

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 147

To express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native Hawaiian Government Reorganization Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the Constitution vests Congress with the authority to address the conditions of the indigenous,
9 native people of the United States;
10

1 (2) Native Hawaiians, the native people of the
2 Hawaiian archipelago that is now part of the United
3 States, are indigenous, native people of the United
4 States;

5 (3) the United States has a special political and
6 legal responsibility to promote the welfare of the na-
7 tive people of the United States, including Native
8 Hawaiians;

9 (4) under the treaty making power of the
10 United States, Congress exercised its constitutional
11 authority to confirm treaties between the United
12 States and the Kingdom of Hawaii, and from 1826
13 until 1893, the United States—

14 (A) recognized the sovereignty of the King-
15 dom of Hawaii;

16 (B) accorded full diplomatic recognition to
17 the Kingdom of Hawaii; and

18 (C) entered into treaties and conventions
19 with the Kingdom of Hawaii to govern com-
20 merce and navigation in 1826, 1842, 1849,
21 1875, and 1887;

22 (5) pursuant to the Hawaiian Homes Commis-
23 sion Act, 1920 (42 Stat. 108, chapter 42), the
24 United States set aside approximately 203,500 acres
25 of land to address the conditions of Native Hawai-

1 ians in the Federal territory that later became the
2 State of Hawaii;

3 (6) by setting aside 203,500 acres of land for
4 Native Hawaiian homesteads and farms, the Hawai-
5 ian Homes Commission Act assists the members of
6 the Native Hawaiian community in maintaining dis-
7 tinct native settlements throughout the State of Ha-
8 waii;

9 (7) approximately 6,800 Native Hawaiian fami-
10 lies reside on the Hawaiian Home Lands and ap-
11 proximately 18,000 Native Hawaiians who are eligi-
12 ble to reside on the Hawaiian Home Lands are on
13 a waiting list to receive assignments of Hawaiian
14 Home Lands;

15 (8)(A) in 1959, as part of the compact with the
16 United States admitting Hawaii into the Union,
17 Congress established a public trust (commonly
18 known as the “ceded lands trust”), for 5 purposes,
19 1 of which is the betterment of the conditions of Na-
20 tive Hawaiians;

21 (B) the public trust consists of lands, including
22 submerged lands, natural resources, and the reve-
23 nues derived from the lands; and

24 (C) the assets of this public trust have never
25 been completely inventoried or segregated;

1 (9) Native Hawaiians have continuously sought
2 access to the ceded lands in order to establish and
3 maintain native settlements and distinct native com-
4 munities throughout the State;

5 (10) the Hawaiian Home Lands and other
6 ceded lands provide an important foundation for the
7 ability of the Native Hawaiian community to main-
8 tain the practice of Native Hawaiian culture, lan-
9 guage, and traditions, and for the survival and eco-
10 nomic self-sufficiency of the Native Hawaiian people;

11 (11) Native Hawaiians continue to maintain
12 other distinctly native areas in Hawaii;

13 (12) on November 23, 1993, Public Law 103-
14 150 (107 Stat. 1510) (commonly known as the
15 “Apology Resolution”) was enacted into law, extend-
16 ing an apology on behalf of the United States to the
17 native people of Hawaii for the United States’ role
18 in the overthrow of the Kingdom of Hawaii;

19 (13) 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 to the United States their claims to their in-
25 herent sovereignty as a people over their national

1 lands, either through the Kingdom of Hawaii or
2 through a plebiscite or referendum;

3 (14) the Apology Resolution expresses the com-
4 mitment of Congress and the President—

5 (A) to acknowledge the ramifications of the
6 overthrow of the Kingdom of Hawaii;

7 (B) to support reconciliation efforts be-
8 tween the United States and Native Hawaiians;
9 and

10 (C) to consult with Native Hawaiians on
11 the reconciliation process as called for in the
12 Apology Resolution;

13 (15) despite the overthrow of the government of
14 the Kingdom of Hawaii, Native Hawaiians have con-
15 tinued to maintain their separate identity as a dis-
16 tinct native community through cultural, social, and
17 political institutions, and to give expression to their
18 rights as native people to self-determination, self-
19 governance, and economic self-sufficiency;

20 (16) Native Hawaiians have also given expres-
21 sion to their rights as native people to self-deter-
22 mination, self-governance, and economic self-suffi-
23 ciency—

