



TESTIMONY OF Ka Lāhui Hawai'i; Ka Lāhui Hawai'i Political Action Committee aka Kōmike Kālai'āina; and Nā Koa Ikaika Ka Lāhui Hawai'i

TO: U.S. Senate Committee on Indian Affairs – Oversight Hearing on
A Call to Action: Native communities' priorities in focus for the 117th Congress

DATE: March 31, 2021

Ka Lāhui Hawai'i; Ka Lāhui Hawai'i Political Action Committee aka Kōmike Kālai'āina; and Nā Koa Ikaika Ka Lāhui Hawai'i jointly submit this written testimony in response to the oversight hearing entitled "A call to action: Native communities' priorities in focus for the 117th Congress."

Ka Lāhui Hawai'i, a native initiative for self-governance formed by and for Native Hawaiians without the interference of the State or Federal governments or its agencies, is the evolutionary product of years of legal research, community dialogues, meetings, and workshops. From 1987, we enrolled over 20,000 citizens from our Islands and on the U.S. continent, convened 3 Constitutional Conventions, held over 35 legislative sessions, conducted 4 general elections with the assistance of the League of Women Voters, ratified 14 treaties of mutual recognition and friendship with Inuit and Indian Nations, sent diplomatic liaisons to the United Nations, and sent delegations to Washington, D.C., to lobby Congress on behalf of Hawaiian entitlements and programs. In addition, Ka Lāhui Hawai'i has actively testified on issues at the Federal, State, County, and community levels, published newsletters and other educational materials, and convened numerous community educational meetings and workshops about sovereignty and other critical issues facing our community such as protecting sacred lands and advocating for water rights exercising our peoples' right to Self-Determination believing in the advancement of our efforts to be self-governing.

Ka Lāhui Hawai'i Political Action Committee (KPAC) aka Kōmike Kālai'āina is a Hawaiian political watchdog organization that was formed to monitor legislation that impacts the Kanaka Maoli (aka Native Hawaiian) people and our National Lands which consist of the Hawaiian Kingdom crown and government lands. KPAC is a national committee of Ka Lāhui Hawai'i that works with many Hawaiian organizations and 'ohana who advocate for Hawaiian Self-Determination and Human Rights set forth in the United Nations Declaration on the Rights of Indigenous Peoples and International Human Rights Conventions. The purpose of KPAC is to participate to the greatest extent in all State/US processes promoting the national platform of Ka Lāhui Hawai'i including the return of lands to Kanaka Maoli (native Hawaiians and their descendants), termination of wardship advocating for the end of abuses of Kanaka Maoli and our lands, and raising public consciousness about the status of the Kanaka Maoli peoples in our own homeland.

Nā Koa Ikaika Ka Lāhui Hawai'i is a non-governmental organization founded by Mililani Trask, the first Kia'āina of **Ka Lāhui Hawai'i**. It is registered as a Native Hawaiian Organization advocating for the rights of indigenous peoples globally.

Ka Lāhui Hawai'i and its predecessor, **Ho'āla Kānāwai and the Native Hawaiian Land Trust Task Force**, have consistently advocated for the full implementation of the Hawaiian Homes Commission Act and the Admission Act Section 5(f) land trust for native Hawaiians, which was accepted as a compact by the State of Hawai'i in its Constitution at Article XII, Sections 1, 2, 3, and 4 as amended in 1978.¹ Section 5(f) of the Admission Act places the responsibility on the United States to bring suit for breach of trust and to fulfill this obligation.

Ka Lāhui Hawai'i; Ka Lāhui Hawai'i Political Action Committee aka Kōmike Kālai'āina; and Nā Koa Ikaika Ka Lāhui Hawai'i requests US Congressional Oversight Hearings in Hawai'i on the State of Hawaii's administration of the Hawaiian Home Lands and Ceded Lands Trusts pursuant to sections 4 and 5(f) of the Hawaii Admissions Act of 1959. Specifically, we are requesting US Congressional Oversight Hearings on the following 4 areas/topics:

1.A. The Federal and State implementation of the Recommendations made for State and Federal corrective action contained in the Report of the Federal-State Task Force on the Hawaiian Homes Commission Act, August 1983, to the United States Dept. of Interior and the State of Hawaii;

¹ Native Hawaiian Land Trust Task Force Response to Volumes I and II of the Native Hawaiian Study Commission Report on the Culture, Needs and Concerns of Native Hawaiians before the Senate Committee on Energy and Natural Resources and the House Committee on the Interior and Insular Affairs, May 14, 1984.

