



1 "Waters" means the area extending seaward two miles from  
2 the shoreline of the island of Ni'ihau.

3 § -3 **Reservation of uses.** (a) The island reserve shall  
4 be used solely and exclusively for the following purposes:

5 (1) Preservation and practice of all rights customarily  
6 and traditionally exercised by native Hawaiians for  
7 cultural, spiritual, and subsistence purposes;

8 (2) Preservation and protection of its archaeological,  
9 historical, and environmental resources;

10 (3) Rehabilitation, revegetation, habitat restoration, and  
11 preservation; and

12 (4) Education.

13 (b) The island of Ni'ihau shall be reserved in perpetuity  
14 for the uses enumerated in subsection (a). Commercial uses  
15 shall be strictly prohibited.

16 § -4 **Powers and duties.** The department and other  
17 departments and agencies of the State shall be subject to the  
18 oversight of the commission with regard to the control and  
19 management of the island reserve. Subject to section -6, the  
20 department shall:

21 (1) Implement controls and permitted uses for the island  
22 reserve;



- 1           (2) Enforce this chapter;
- 2           (3) Provide administrative support to the commission; and
- 3           (4) Authorize those of its employees or agents as it deems
- 4                 reasonable and necessary to serve and execute warrants
- 5                 and arrest offenders or issue citations in all matters
- 6                 relating to enforcement of the laws and rules
- 7                 applicable to the Ni'ihau island reserve.

8           § -5 **Commission.** (a) There is established the Ni'ihau  
9 island reserve commission to be placed within the department of  
10 land and natural resources for administrative purposes as  
11 provided in section 26-35. The commission shall consist of  
12 seven members who are residents of the island of Ni'ihau to be  
13 appointed in the manner and to serve for the terms provided in  
14 section 26-34.

15           (b) The governor shall appoint the chairperson from among  
16 the members of the commission.

17           (c) The members of the commission shall serve without pay  
18 but shall be reimbursed for their actual and necessary expenses,  
19 including travel expenses, incurred in carrying out their  
20 duties.



1 (d) Any action taken by the commission shall be approved by  
2 a simple majority of its members. Four members shall constitute  
3 a quorum to do business.

4 (e) The commission, without regard to the requirements of  
5 chapter 76, may hire employees necessary to perform its duties.

6 § -6 Responsibilities and duties of the commission. The  
7 general administration of the island reserve shall rest with the  
8 commission. In carrying out its duties and responsibilities,  
9 the commission:

10 (1) Shall establish criteria, policies, and controls for  
11 permissible uses within the island reserve;

12 (2) Shall approve all contracts for services and rules  
13 pertaining to the island reserve;

14 (3) Shall provide advice to the governor, the department,  
15 and other departments and agencies on any matter  
16 relating to the island reserve;

17 (4) Shall provide advice to the office of planning and the  
18 department of the attorney general on any matter  
19 relating to the island of Ni'ihau;

20 (5) May enter into curator or stewardship agreements with  
21 appropriate Hawaiian cultural and spiritual community  
22 organizations for the perpetuation of native Hawaiian



1 cultural, religious, and subsistence customs, beliefs,  
2 and practices for the purposes stated in section

3 -3;

4 (6) Shall carry out those powers and duties otherwise  
5 conferred upon the board of land and natural resources  
6 and the land use commission with regard to  
7 dispositions and approvals pertaining to the island  
8 reserve. All powers and duties of the board of land  
9 and natural resources and the land use commission  
10 concerning dispositions and approvals pertaining to  
11 the island reserve are transferred to the commission;

12 (7) Shall carry out those powers and duties concerning the  
13 island reserve otherwise conferred upon the county of  
14 Kaua'i by chapter 205A. The powers and duties of the  
15 county of Kaua'i and its agencies concerning coastal  
16 zone dispositions and approvals pertaining to the  
17 island reserve are transferred to the commission;

18 (8) Shall carry out those powers and duties concerning the  
19 island reserve otherwise conferred upon the island  
20 burial councils and the department with regard to  
21 proper treatment of burial sites and human skeletal  
22 remains found in the island reserve;



1           (9) Shall adopt rules in accordance with chapter 91 that  
2           are necessary for the purposes of this chapter and  
3           shall maintain a record of its proceedings and  
4           actions;

5           (10) May delegate to the executive director or employees of  
6           the commission, by formal commission action, such  
7           power and authority vested in the commission by this  
8           chapter as the commission deems reasonable and proper  
9           for the effective administration of this chapter; and

10          (11) May solicit and accept grants, donations, and  
11          contributions for deposit into the Ni‘ihau  
12          rehabilitation trust fund to support the purposes of  
13          this chapter.

14          §   -7   **Fishing.** Section       -3 notwithstanding, the  
15          commission shall adopt rules pursuant to chapter 91 to permit  
16          fishing in the waters around Ni‘ihau that are consistent with the  
17          purpose of this chapter and that take into consideration the  
18          health and safety of the general public.