- 1 (A) through the provision of governmental
2 services to Native Hawaiians, including the pro-
3 vision of—
- 4 (i) health care services;
 - 5 (ii) educational programs;
 - 6 (iii) employment and training pro-
7 grams;
 - 8 (iv) economic development assistance
9 programs;
 - 10 (v) children’s services;
 - 11 (vi) conservation programs;
 - 12 (vii) fish and wildlife protection;
 - 13 (viii) agricultural programs;
 - 14 (ix) native language immersion pro-
15 grams;
 - 16 (x) native language immersion schools
17 from kindergarten through high school;
 - 18 (xi) college and master’s degree pro-
19 grams in native language immersion in-
20 struction; and
 - 21 (xii) traditional justice programs, and
- 22 (B) by continuing their efforts to enhance
23 Native Hawaiian self-determination and local
24 control;

1 (17) Native Hawaiians are actively engaged in
2 Native Hawaiian cultural practices, traditional agri-
3 cultural methods, fishing and subsistence practices,
4 maintenance of cultural use areas and sacred sites,
5 protection of burial sites, and the exercise of their
6 traditional rights to gather medicinal plants and
7 herbs, and food sources;

8 (18) the Native Hawaiian people wish to pre-
9 serve, develop, and transmit to future generations of
10 Native Hawaiians their lands and Native Hawaiian
11 political and cultural identity in accordance with
12 their traditions, beliefs, customs and practices, lan-
13 guage, and social and political institutions, to con-
14 trol and manage their own lands, including ceded
15 lands, and to achieve greater self-determination over
16 their own affairs;

17 (19) this Act provides a process within the
18 framework of Federal law for the Native Hawaiian
19 people to exercise their inherent rights as a distinct,
20 indigenous, native community to reorganize a Native
21 Hawaiian governing entity for the purpose of giving
22 expression to their rights as native people to self-de-
23 termination and self-governance;

24 (20) Congress—

1 (A) has declared that the United States
2 has a special responsibility for the welfare of
3 the native peoples of the United States, includ-
4 ing Native Hawaiians;

5 (B) has identified Native Hawaiians as a
6 distinct group of indigenous, native people of
7 the United States within the scope of its au-
8 thority under the Constitution, and has enacted
9 scores of statutes on their behalf ; and

10 (C) has delegated broad authority to the
11 State of Hawaii to administer some of the
12 United States' responsibilities as they relate to
13 the Native Hawaiian people and their lands;

14 (21) the United States has recognized and re-
15 affirmed the special political and legal relationship
16 with the Native Hawaiian people through the enact-
17 ment of the Act entitled, "An Act to provide for the
18 admission of the State of Hawaii into the Union",
19 approved March 18, 1959 (Public Law 86-3; 73
20 Stat. 4), by—

21 (A) ceding to the State of Hawaii title to
22 the public lands formerly held by the United
23 States, and mandating that those lands be held
24 as a public trust for 5 purposes, 1 of which is

1 for the betterment of the conditions of Native
2 Hawaiians; and

3 (B) transferring the United States' respon-
4 sibility for the administration of the Hawaiian
5 Home Lands to the State of Hawaii, but retain-
6 ing the authority to enforce the trust, including
7 the exclusive right of the United States to con-
8 sent to any actions affecting the lands that
9 comprise the corpus of the trust and any
10 amendments to the Hawaiian Homes Commis-
11 sion Act, 1920 (42 Stat. 108, chapter 42) that
12 are enacted by the legislature of the State of
13 Hawaii affecting the beneficiaries under the
14 Act;

15 (22) the United States has continually recog-
16 nized and reaffirmed that—

17 (A) Native Hawaiians have a cultural, his-
18 toric, and land-based link to the aboriginal, in-
19 digenous, native people who exercised sov-
20 ereignty over the Hawaiian Islands;

21 (B) Native Hawaiians have never relin-
22 quished their claims to sovereignty or their sov-
23 ereign lands;

24 (C) the United States extends services to
25 Native Hawaiians because of their unique sta-

1 tus as the indigenous, native people of a once-
2 sovereign nation with whom the United States
3 has a political and legal relationship; and

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

9 (23) the State of Hawaii supports the reaffir-
10 mation of the political and legal relationship between
11 the Native Hawaiian governing entity and the
12 United States as evidenced by 2 unanimous resolu-
13 tions enacted by the Hawaii State Legislature in the
14 2000 and 2001 sessions of the Legislature and by
15 the testimony of the Governor of the State of Hawaii
16 before the Committee on Indian Affairs of the Sen-
17 ate on February 25, 2003.

18 **SEC. 3. DEFINITIONS.**

19 In this Act:

20 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-
21 PLE.—The term “aboriginal, indigenous, native peo-
22 ple” means people whom Congress has recognized as
23 the original inhabitants of the lands that later be-
24 came part of the United States and who exercised

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

3 (2) ADULT MEMBER.—The term “adult mem-
4 ber” means a Native Hawaiian who has attained the
5 age of 18 and who elects to participate in the reor-
6 ganization of the Native Hawaiian governing entity.