1.B. The State and US Governments actions implementing the Recommendations of the Federal Audit Report on Follow-up of Recommendations Concerning the Hawaiian Homes Commission, Office of the Secretary [From the U.S. Government Printing Office, www.gpo.gov] Report No. 00-i-500, Title: Audit Report on Follow up of Recommendations Concerning the Hawaiian Homes Commission, Office of the Secretary Date: June 16, 2000;

Note: **The Hawaiian Homes Commission Act** was enacted into law in 1921, 100 years ago. Its primary purpose is the Homesteading of native Hawaiians on Homestead lands that were transferred to the State in ‘Trust’ for native Hawaiians in Section 4 of the Admissions Act. **In 1983, when the Federal-State Task Force Report was published there were about 8,000 native Hawaiians on waiting lists for a Homestead. In 2021, the numbers have expanded to over 28,000. No significant or meaningful corrective action has been taken to address the growing need of native Hawaiians for affordable housing on their Trust lands since the Recommendations of the Task Force were made in 1983.** In addition, the failure of both the Federal and State governments to provide funding and resources to implement the Hawaiian Homes Commission Act since its inception is the source of ongoing litigation against the State. The use of Hawaiian Home Lands for other purposes has been documented for many years and the lack of ensuring that excess federal lands are made available as part of the Hawaiian Home Lands Recovery Act has been circumvented by the Department of Defense (DOD). Lastly, a proposal to study the suitability and feasibility of designating certain land as the South Kona National Heritage Area could potentially remove even more Hawaiian Home Lands.

2. The State and US Governments **abuse and mismanagement** of the **Ceded Lands Trust**;

The US military’s use and interest in renewing long-term leases of large areas of Ceded Lands for a nominal fee and the abuse of those lands including the bombing of **Kaho‘olawe** and training at **Pohakuloa** and **Makua** to name a few have resulted in these and other areas littered with unexploded ordnance and other toxic chemicals. The State has equally mismanaged these lands as evidenced by **Mauna Kea** and policies to allow for long-term leases (100 year term). While the ultimate goal is the return of these trust assets to a sovereign native Hawaiian entity formed without the interference of the State and Federal government, in the meantime, a full accounting and compensation should be provided for the use of these lands. Reports submitted to the State Department of Land and Natural Resources **detail uses of Ceded lands without compensation** and the cap on the amount of funds that has been in place without an increase for the past 15 years.

A significant portion of the Ceded Lands Trust is part of the **Papahānaumokuākea** Marine National Monument. At minimum, an update should be provided on how this designation has improved the resource and fulfills the obligation to better the conditions of native Hawaiians. **Native Hawaiian rights to access and gather** must be appropriately addressed. Furthermore, a thorough review of **Papahānaumokuākea** should be completed before other proposed designations like the **Kaena** Point National Heritage Area or the South Kona National Heritage Area.

3.A. The failure of the US DOD to adopt a coherent policy and procedure for **required Consultation with Native Hawaiians** on DOD projects impacting their trust **lands and human rights**.

The current DOD policy regarding “Consultations” with Native Hawaiians Pursuant to President Biden’s Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships issued in January, 86 Fed. Reg. 7491 (Jan. 26, 2021) (“Memorandum”) does not address or include adequate protections and processes for consultation or for the protection of the **human rights of Native Hawaiians**. The outcome contemplated in the President’s Memorandum is a “detailed plan of action the agency will take to implement the policies and directives of Executive Order 13175,” described in the Memorandum.

The DOD is currently in the process of reviewing DoDI: 4710.03. There are discrepancies between the Memorandum and the DOD Consultation policy set forth in DOD instruction 4710.03 Consultation with Native Hawaiian Organizations (October 25, 2011). DOD’s consultation policy specifically includes Native Hawaiians, but does not include or address rights of Native Hawaiians set forth in the **UN Declaration on the Rights of Indigenous Peoples** (UNDRIP), which was endorsed by the United States on December 16, 2010. UNDRIP Article 32 mandates that nation states consult with Indigenous peoples “in order to obtain their **free and informed consent** prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

To date, the DOD consultation process has not included the UNDRIP standards. Given the directives of the Memorandum and Executive Orders discussed above, UNDRIP standards including **free, prior and informed consent** of Indigenous Peoples should be included in the DOD policies and processes for ‘Consultation’ with Native

Hawaiians. Note: In 2013, the Advisory Council on Historic Preservation (“ACHP”) developed a plan to incorporate the UNDRIP into their consultation process, but DOD has failed to follow the ACHP’s lead.

Despite the deficiencies in the DOD policies for consultation, the DOD is aggressively initiating and pursuing several “consultations” in Hawaii including (but not limited to)

- The EIS for **Pōhakuloa** leases of Hawaiian trust land - draft being prepared.
- EIS for O’ahu leases of Hawaiian trust land - scoping will likely begin this year.
- The EA for munitions storage facility expansion at West Loch.
- EIS for Homeland Defense Radar at **Kahuku** or **Koke’e** - currently reopened scoping process.
- Red Hill fuel tanks - Navy applied for a DOH permit to operate its underground fuel tanks.
- There are several other DOD “Consultations” proceeding under the evolving DOD Procedures, none of which requires that the DOD disclose the data in their possession on the condition of historic and cultural properties subject to their use.

