
25 In appointing members of the Com-

mission, the Secretary may choose
such members from among—

(aa) five suggested candidates submitted by the majority leader of the Senate and the minority leader of the Senate from a list of candidates provided to such leaders by the Chairman and Vice Chairman of the Committee on Indian Affairs of the Senate; and

(bb) four suggested candidates submitted by the Speaker of the House of Representatives and the minority leader of the House of Representatives from a list provided to the Speaker and the minority leader by the Chairman and Ranking member of the Committee on Resources of the House of Representatives.

(iii) EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees

1 of agencies under subchapter I of chapter
2 57 of title 5, United States Code, while
3 away from their homes or regular places of
4 business in the performance of services for
5 the Commission.

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

11 (3) SECRETARY.—

12 (A) CERTIFICATION.—The Secretary shall
13 review the Commission’s certification of the
14 membership roll and determine whether it is
15 consistent with applicable Federal law, includ-
16 ing the special trust relationship between the
17 United States and the indigenous, native people
18 of the United States.

19 (B) PUBLICATION.—Upon making the de-
20 termination authorized in subparagraph (A),
21 the Secretary shall publish a final roll.

22 (C) APPEAL.—

23 (i) ESTABLISHMENT OF MECHA-
24 NISM.—The Secretary is authorized to es-
25 tablish a mechanism for an appeal of the

Commission's determination as it concerns—

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

(II) a challenge to the inclusion of the name of a person on the roll on the grounds that the person does not meet the definition of Native Hawaiian, as so defined.

(ii) PUBLICATION; UPDATE.—The Secretary shall publish the final roll while appeals are pending, and shall update the final roll and the publication of the final roll upon the final disposition of any appeal.

(D) FAILURE TO ACT.—If the Secretary fails to make the certification authorized in subparagraph (A) within 90 days of the date that the Commission submits the membership roll to the Secretary, the certification shall be deemed to have been made, and the Commission shall publish the final roll.

1 (4) EFFECT OF PUBLICATION.—The publication
2 of the final roll shall serve as the basis for the eligi-
3 bility of adult members listed on the roll to partici-
4 pate in all referenda and elections associated with
5 the organization of a Native Hawaiian Interim Gov-
6 erning Council and the Native Hawaiian govern-
7 ment.

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

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
13 TERIM GOVERNING COUNCIL.—

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

17 (A) develop criteria for candidates to be
18 elected to serve on the Native Hawaiian Interim
19 Governing Council;

20 (B) determine the structure of the Native
21 Hawaiian Interim Governing Council; and

22 (C) elect members to the Native Hawaiian
23 Interim Governing Council.

24 (2) ELECTION.—Upon the request of the adult
25 members listed on the roll developed under the au-

1 thority of subsection (a), the United States Office
2 for Native Hawaiian Affairs may assist the Native
3 Hawaiian community in holding an election by secret
4 ballot (absentee and mail balloting permitted), to
5 elect the membership of the Native Hawaiian In-
6 terim Governing Council.

7 (3) POWERS.—

8 (A) IN GENERAL.—The Native Hawaiian
9 Interim Governing Council is authorized to rep-
10 resent those on the roll in the implementation
11 of this Act and shall have no powers other than
12 those given to it in accordance with this Act.

13 (B) FUNDING.—The Native Hawaiian In-
14 terim Governing Council is authorized to enter
15 into a contract or grant with any Federal agen-
16 cy, including but not limited to, the United
17 States Office for Native Hawaiian Affairs with-
18 in the Department of the Interior and the Ad-
19 ministration for Native Americans within the
20 Department of Health and Human Services, to
21 carry out the activities set forth in subpara-
22 graph (C).

23 (C) ACTIVITIES.—

24 (i) IN GENERAL.—The Native Hawai-
25 ian Interim Governing Council is author-

1 ized to conduct a referendum of the adult
2 members listed on the roll developed under
3 the authority of subsection (a) for the pur-
4 pose of determining (but not limited to)
5 the following:

6 (I) The proposed elements of the
7 organic governing documents of a Na-
8 tive Hawaiian government.

9 (II) The proposed powers and
10 authorities to be exercised by a Native
11 Hawaiian government, as well as the
12 proposed privileges and immunities of
13 a Native Hawaiian government.

14 (III) The proposed civil rights
15 and protection of such rights of the
16 citizens of a Native Hawaiian govern-
17 ment and all persons subject to the
18 authority of a Native Hawaiian gov-
19 ernment.

20 (ii) DEVELOPMENT OF ORGANIC GOV-
21 ERNING DOCUMENTS.—Based upon the
22 referendum, the Native Hawaiian Interim
23 Governing Council is authorized to develop
24 proposed organic governing documents for
25 a Native Hawaiian government.

1 (iii) DISTRIBUTION.—The Native Ha-
2 waiian Interim Governing Council is au-
3 thorized to distribute to all adult members
4 of those listed on the roll, a copy of the
5 proposed organic governing documents, as
6 drafted by the Native Hawaiian Interim
7 Governing Council, along with a brief im-
8 partial description of the proposed organic
9 governing documents.

10 (iv) CONSULTATION.—The Native Ha-
11 waiian Interim Governing Council is au-
12 thorized to freely consult with those mem-
13 bers listed on the roll concerning the text
14 and description of the proposed organic
15 governing documents.

16 (D) ELECTIONS.—

17 (i) IN GENERAL.—The Native Hawai-
18 ian Interim Governing Council is author-
19 ized to hold elections for the purpose of
20 ratifying the proposed organic governing
21 documents, and upon ratification of the or-
22 ganic governing documents, to hold elec-
23 tions for the officers of the Native Hawai-
24 ian government.