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

14 (4) COMMISSION.—The term “commission”
15 means the Commission established under section
16 7(b) to provide for the certification that those adult
17 members of the Native Hawaiian community listed
18 on the roll meet the definition of Native Hawaiian
19 set forth in paragraph (8).

20 (5) COUNCIL.—The term “council” means the
21 Native Hawaiian Interim Governing Council estab-
22 lished under section 7(c)(2).

23 (6) INDIAN PROGRAM OR SERVICE.—

24 (A) IN GENERAL.—The term “Indian pro-
25 gram or service” means any federally funded or

1 authorized program or service provided to an
2 Indian tribe (or member of an Indian tribe) be-
3 cause of the status of the members of the In-
4 dian tribe as Indians.

5 (B) INCLUSIONS.—The term “Indian pro-
6 gram or service” includes a program or service
7 provided by the Bureau of Indian Affairs, the
8 Indian Health Service, or any other Federal
9 agency.

10 (7) INDIAN TRIBE.—The term “Indian tribe”
11 has the meaning given the term in section 4 of the
12 Indian Self-Determination and Education Assistance
13 Act (25 U.S.C. 450b).

14 (8) INDIGENOUS, NATIVE PEOPLE.—The term
15 “indigenous, native people” means the lineal de-
16 scendants of the aboriginal, indigenous, native peo-
17 ple of the United States.

18 (9) INTERAGENCY COORDINATING GROUP.—The
19 term “Interagency Coordinating Group” means the
20 Native Hawaiian Interagency Coordinating Group
21 established under section 6.

22 (10) NATIVE HAWAIIAN.—

23 (A) IN GENERAL.—Subject to subpara-
24 graph (B), for the purpose of establishing the
25 roll authorized under section 7(c)(1) and before

1 the reaffirmation of the political and legal rela-
2 tionship between the United States and the Na-
3 tive Hawaiian governing entity, the term “Na-
4 tive Hawaiian” means—

5 (i) an individual who is 1 of the indig-
6 enous, native people of Hawaii and who is
7 a direct lineal descendant of the aboriginal,
8 indigenous, native people who—

9 (I) resided in the islands that
10 now comprise the State of Hawaii on
11 or before January 1, 1893; and

12 (II) occupied and exercised sov-
13 ereignty in the Hawaiian archipelago,
14 including the area that now con-
15 stitutes the State of Hawaii; or

16 (ii) an individual who is 1 of the in-
17 digenous, native people of Hawaii and who
18 was eligible in 1921 for the programs au-
19 thorized by the Hawaiian Homes Commis-
20 sion Act (42 Stat. 108, chapter 42) or a
21 direct lineal descendant of that individual.

22 (B) NO EFFECT ON OTHER DEFINI-
23 TIONS.—Nothing in this paragraph affects the
24 definition of the term “Native Hawaiian” under

1 any other Federal or State law (including a reg-
2 ulation).

3 (11) NATIVE HAWAIIAN GOVERNING ENTITY.—

4 The term “Native Hawaiian Governing Entity”
5 means the governing entity organized by the Native
6 Hawaiian people pursuant to this Act.

7 (12) NATIVE HAWAIIAN PROGRAM OR SERV-

8 ICE.—The term “Native Hawaiian program or serv-
9 ice” means any program or service provided to Na-
10 tive Hawaiians because of their status as Native Ha-
11 waiians.

12 (13) OFFICE.—The term “Office” means the

13 United States Office for Native Hawaiian Relations
14 established by section 5(a).

15 (14) SECRETARY.—The term “Secretary”

16 means the Secretary of the Interior.

17 **SEC. 4. UNITED STATES POLICY AND PURPOSE.**

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

19 (1) Native Hawaiians are a unique and distinct,
20 indigenous, native people with whom the United
21 States has a special political and legal relationship;

22 (2) the United States has a special political and
23 legal relationship with the Native Hawaiian people
24 which includes promoting the welfare of Native Ha-
25 waiians;

1 (3) Congress possesses the authority under the
2 Constitution, including but not limited to Article I,
3 section 8, clause 3, to enact legislation to address
4 the conditions of Native Hawaiians and has exer-
5 cised this authority through the enactment of—

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

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

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

14 (4) Native Hawaiians have—

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

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

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

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

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

1 (b) PURPOSE.—The purpose of this Act is to provide
2 a process for the reorganization of the Native Hawaiian
3 governing entity and the reaffirmation of the political and
4 legal relationship between the United States and the Na-
5 tive Hawaiian governing entity for purposes of continuing
6 a government-to-government relationship.