As a result of these deficiencies in the DOD policies and procedures, Native Hawaiians and others (Sierra Club and Board of Water Supply) are seeking Contested Case legal review of some of the above military leases.

3.B. DOD’s ongoing **withholding of Cultural information** from Hawaiian practitioners and the public:

For years, the DOD has advanced its use of Hawaiian trust lands based on cultural studies and research that it has withheld from Hawaiian practitioners and the public. In all of these cases, **DOD has represented that it has done cultural impact assessments showing no significant impact, but has withheld the data from Hawaiians.**

Examples include:

- **The “Cultural History Report of Mākua Military Reservation and Vicinity, Makua Valley, O’ahu, Hawai’i”** (Kelly and Quintal 1977). The report was never publicly released by the Army. Marion Kelly, the primary author of the report claimed that the Army disliked her conclusions and suppressed the document (Kelly and Quintal 1977). Eventually, community members demanded that the report be included in the public record as part of a separate National Environmental Policy Act (NEPA) process.
- **The “Oral History Study: Ahupua’a of Mākua and Kahanahāiki, District of Wai’anae, Island of O’ahu”** (Maly and Institute for Sustainable Development 1998), which was commissioned by the Marine Corps as a part of an environmental assessment for amphibious training in Hawai’i, was never formally published or released to the public.
- In 2006, Native Hawaiian cultural monitors working on a Stryker Brigade construction project in **Līhu’e** (Schofield Barracks) reported that construction crews had breached a buffer zone for an important Native Hawaiian sacred site. The Office of Hawaiian Affairs (OHA) issued a notice of violation of the Programmatic Agreement and initiated a lawsuit (Office of Hawaiian Affairs v. Robert Gates, et al 2008). The Army and OHA reached a settlement that allowed for an “independent, objective ‘second opinion’ regarding the adequacy of cultural resource inventories associated with the Stryker Transformation Areas in Hawai’i” (Monahan 2009, iii). It allowed for up to 50 days of fieldwork by this third party archaeologist accompanied by representatives of both parties. The “Cultural Resource Evaluations of Stryker Transformation Areas in Hawai’i” (Monahan 2009), the so-called **“Monahan Report”**, found **a number of problems with the Army’s cultural resources management**, including “problems with the Army’s ‘due diligence’ consideration of cumulative impacts and mitigation commitments at many cultural resources;” much of the Army’s previous archaeological survey work was “only available as draft reports;” “a general lack of subsurface testing (excavation);” and questionable qualifications of personnel involved in previous surveys (Monahan 2009, iii). The Monahan Report documented numerous cultural sites and resources that had been overlooked by previous Army surveys and recommended their evaluation for listing on the National Register of Historic Places. Monahan found that professional determinations of “what is or is not, historically significant” have been **“based on studies that lack meaningful input from Kānaka Maoli (Native Hawaiians)”** (Monahan 2009, 300). Further, the Monahan Report called for a Traditional Cultural Properties study of the entire cultural landscape which would incorporate **Native Hawaiian cultural knowledge** in the determination of historical and cultural significance of the cultural resources. However, the **Army sought to seal the Monahan Report** (Office of Hawaiian Affairs v. Robert Gates, et al 2008). **OHA sent the Army subsequent letters requesting that the Army correct the deficiencies identified in the Monahan Report. The Army ignored OHA’s request.**

4. Ongoing efforts of the State and Democrats to have the U.S. “recognize” a ‘Hawaiian Tribe’ in order to access federal Indian tribal benefits, while leaving the State of Hawaii in control of the Ceded Lands Trust and jurisdiction over these Hawaiian lands, territories and resources (including energy resources).

For years there has been an ongoing political effort in Hawaii for “Federal Recognition” of a ‘Hawaiian Tribe’. These efforts were all initiated by the State Democrats who have steadfastly resisted any effort to segregate the Trust into a share for the ‘Public’ and a share for “native Hawaiians” and “Native Hawaiians”.

Examples of this effort include:

The Federal Apology Bill:

In 1993, Congress apologized to Native Hawaiians for its role in overthrowing the monarchy and committing itself to a process of reconciliation. To that end, in 2014, the U.S. Department of the Interior (DOI) held a series of hearings across Hawaii, giving hundreds of Native Hawaiians a platform to express their opinions on federal recognition. Transcripts of the hearings reveal that the vast majority of those who testified oppose recognition, arguing the overthrow violated international law and the kingdom, in fact, never stopped existing.