19          §   -8   **Penalty.** Any person who violates any of the laws  
20          or rules applicable to the island reserve shall be guilty of a  
21          petty misdemeanor and shall be fined not more than \$1,000 or



1 imprisoned not more than thirty days, or both, for each offense.

2 Each day of each violation shall be deemed a separate offense.

3       §   -9   **General administrative penalties.** (a) Except as  
4 otherwise provided by law, the commission is authorized to set,  
5 charge, and collect administrative fines, or bring legal action  
6 to recover administrative costs of the commission or the  
7 department, or payment for damages, or for the cost to correct  
8 damages resulting from a violation of this chapter or any rule  
9 adopted thereunder. The administrative fines shall be as  
10 follows:

11       (1) For a first violation, by a fine of not more than  
12           \$10,000;

13       (2) For a second violation within five years of a previous  
14           violation, by a fine of not more than \$15,000; and

15       (3) For a third or subsequent violation within five years  
16           of the last violation, by a fine of not more than  
17           \$25,000.

18       (b) In addition, an administrative fine of up to \$5,000  
19 may be levied for each specimen of natural resource or any  
20 historic property taken, killed, injured, broken, or damaged in  
21 violation of any rule adopted under this chapter.



1 (c) For purposes of this section, "natural resource"  
2 includes any archaeological artifacts, minerals, any aquatic  
3 life or wildlife or parts thereof, including their eggs, and any  
4 land plants or parts thereof, including seeds. Also for  
5 purposes of this section, "historic property" means any  
6 building, structure, object, districts, area, or site, including  
7 heiau and underwater site, which is over fifty years old.

8 (d) Any criminal penalty for any violation of this chapter  
9 or any rule adopted under this chapter shall not be deemed to  
10 preclude the commission from bringing a civil legal action to  
11 recover additional administrative fines and costs. Any civil  
12 legal action against a person to recover administrative fines  
13 and costs for any violation of this chapter or any rule adopted  
14 under this chapter shall not be deemed to preclude the State  
15 from pursuing any criminal action against that person.

16 (e) In any judicial proceeding to recover an  
17 administrative penalty imposed, the commission need only show  
18 that notice was given, that a hearing was held or the time  
19 granted for requesting a hearing has run without such a request,  
20 that an administrative penalty was imposed, and that the  
21 administrative penalty remains unpaid.





1           §   -10   **Administrative violation system.** With the mutual  
2 consent of both the commission and the department, the  
3 commission may use the civil natural resource violations system  
4 of the department of land and natural resources; provided that  
5 the commission shall act whenever the board is authorized to act  
6 to process violations of this chapter or any rules adopted  
7 thereunder.

8           §   -11   **Ni'ihau rehabilitation trust fund.** (a) There is  
9 created in the state treasury a trust fund to be designated as  
10 the Ni'ihau rehabilitation trust fund to be administered by the  
11 department with the prior approval of the commission. Subject  
12 to this chapter:

13           (1) All moneys received for the rehabilitation and  
14               environmental restoration of the island of Ni'ihau,  
15               including the island's reefs and fishing areas within  
16               three miles of the island, and other purposes  
17               consistent with this chapter;

18           (2) Any moneys appropriated by the legislature to the  
19               trust fund;

20           (3) Any moneys received from grants, donations, or the  
21               proceeds from contributions; and



1           (4) The interest or return on investments earned from  
2                    moneys in the trust fund  
3 shall be deposited in the trust fund and shall be used to  
4 fulfill the purposes of this chapter.

5           (b) The commission may use moneys in the trust fund to  
6 carry out the purposes of this chapter, including hiring  
7 employees, specialists, and consultants necessary to complete  
8 projects related to the purposes of this chapter.

9           (c) Moneys deposited into or appropriated to the trust  
10 fund shall remain available until they are obligated or until  
11 the trust fund is terminated.

12           (d) If the trust fund is terminated, all funds shall be  
13 transferred to the general fund; provided that all unexpended or  
14 unencumbered balances shall be disbursed in accordance with any  
15 requirements set by funding sources and for purposes consistent  
16 with this chapter.

17           (e) The commission shall submit an annual report on the  
18 status of the Ni'ihau rehabilitation trust fund to the  
19 legislature, no later than twenty days prior to the convening of  
20 each regular session of the legislature. The annual report  
21 shall include the total number of and amount of grants,




1 donations, and contributions received and balances remaining on  
2 June 30 of each year.

3 § -12 Severability. If any provision of this chapter or  
4 the application thereof to any person or circumstance is held  
5 invalid, the invalidity shall not affect other provisions or  
6 applications of this chapter that can be given effect without  
7 the invalid provision or application, and to this end the  
8 provisions of this chapter are severable."

9 SECTION 2. This Act shall take effect upon its approval.

10

INTRODUCED BY: 



**Report Title:**

Ni'ihau Island Reserve Commission

**Description:**

Establishes the Ni'ihau Island Reserve Commission to protect and preserve the island of Ni'ihau, its historic sites, resources, and culture.