7 **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**
8 **LATIONS.**

9 (a) ESTABLISHMENT.—There is established within
10 the Office of the Secretary, the United States Office for
11 Native Hawaiian Relations.

12 (b) DUTIES.—The Office shall—

13 (1) continue the process of reconciliation with
14 the Native Hawaiian people in furtherance of the
15 Apology Resolution;

16 (2) upon the reaffirmation of the political and
17 legal relationship between the Native Hawaiian gov-
18 erning entity and the United States, effectuate and
19 coordinate the special political and legal relationship
20 between the Native Hawaiian governing entity and
21 the United States through the Secretary, and with
22 all other Federal agencies;

23 (3) fully integrate the principle and practice of
24 meaningful, regular, and appropriate consultation
25 with the Native Hawaiian governing entity by pro-

1 viding timely notice to, and consulting with, the Na-
2 tive Hawaiian people and the Native Hawaiian gov-
3 erning entity before taking any actions that may
4 have the potential to significantly affect Native Ha-
5 waiian resources, rights, or lands;

6 (4) consult with the Interagency Coordinating
7 Group, other Federal agencies, the Governor of the
8 State of Hawaii and relevant agencies of the State
9 of Hawaii on policies, practices, and proposed ac-
10 tions affecting Native Hawaiian resources, rights, or
11 lands; and

12 (5) prepare and submit to the Committee on
13 Indian Affairs and the Committee on Energy and
14 Natural Resources of the Senate and the Committee
15 on Resources of the House of Representatives an an-
16 nual report detailing the activities of the Interagency
17 Coordinating Group that are undertaken with re-
18 spect to the continuing process of reconciliation and
19 to effect meaningful consultation with the Native
20 Hawaiian governing entity and providing rec-
21 ommendations for any necessary changes to Federal
22 law or regulations promulgated under the authority
23 of Federal law.

1 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**
2 **GROUP.**

3 (a) **ESTABLISHMENT.**—In recognition that Federal
4 programs authorized to address the conditions of Native
5 Hawaiians are largely administered by Federal agencies
6 other than the Department of the Interior, there is estab-
7 lished an interagency coordinating group to be known as
8 the “Native Hawaiian Interagency Coordinating Group”.

9 (b) **COMPOSITION.**—The Interagency Coordinating
10 Group shall be composed of officials, to be designated by
11 the President, from—

12 (1) each Federal agency that administers Na-
13 tive Hawaiian programs, establishes or implements
14 policies that affect Native Hawaiians, or whose ac-
15 tions may significantly or uniquely impact Native
16 Hawaiian resources, rights, or lands; and

17 (2) the Office.

18 (c) **LEAD AGENCY.**—

19 (1) **IN GENERAL.**—The Department of the Inte-
20 rior shall serve as the lead agency of the Interagency
21 Coordinating Group.

22 (2) **MEETINGS.**—The Secretary shall convene
23 meetings of the Interagency Coordinating Group.

24 (d) **DUTIES.**—The Interagency Coordinating Group
25 shall—

1 (1) coordinate Federal programs and policies
2 that affect Native Hawaiians or actions by any agen-
3 cy or agencies of the Federal Government that may
4 significantly or uniquely affect Native Hawaiian re-
5 sources, rights, or lands;

6 (2) ensure that each Federal agency develops a
7 policy on consultation with the Native Hawaiian peo-
8 ple, and upon the reaffirmation of the political and
9 legal relationship between the Native Hawaiian gov-
10 erning entity and the United States, consultation
11 with the Native Hawaiian governing entity; and

12 (3) ensure the participation of each Federal
13 agency in the development of the report to Congress
14 authorized in section 5(b)(5).

15 **SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NA-**
16 **TIVE HAWAIIAN GOVERNING ENTITY AND**
17 **THE REAFFIRMATION OF THE POLITICAL**
18 **AND LEGAL RELATIONSHIP BETWEEN THE**
19 **UNITED STATES AND THE NATIVE HAWAIIAN**
20 **GOVERNING ENTITY.**

21 (a) **RECOGNITION OF THE NATIVE HAWAIIAN GOV-**
22 **ERNING ENTITY.**—The right of the Native Hawaiian peo-
23 ple to reorganize the Native Hawaiian governing entity to
24 provide for their common welfare and to adopt appropriate

1 organic governing documents is recognized by the United
2 States.

3 (b) COMMISSION.—

4 (1) IN GENERAL.—There is authorized to be es-
5 tablished a Commission to be composed of nine
6 members for the purposes of—

7 (A) preparing and maintaining a roll of the
8 adult members of the Native Hawaiian commu-
9 nity who elect to participate in the reorganiza-
10 tion of the Native Hawaiian governing entity;
11 and

12 (B) certifying that the adult members of
13 the Native Hawaiian community proposed for
14 inclusion on the roll meet the definition of Na-
15 tive Hawaiian in paragraph (8) of section 3.

