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**H. R. 2314**

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2010

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**AN ACT**

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.

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. SHORT TITLE.**

2 This Act may be cited as the “Native Hawaiian Gov-  
3 ernment Reorganization Act of 2010”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Constitution vests Congress with the au-  
7 thority to address the conditions of the indigenous,  
8 native people of the United States and the Supreme  
9 Court has held that under the Indian Commerce,  
10 Treaty, Supremacy, and Property Clauses, and the  
11 War Powers, Congress may exercise that power to  
12 rationally promote the welfare of the native peoples  
13 of the United States so long as the native people are  
14 a “distinctly native community”;

15 (2) Native Hawaiians, the native people of the  
16 Hawaiian archipelago that is now part of the United  
17 States, are 1 of the indigenous, native peoples of the  
18 United States, and the Native Hawaiian people are  
19 a distinctly native community;

20 (3) the United States has a special political and  
21 legal relationship with, and has long enacted legisla-  
22 tion to promote the welfare of, the native peoples of  
23 the United States, including the Native Hawaiian  
24 people;

25 (4) under the authority of the Constitution, the  
26 United States concluded a number of treaties with

1 the Kingdom of Hawaii, and from 1826 until 1893,  
2 the United States—

3 (A) recognized the sovereignty of the King-  
4 dom of Hawaii as a nation;

5 (B) accorded full diplomatic recognition to  
6 the Kingdom of Hawaii; and

7 (C) entered into treaties and conventions  
8 of peace, friendship and commerce with the  
9 Kingdom of Hawaii to govern trade, commerce,  
10 and navigation in 1826, 1842, 1849, 1875, and  
11 1887;

12 (5) pursuant to the Hawaiian Homes Commis-  
13 sion Act, 1920 (42 Stat. 108, chapter 42), the  
14 United States set aside approximately 203,500 acres  
15 of land in trust to better address the conditions of  
16 Native Hawaiians in the Federal territory that later  
17 became the State of Hawaii and in enacting the Ha-  
18 waiian Homes Commission Act, 1920, Congress ac-  
19 knowledged the Native Hawaiian people as a native  
20 people of the United States, as evidenced by the  
21 Committee Report, which notes that Congress relied  
22 on the Indian affairs power and the War Powers, in-  
23 cluding the power to make peace;

24 (6) by setting aside 203,500 acres of land in  
25 trust for Native Hawaiian homesteads and farms,

1 the Hawaiian Homes Commission Act, 1920, assists  
2 the members of the Native Hawaiian community in  
3 maintaining distinctly native communities through-  
4 out the State of Hawaii;

5 (7) approximately 9,800 Native Hawaiian fami-  
6 lies reside on the Hawaiian Home Lands, and ap-  
7 proximately 25,000 Native Hawaiians who are eligi-  
8 ble to reside on the Hawaiian Home Lands are on  
9 a waiting list to receive assignments of Hawaiian  
10 Home Lands;

11 (8)(A) in 1959, as part of the compact with the  
12 United States admitting Hawaii into the Union,  
13 Congress delegated the authority and responsibility  
14 to administer the Hawaiian Homes Commission Act,  
15 1920, lands in trust for Native Hawaiians and es-  
16 tablished a new public trust (commonly known as  
17 the “ceded lands trust”), for 5 purposes, 1 of which  
18 is the betterment of the conditions of Native Hawai-  
19 ians, and Congress thereby reaffirmed its recogni-  
20 tion of the Native Hawaiians as a distinctly native  
21 community with a direct lineal and historical succes-  
22 sion to the aboriginal, indigenous people of Hawaii;

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

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

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

7 (10) the Hawaiian Home Lands and other  
8 ceded lands provide important native land reserves  
9 and resources for the Native Hawaiian community  
10 to maintain the practice of Native Hawaiian culture,  
11 language, and traditions, and for the continuity, sur-  
12 vival, and economic self-sufficiency of the Native  
13 Hawaiian people as a distinctly native political com-  
14 munity;

15 (11) Native Hawaiians continue to maintain  
16 other distinctly native areas in Hawaii, including na-  
17 tive lands that date back to the ali'i and kuleana  
18 lands reserved under the Kingdom of Hawaii;

19 (12) through the Sovereign Council of Hawaiian  
20 Homelands Assembly and Native Hawaiian home-  
21 stead associations, Native Hawaiian civic associa-  
22 tions, charitable trusts established by the Native Ha-  
23 waiian ali'i, nonprofit native service providers and  
24 other community associations, the Native Hawaiian  
25 people have actively maintained native traditions and