1 (ii) ASSISTANCE.—Upon the request
2 of the Native Hawaiian Interim Governing
3 Council, the United States Office of Native
4 Hawaiian Affairs may assist the Council in
5 conducting such elections.

6 (4) TERMINATION.—The Native Hawaiian In-
7 terim Governing Council shall have no power or au-
8 thority under this Act after the time at which the
9 duly elected officers of the Native Hawaiian govern-
10 ment take office.

11 (d) RECOGNITION OF THE NATIVE HAWAIIAN GOV-
12 ERNMENT.—

13 (1) PROCESS FOR RECOGNITION.—

14 (A) SUBMITTAL OF ORGANIC GOVERNING
15 DOCUMENTS.—The duly elected officers of the
16 Native Hawaiian government shall submit the
17 organic governing documents of the Native Ha-
18 waiian government to the Secretary.

19 (B) CERTIFICATIONS.—Within 90 days of
20 the date that the duly elected officers of the
21 Native Hawaiian government submit the or-
22 ganic governing documents to the Secretary,
23 the Secretary shall certify that the organic gov-
24 erning documents—

1 (i) were adopted by a majority vote of
2 the adult members listed on the roll pre-
3 pared under the authority of subsection
4 (a);

5 (ii) are consistent with applicable Fed-
6 eral law and the special trust relationship
7 between the United States and the indige-
8 nous native people of the United States;

9 (iii) provide for the exercise of those
10 governmental authorities that are recog-
11 nized by the United States as the powers
12 and authorities that are exercised by other
13 governments representing the indigenous,
14 native people of the United States;

15 (iv) provide for the protection of the
16 civil rights of the citizens of the Native
17 Hawaiian government and all persons sub-
18 ject to the authority of the Native Hawai-
19 ian government, and to assure that the
20 Native Hawaiian government exercises its
21 authority consistent with the requirements
22 of section 202 of the Act of April 11, 1968
23 (25 U.S.C. 1302);

24 (v) prevent the sale, disposition, lease,
25 or encumbrance of lands, interests in

lands, or other assets of the Native Hawaiian government without the consent of the Native Hawaiian government;

(vi) establish the criteria for citizenship in the Native Hawaiian government; and

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

(C) FAILURE TO ACT.—If the Secretary fails to act within 90 days of the date that the duly elected officers of the Native Hawaiian government submitted the organic governing documents of the Native Hawaiian government to the Secretary, the certifications authorized in subparagraph (B) shall be deemed to have been made.

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

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall re-

1 submit the organic governing documents to
 2 the duly elected officers of the Native Ha-
 3 waiian government along with a justifica-
 4 tion for each of the Secretary's findings as
 5 to why the provisions are not consistent
 6 with such law.

7 (ii) AMENDMENT AND RESUBMISSION
 8 BY THE NATIVE HAWAIIAN GOVERN-
 9 MENT.—If the organic governing docu-
 10 ments are resubmitted to the duly elected
 11 officers of the Native Hawaiian govern-
 12 ment by the Secretary under clause (i), the
 13 duly elected officers of the Native Hawai-
 14 ian government shall—

15 (I) amend the organic governing
 16 documents to ensure that the docu-
 17 ments comply with applicable Federal
 18 law; and

19 (II) resubmit the amended or-
 20 ganic governing documents to the Sec-
 21 retary for certification in accordance
 22 with subparagraphs (B) and (C).

23 (2) FEDERAL RECOGNITION.—

24 (A) RECOGNITION.—Notwithstanding any
 25 other provision of law, upon the election of the

1 officers of the Native Hawaiian government and
2 the certifications (or deemed certifications) by
3 the Secretary authorized in paragraph (1), Fed-
4 eral recognition is hereby extended to the Na-
5 tive Hawaiian government as the representative
6 governing body of the Native Hawaiian people.

7 (B) NO DIMINISHMENT OF RIGHTS OR
8 PRIVILEGES.—Nothing contained in this Act
9 shall diminish, alter, or amend any existing
10 rights or privileges enjoyed by the Native Ha-
11 waiian people which are not inconsistent with
12 the provisions of this Act.

13 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

14 There is authorized to be appropriated such sums as
15 may be necessary to carry out the activities authorized in
16 this Act.

17 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
18 **THORITY; NEGOTIATIONS.**

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

1 (b) NEGOTIATIONS.—Upon the Federal recognition
2 of the Native Hawaiian government pursuant to section
3 7(d)(2) of this Act, the United States is authorized to ne-
4 gotiate and enter into an agreement with the State of Ha-
5 waii and the Native Hawaiian government regarding the
6 transfer of lands, resources, and assets dedicated to Na-
7 tive Hawaiian use under existing law as in effect on the
8 date of enactment of this Act to the Native Hawaiian gov-
9 ernment.

10 **SEC. 10. DISCLAIMER.**

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

15 **SEC. 11. REGULATIONS.**

16 The Secretary is authorized to make such rules and
17 regulations and such delegations of authority as the Sec-
18 retary deems necessary to carry out the provisions of this
19 Act.

20 **SEC. 12. SEVERABILITY.**

21 In the event that any section or provision of this Act,
22 or any amendment made by this Act is held invalid, it
23 is the intent of Congress that the remaining sections or

- 1 provisions of this Act, and the amendments made by this
- 2 Act, shall continue in full force and effect.