16 (2) MEMBERSHIP.—

17 (A) APPOINTMENT.—Within 180 days of
18 the date of enactment of this Act, the Secretary
19 shall appoint the members of the Commission
20 in accordance with subclause (B). Any vacancy
21 on the Commission shall not affect its powers
22 and shall be filled in the same manner as the
23 original appointment.

24 (B) REQUIREMENTS.—The members of the
25 Commission shall be Native Hawaiian, as de-

1 fined in section 3(8), and shall have expertise in
2 the determination of Native Hawaiian ancestry
3 and lineal descendance.

4 (3) EXPENSES.—Each member of the Commis-
5 sion shall be allowed travel expenses, including per
6 diem in lieu of subsistence, at rates authorized for
7 employees of agencies under subchapter I of chapter
8 57 of title 5, United States Code, while away from
9 their homes or regular places of business in the per-
10 formance of services for the Commission.

11 (4) DUTIES.—The Commission shall—

12 (A) prepare and maintain a roll of the
13 adult members of the Native Hawaiian commu-
14 nity who elect to participate in the reorganiza-
15 tion of the Native Hawaiian governing entity;
16 and

17 (B) certify that each of the adult members
18 of the Native Hawaiian community proposed for
19 inclusion on the roll meets the definition of Na-
20 tive Hawaiian in section 3(8).

21 (5) STAFF.—

22 (A) IN GENERAL.—The Commission may,
23 without regard to the civil service laws (includ-
24 ing regulations), appoint and terminate an execu-
25 tive director and such other additional per-

1 sonnel as are necessary to enable the Commis-
2 sion to perform the duties of the Commission.

3 (B) COMPENSATION.—

4 (i) IN GENERAL.—Except as provided
5 in clause (ii), the Commission may fix the
6 compensation of the executive director and
7 other personnel without regard to the pro-
8 visions of chapter 51 and subchapter III of
9 chapter 53 of title 5, United States Code,
10 relating to classification of positions and
11 General Schedule pay rates.

12 (ii) MAXIMUM RATE OF PAY.—The
13 rate of pay for the executive director and
14 other personnel shall not exceed the rate
15 payable for level V of the Executive Sched-
16 ule under section 5316 of title 5, United
17 States Code.

18 (6) DETAIL OF FEDERAL GOVERNMENT EM-
19 PLOYEES.—

20 (A) IN GENERAL.—An employee of the
21 Federal Government may be detailed to the
22 Commission without reimbursement.

23 (B) CIVIL SERVICE STATUS.—The detail of
24 the employee shall be without interruption or
25 loss of civil service status or privilege.

1 (7) PROCUREMENT OF TEMPORARY AND INTER-
2 MITTENT SERVICES.—The Commission may procure
3 temporary and intermittent services in accordance
4 with section 3109(b) of title 5, United States Code,
5 at rates for individuals that do not exceed the daily
6 equivalent of the annual rate of basic pay prescribed
7 for level V of the Executive Schedule under section
8 5316 of that title.

9 (8) EXPIRATION.—The Secretary shall dissolve
10 the Commission upon the reaffirmation of the polit-
11 ical and legal relationship between the Native Ha-
12 waiian governing entity and the United States.

13 (c) PROCESS FOR THE REORGANIZATION OF THE NA-
14 TIVE HAWAIIAN GOVERNING ENTITY.—

15 (1) ROLL.—

16 (A) CONTENTS.—The roll shall include the
17 names of the adult members of the Native Ha-
18 waiian community who elect to participate in
19 the reorganization of the Native Hawaiian gov-
20 erning entity and are certified to be Native Ha-
21 waiian as defined in section 3(8) by the Com-
22 mission.

23 (B) FORMATION OF ROLL.—Each adult
24 member of the Native Hawaiian community
25 who elects to participate in the reorganization

1 of the Native Hawaiian governing entity shall
2 submit to the Commission documentation in the
3 form established by the Commission that is suf-
4 ficient to enable the Commission to determine
5 whether the individual meets the definition of
6 Native Hawaiian in section 3(8).

7 (C) DOCUMENTATION.—The Commission
8 shall—

9 (i) identify the types of documentation
10 that may be submitted to the Commission
11 that would enable the Commission to de-
12 termine whether an individual meets the
13 definition of Native Hawaiian in section
14 3(8);

15 (ii) establish a standard format for
16 the submission of documentation; and

17 (iii) publish information related to
18 clauses (i) and (ii) in the Federal Register.