1 customary usages throughout the Native Hawaiian  
2 community and the Federal and State courts have  
3 continuously recognized the right of the Native Ha-  
4 waiian people to engage in certain customary prac-  
5 tices and usages on public lands;

6 (13) on November 23, 1993, public law 103–  
7 150 (107 Stat. 1510) (commonly known as the  
8 “Apology Resolution”) was enacted into law, extend-  
9 ing an apology to Native Hawaiians on behalf of the  
10 people of the United States for the United States’  
11 role in the overthrow of the Kingdom of Hawaii;

12 (14) the Apology Resolution acknowledges that  
13 the overthrow of the Kingdom of Hawaii occurred  
14 with the active participation of agents and citizens  
15 of the United States, and further acknowledges that  
16 the Native Hawaiian people never directly relin-  
17 quished to the United States their claims to their in-  
18 herent sovereignty as a people over their national  
19 lands, either through the Kingdom of Hawaii or  
20 through a plebiscite or referendum;

21 (15)(A) the Apology Resolution expresses the  
22 commitment of Congress and the President—

23 (i) to acknowledge the ramifications of the  
24 overthrow of the Kingdom of Hawaii; and

1           (ii) to support reconciliation efforts be-  
2           tween the United States and Native Hawaiians;

3           (B) Congress established the Office of Hawai-  
4           ian Relations within the Department of the Interior  
5           with 1 of its purposes being to consult with Native  
6           Hawaiians on the reconciliation process; and

7           (C) the United States has the duty to reconcile  
8           and reaffirm its friendship with the Native Hawaiian  
9           people because, among other things, the United  
10          States Minister and United States naval forces par-  
11          ticipated in the overthrow of the Kingdom of Ha-  
12          waii;

13          (16)(A) despite the overthrow of the Govern-  
14          ment of the Kingdom of Hawaii, Native Hawaiians  
15          have continued to maintain their separate identity as  
16          a single distinctly native political community  
17          through cultural, social, and political institutions,  
18          and to give expression to their rights as native peo-  
19          ple to self-determination, self-governance, and eco-  
20          nomic self-sufficiency; and

21          (B) there is clear continuity between the ab-  
22          original, indigenous, native people of the Kingdom of  
23          Hawaii and their successors, the Native Hawaiian  
24          people today;

1           (17) Native Hawaiians have also given expres-  
2           sion to their rights as native people to self-deter-  
3           mination, self-governance, and economic self-suffi-  
4           ciency—

5                   (A) through the provision of governmental  
6           services to Native Hawaiians, including the pro-  
7           vision of—

8                           (i) health care services;

9                           (ii) educational programs;

10                          (iii) employment and training pro-  
11                          grams;

12                          (iv) economic development assistance  
13                          programs;

14                           (v) children’s services;

15                           (vi) conservation programs;

16                           (vii) fish and wildlife protection;

17                           (viii) agricultural programs;

18                          (ix) native language immersion pro-  
19                          grams;

20                          (x) native language immersion schools  
21                          from kindergarten through high school;

22                          (xi) college and master’s degree pro-  
23                          grams in native language immersion in-  
24                          struction; and

25                           (xii) traditional justice programs; and



1 (B) by continuing their efforts to enhance  
2 Native Hawaiian self-determination and local  
3 control;

4 (18) Native Hawaiian people are actively en-  
5 gaged in Native Hawaiian cultural practices, tradi-  
6 tional agricultural methods, fishing and subsistence  
7 practices, maintenance of cultural use areas and sa-  
8 cred sites, protection of burial sites, and the exercise  
9 of their traditional rights to gather medicinal plants  
10 and herbs, and food sources;

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

20 (20) this Act provides a process within the  
21 framework of Federal law for the Native Hawaiian  
22 people to exercise their inherent rights as a distinct,  
23 indigenous, native community to reorganize a single  
24 unified Native Hawaiian governing entity for the

1 purpose of giving expression to their rights as a na-  
2 tive people to self-determination and self-governance;

3 (21) Congress—

4 (A) has declared that the United States  
5 has a special political and legal relationship for  
6 the welfare of the native peoples of the United  
7 States, including Native Hawaiians;

8 (B) has identified Native Hawaiians as an  
9 indigenous, distinctly native people of the  
10 United States within the scope of its authority  
11 under the Constitution, and has enacted scores  
12 of statutes on their behalf; and