[See: [Native Hawaiians Divided on Federal Recognition, By Cecily Hilleary February 07, 2019 08:43 AM](#)]

In 2000, Senator Daniel Akaka introduced the Native Hawaiian Government Reorganization Act, or more commonly known as the Akaka Bill, “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.” The bill was proposed to recognize Hawaiians as “indigenous people who have a special relationship with the United States and thus a right to self-determination under federal law acknowledging tribal governance.” **Specifically, the bill provided recognition of a Native Hawaiian governing entity but did not articulate the specific rights of that entity, as those rights would be negotiated between the federal government, Hawai‘i state government, and the Native Hawaiian governing entity.** The primary motivation for federal recognition was to protect over 160 federal programs that provide Native Hawaiians access to health, education, labor, and housing resources against potential challenges following *Rice v. Cayetano*. Supporters of federal recognition claimed that the Akaka Bill would “stave off court challenges to Hawaiian programs and entitlements by providing for the formation of a Hawaiian ‘nation within a nation’ similar to the status of Native American tribes.” In opposition, Republican critics called the bill a “plan for a race-based government” and opposed it numerous times in the Senate. The bill has never been set to a vote in Congress. The bill was continually amended in order to appease the Republican critics, delayed by filibusters, and delayed by several national events and natural disasters. After its initial introduction in 2000, Senator Akaka presented various versions in five subsequent Congresses. In 2010, the Akaka Bill passed the House with a 245–164 vote, but did not move forward for a Senate vote. By 2013, President Obama expressed his support for the Akaka Bill and a willingness to use an executive order to by-pass Congress and federally recognize Native Hawaiians. **No such order has yet been signed.** [See: [Re-Building a Native Hawaiian Nation: Base Rolls, Membership, and Land in an Effective Self-Determination Movement by Linda Zhang, UCLA Asian Pacific American Law Journal, 2017.](#)]

Hawaiians did not initiate or support the effort to enroll their peoples into the State’s Federal recognition effort that resulted in the establishment of an “official” Roll Commission. [See: HRS §10H-3 Native Hawaiian roll commission. (a) There is established a five-member Native Hawaiian roll commission within the office of Hawaiian affairs for administrative purposes only. The Native Hawaiian roll commission shall be responsible for: (1) Preparing and maintaining a roll of qualified Native Hawaiians; (2) Certifying that the individuals on the roll of qualified Native Hawaiians meet the definition of qualified Native Hawaiians.”]. **Hawaiians did not elect the 5 Roll Commissioners. They were appointed by the State Governor.** They were political appointees and included a past State Governor, John Waihee, who had not supported Hawaiian nationhood but in fact had facilitated State wardship by creating the State Office of Hawaiian Affairs. [See: [NATIVE HAWAIIAN ROLL COMMISSION NAMED, September 8, 2011 in Department of Hawaiian Home Lands, Media Release](#)].

We strongly urge this Committee to review its own Report. Calendar No. 568 112th Congress, Report - SENATE 2d Session 112-251. TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE UNITED STATES RELATIONSHIP WITH NATIVE HAWAIIANS AND TO PROVIDE PARITY AND A PROCESS FOR THE RECOGNITION BY THE UNITED STATES OF THE NATIVE HAWAIIAN GOVERNING ENTITY, December 17, 2012.- [To accompany S. 675]

“The Committee on Indian Affairs, to which was referred the bill (S. 675) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass. “The purpose of S. 675 is to ensure parity in federal treatment of Native nations with whom the United States has a trust responsibility, to establish a process for the reorganization and federal recognition of a Native Hawaiian governing entity, and to reaffirm the special political and legal relationship between the United States and the Native Hawaiian governing entity for purposes of carrying on a government-to-government relationship.”

The purpose of the Federal Recognition law was not to provide Hawaiians with Self-determination, but to create a paper nation.

This effort, like many before and after, placed the burden of financing the effort on Hawaiian Trust Funds under the oversight of the State Office of Hawaiian Affairs, a body elected not by Hawaiians but by the Public! The estimated cost for the effort was \$250,000, however no financial accounting was ever made public and estimates for the costs ranged from 2.9 million to 6 million Hawaiian Trust dollars. The multi-million dollar effort was a total political fiasco. **No ‘certified’ Roll of Hawaiians was ever created**, printed ballots had several mistakes including listing candidates from the wrong island, the registering of people who were dead, and failing to verify ancestry!

Congressional Oversight Hearings on Hawaiian Self-determination and Federal Recognition should be held in Hawaii BEFORE another political effort is initiated by the State and Federal governments. The initial step in the process should be the establishment of a culturally appropriate government by and for Hawaiians, the second step is recognition of the Nation.

RESPECTIFULLY SUBMITTED.



KA LĀHUI HAWAI‘I