19 (D) CONSULTATION.—In making deter-
20 minations that each of the adult members of
21 the Native Hawaiian community proposed for
22 inclusion on the roll meets the definition of Na-
23 tive Hawaiian in section 3(8), the Commission
24 may consult with Native Hawaiian organiza-
25 tions, agencies of the State of Hawaii including

1 but not limited to the Department of Hawaiian
2 Home Lands, the Office of Hawaiian Affairs,
3 and the State Department of Health, and other
4 entities with expertise and experience in the de-
5 termination of Native Hawaiian ancestry and
6 lineal descendency.

7 (E) CERTIFICATION AND SUBMITTAL OF
8 ROLL TO SECRETARY.—The Commission
9 shall—

10 (i) submit the roll containing the
11 names of the adult members of the Native
12 Hawaiian community who meet the defini-
13 tion of Native Hawaiian in section 3(8) to
14 the Secretary within two years from the
15 date on which the Commission is fully
16 composed; and

17 (ii) certify to the Secretary that each
18 of the adult members of the Native Hawai-
19 ian community proposed for inclusion on
20 the roll meets the definition of Native Ha-
21 waiian in section 3(8).

22 (F) PUBLICATION.—Upon certification by
23 the Commission to the Secretary that those list-
24 ed on the roll meet the definition of Native Ha-

1 waiian in section 3(8), the Secretary shall pub-
2 lish the roll in the Federal Register.

3 (G) APPEAL.—The Secretary may estab-
4 lish a mechanism for an appeal for any person
5 whose name is excluded from the roll who
6 claims to meet the definition of Native Hawai-
7 ian in section 3(8) and to be 18 years of age
8 or older.

9 (H) PUBLICATION; UPDATE.—The Sec-
10 retary shall—

11 (i) publish the roll regardless of
12 whether appeals are pending;

13 (ii) update the roll and the publication
14 of the roll on the final disposition of any
15 appeal; and

16 (iii) update the roll to include any Na-
17 tive Hawaiian who has attained the age of
18 18 and who has been certified by the Com-
19 mission as meeting the definition of Native
20 Hawaiian in section 3(8) after the initial
21 publication of the roll or after any subse-
22 quent publications of the roll.

23 (I) FAILURE TO ACT.—If the Secretary
24 fails to publish the roll, not later than 90 days
25 after the date on which the roll is submitted to

1 the Secretary, the Commission shall publish the
2 roll notwithstanding any order or directive
3 issued by the Secretary or any other official of
4 the Department of the Interior to the contrary.

5 (J) EFFECT OF PUBLICATION.—The publi-
6 cation of the initial and updated roll shall serve
7 as the basis for the eligibility of adult members
8 of the Native Hawaiian community whose
9 names are listed on those rolls to participate in
10 the reorganization of the Native Hawaiian gov-
11 erning entity.

12 (2) ORGANIZATION OF THE NATIVE HAWAIIAN
13 INTERIM GOVERNING COUNCIL.—

14 (A) ORGANIZATION.—The adult members
15 of the Native Hawaiian community listed on the
16 roll published under this section may—

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

20 (ii) determine the structure of the
21 Council; and

22 (iii) elect members from individuals
23 listed on the roll published under this sub-
24 section to the Council.

25 (B) POWERS.—

1 (i) IN GENERAL.—The Council—

2 (I) may represent those listed on
3 the roll published under this section in
4 the implementation of this Act; and

5 (II) shall have no powers other
6 than powers given to the Council
7 under this Act.

8 (ii) FUNDING.—The Council may
9 enter into a contract with, or obtain a
10 grant from, any Federal or State agency to
11 carry out clause (iii).

12 (iii) ACTIVITIES.—

13 (I) IN GENERAL.—The Council
14 may conduct a referendum among the
15 adult members of the Native Hawai-
16 ian community listed on the roll pub-
17 lished under this subsection for the
18 purpose of determining the proposed
19 elements of the organic governing doc-
20 uments of the Native Hawaiian gov-
21 erning entity, including but not lim-
22 ited to—

23 (aa) the proposed criteria
24 for citizenship of the Native Ha-
25 waiian governing entity;

1 (bb) the proposed powers
2 and authorities to be exercised by
3 the Native Hawaiian governing
4 entity, as well as the proposed
5 privileges and immunities of the
6 Native Hawaiian governing enti-
7 ty;

8 (cc) the proposed civil rights
9 and protection of the rights of
10 the citizens of the Native Hawai-
11 ian governing entity and all per-
12 sons affected by the exercise of
13 governmental powers and au-
14 thorities of the Native Hawaiian
15 governing entity; and

16 (dd) other issues determined
17 appropriate by the Council.

18 (II) DEVELOPMENT OF ORGANIC
19 GOVERNING DOCUMENTS.—Based on
20 the referendum, the Council may de-
21 velop proposed organic governing doc-
22 uments for the Native Hawaiian gov-
23 erning entity.

24 (III) DISTRIBUTION.—The Coun-
25 cil may distribute to all adult mem-

1 bers of the Native Hawaiian commu-
2 nity listed on the roll published under
3 this subsection—

4 (aa) a copy of the proposed
5 organic governing documents, as
6 drafted by the Council; and

7 (bb) a brief impartial de-
8 scription of the proposed organic
9 governing documents;

10 (IV) ELECTIONS.—The Council
11 may hold elections for the purpose of
12 ratifying the proposed organic gov-
13 erning documents, and on certification
14 of the organic governing documents
15 by the Secretary in accordance with
16 paragraph (4), hold elections of the
17 officers of the Native Hawaiian gov-
18 erning entity pursuant to paragraph
19 (5).

20 (3) SUBMITTAL OF ORGANIC GOVERNING DOCU-
21 MENTS.—Following the reorganization of the Native
22 Hawaiian governing entity and the adoption of or-
23 ganic governing documents, the Council shall submit
24 the organic governing documents of the Native Ha-
25 waiian governing entity to the Secretary.

1 (4) CERTIFICATIONS.—

2 (A) IN GENERAL.—Within the context of
3 the future negotiations to be conducted under
4 the authority of section 8(b)(1), and the subse-
5 quent actions by the Congress and the State of
6 Hawaii to enact legislation to implement the
7 agreements of the 3 governments, not later
8 than 90 days after the date on which the Coun-
9 cil submits the organic governing documents to
10 the Secretary, the Secretary shall certify that
11 the organic governing documents—

12 (i) establish the criteria for citizenship
13 in the Native Hawaiian governing entity;

14 (ii) were adopted by a majority vote of
15 the adult members of the Native Hawaiian
16 community whose names are listed on the
17 roll published by the Secretary;

18 (iii) provide authority for the Native
19 Hawaiian governing entity to negotiate
20 with Federal, State, and local govern-
21 ments, and other entities;

22 (iv) provide for the exercise of govern-
23 mental authorities by the Native Hawaiian
24 governing entity, including any authorities
25 that may be delegated to the Native Ha-

1 waiian governing entity by the United
2 States and the State of Hawaii following
3 negotiations authorized in section 8(b)(1)
4 and the enactment of legislation to imple-
5 ment the agreements of the 3 governments;

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

11 (vi) provide for the protection of the
12 civil rights of the citizens of the Native
13 Hawaiian governing entity and all persons
14 affected by the exercise of governmental
15 powers and authorities by the Native Ha-
16 waiian governing entity; and

17 (vii) are consistent with applicable
18 Federal law and the special political and
19 legal relationship between the United
20 States and the indigenous, native people of
21 the United States; provided that the provi-
22 sions of Public Law 103-454, 25 U.S.C.
23 479a, shall not apply.

1 (B) RESUBMISSION IN CASE OF NON-
2 COMPLIANCE WITH THE REQUIREMENTS OF
3 SUBPARAGRAPH (a).—

4 (i) RESUBMISSION BY THE SEC-
5 RETARY.—If the Secretary determines that
6 the organic governing documents, or any
7 part of the documents, do not meet all of
8 the requirements set forth in subparagraph
9 (A), the Secretary shall resubmit the or-
10 ganic governing documents to the Council,
11 along with a justification for each of the
12 Secretary's findings as to why the provi-
13 sions are not in full compliance.

14 (ii) AMENDMENT AND RESUBMISSION
15 OF ORGANIC GOVERNING DOCUMENTS.—If
16 the organic governing documents are re-
17 submitted to the Council by the Secretary
18 under clause (i), the Council shall—

19 (I) amend the organic governing
20 documents to ensure that the docu-
21 ments meet all the requirements set
22 forth in subparagraph (A); and

23 (II) resubmit the amended or-
24 ganic governing documents to the Sec-

1 retary for certification in accordance
2 with this paragraph.

3 (C) CERTIFICATIONS DEEMED MADE.—

4 The certifications under paragraph (4) shall be
5 deemed to have been made if the Secretary has
6 not acted within 90 days after the date on
7 which the Council has submitted the organic
8 governing documents of the Native Hawaiian
9 governing entity to the Secretary.

10 (5) ELECTIONS.—On completion of the certifi-
11 cations by the Secretary under paragraph (4), the
12 Council may hold elections of the officers of the Na-
13 tive Hawaiian governing entity.

14 (6) REAFFIRMATION.—Notwithstanding any
15 other provision of law, upon the certifications re-
16 quired under paragraph (4) and the election of the
17 officers of the Native Hawaiian governing entity, the
18 political and legal relationship between the United
19 States and the Native Hawaiian governing entity is
20 hereby reaffirmed and the United States extends
21 Federal recognition to the Native Hawaiian gov-
22 erning entity as the representative governing body of
23 the Native Hawaiian people.

1 **SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
2 **THORITY; NEGOTIATIONS; CLAIMS.**

3 (a) REAFFIRMATION.—The delegation by the United
4 States of authority to the State of Hawaii to address the
5 conditions of the indigenous, native people of Hawaii con-
6 tained in the Act entitled “An Act to provide for the ad-
7 mission of the State of Hawaii into the Union” approved
8 March 18, 1959 (Public Law 86–3, 73 Stat. 4), is re-
9 affirmed.

10 (b) NEGOTIATIONS.—

11 (1) IN GENERAL.—Upon the reaffirmation of
12 the political and legal relationship between the
13 United States and the Native Hawaiian governing
14 entity, the United States and the State of Hawaii
15 may enter into negotiations with the Native Hawai-
16 ian governing entity designed to lead to an agree-
17 ment addressing such matters as—

18 (A) the transfer of lands, natural re-
19 sources, and other assets, and the protection of
20 existing rights related to such lands or re-
21 sources;

22 (B) the exercise of governmental authority
23 over any transferred lands, natural resources,
24 and other assets, including land use;

25 (C) the exercise of civil and criminal juris-
26 diction;

1 (D) the delegation of governmental powers
2 and authorities to the Native Hawaiian gov-
3 erning entity by the United States and the
4 State of Hawaii; and

5 (E) any residual responsibilities of the
6 United States and the State of Hawaii.

7 (2) AMENDMENTS TO EXISTING LAWS.—Upon
8 agreement on any matter or matters negotiated with
9 the United States, the State of Hawaii, and the Na-
10 tive Hawaiian governing entity, the parties are au-
11 thorized to submit—

12 (A) to the Committee on Indian Affairs of
13 the Senate, the Committee on Energy and Nat-
14 ural Resources of the Senate, and the Com-
15 mittee on Resources of the House of Represent-
16 atives, recommendations for proposed amend-
17 ments to Federal law that will enable the imple-
18 mentation of agreements reached between the 3
19 governments; and

20 (B) to the Governor and the legislature of
21 the State of Hawaii, recommendations for pro-
22 posed amendments to State law that will enable
23 the implementation of agreements reached be-
24 tween the 3 governments.

25 (c) CLAIMS.—

1 (1) IN GENERAL.—Nothing in this Act serves
2 as a settlement of any claim against the United
3 States.

4 (2) STATUTE OF LIMITATIONS.—Any claim
5 against the United States arising under Federal law
6 that—

7 (A) is in existence on the date of enact-
8 ment of this Act;

9 (B) is asserted by the Native Hawaiian
10 governing entity on behalf of the Native Hawai-
11 ian people; and

12 (C) relates to the legal and political rela-
13 tionship between the United States and the Na-
14 tive Hawaiian people;

15 shall be brought in the court of jurisdiction over
16 such claims not later than 20 years after the date
17 on which Federal recognition is extended to the Na-
18 tive Hawaiian governing entity under section
19 7(c)(6).

20 **SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

21 (a) INDIAN GAMING REGULATORY ACT.—Nothing in
22 this Act shall be construed to authorize the Native Hawai-
23 ian governing entity to conduct gaming activities under
24 the authority of the Indian Gaming Regulatory Act (25
25 U.S.C. 2701 et seq.).

1 (b) INDIAN PROGRAMS AND SERVICES.—Notwith-
2 standing section 7(c)(6), because of the eligibility of the
3 Native Hawaiian governing entity and its citizens for Na-
4 tive Hawaiian programs and services in accordance with
5 subsection (c), nothing in this Act provides an authoriza-
6 tion for eligibility to participate in any Indian program
7 or service to any individual or entity not otherwise eligible
8 for the program or service under applicable Federal law.

9 (c) NATIVE HAWAIIAN PROGRAMS AND SERVICES.—
10 The Native Hawaiian governing entity and its citizens
11 shall be eligible for Native Hawaiian programs and serv-
12 ices to the extent and in the manner provided by other
13 applicable laws.

14 **SEC. 10. SEVERABILITY.**

15 If any section or provision of this Act is held invalid,
16 it is the intent of Congress that the remaining sections
17 or provisions shall continue in full force and effect.

18 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated such sums
20 as are necessary to carry out this Act.