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

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

24 (A) ceding to the State of Hawaii title to  
25 the public lands formerly held by the United

1 States, and mandating that those lands be held  
2 as a public trust for 5 purposes, 1 of which is  
3 for the betterment of the conditions of Native  
4 Hawaiians; and

5 (B) transferring the United States respon-  
6 sibility for the administration of the Hawaiian  
7 Home Lands to the State of Hawaii, but retain-  
8 ing the exclusive right of the United States to  
9 consent to any actions affecting the lands in-  
10 cluded in the trust and any amendments to the  
11 Hawaiian Homes Commission Act, 1920 (42  
12 Stat. 108, chapter 42), that are enacted by the  
13 legislature of the State of Hawaii affecting the  
14 beneficiaries under the Act;

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

17 (A) Native Hawaiians have a direct genea-  
18 logical, cultural, historic, and land-based con-  
19 nection to their forebears, the aboriginal, indig-  
20 enous, native people who exercised original sov-  
21 ereignty over the Hawaiian Islands;

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

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

6 (D) the special relationship of American  
7 Indians, Alaska Natives, and Native Hawaiians  
8 to the United States arises out of their status  
9 as aboriginal, indigenous, native people of the  
10 United States; and

11 (24) the State of Hawaii supports the reaffir-  
12 mation of the special political and legal relationship  
13 between the Native Hawaiian governing entity and  
14 the United States, as evidenced by 2 unanimous res-  
15 olutions enacted by the Hawaii State Legislature in  
16 the 2000 and 2001 sessions of the Legislature and  
17 by the testimony of the Governor of the State of Ha-  
18 waii before the Committee on Indian Affairs of the  
19 Senate on February 25, 2003, and March 1, 2005.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**  
23 **PLE.**—The term “aboriginal, indigenous, native peo-  
24 ple” means a people whom Congress has recognized  
25 as the original inhabitants of the lands that later be-

1 came part of the United States and who exercised  
2 sovereignty in the areas that later became part of  
3 the United States.

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

11 (3) COMMISSION.—The term “Commission”  
12 means the Commission established under section  
13 8(b).

14 (4) COUNCIL.—The term “Council” means the  
15 Native Hawaiian Interim Governing Council estab-  
16 lished under section 8(c)(2).

17 (5) INDIAN PROGRAM OR SERVICE.—

18 (A) IN GENERAL.—The term “Indian pro-  
19 gram or service” means any federally funded or  
20 authorized program or service provided to an  
21 Indian tribe (or member of an Indian tribe) be-  
22 cause of the status of the members of the In-  
23 dian tribe as Indians.

24 (B) INCLUSIONS.—The term “Indian pro-  
25 gram or service” includes a program or service

1 provided by the Bureau of Indian Affairs, the  
2 Indian Health Service, or any other Federal  
3 agency.

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

8 (7) INDIGENOUS, NATIVE PEOPLE.—The term  
9 “indigenous, native people” means the lineal de-  
10 scendants of the aboriginal, indigenous, native peo-  
11 ple of the United States.

12 (8) INTERAGENCY COORDINATING GROUP.—The  
13 term “Interagency Coordinating Group” means the  
14 Native Hawaiian Interagency Coordinating Group  
15 established under section 6.

16 (9) NATIVE HAWAIIAN GOVERNING ENTITY.—  
17 The term “Native Hawaiian governing entity”  
18 means the governing entity organized pursuant to  
19 this Act by the qualified Native Hawaiian constitu-  
20 ents.

21 (10) NATIVE HAWAIIAN MEMBERSHIP ORGANI-  
22 ZATION.—The term “Native Hawaiian membership  
23 organization” means an organization that—

24 (A) serves and represents the interests of  
25 Native Hawaiians, has as a primary and stated

1           purpose the provision of services to Native Ha-  
2           waiians, and has expertise in Native Hawaiian  
3           affairs;

4           (B) has leaders who are elected democrat-  
5           ically, or selected through traditional Native  
6           leadership practices, by members of the Native  
7           Hawaiian community;

8           (C) advances the cause of Native Hawai-  
9           ians culturally, socially, economically, or politi-  
10          cally;

11          (D) is a membership organization or asso-  
12          ciation; and

13          (E) has an accurate and reliable list of Na-  
14          tive Hawaiian members.

15          (11) OFFICE.—The term “Office” means the  
16          United States Office of Hawaiian Relations estab-  
17          lished by section 5(a).

18          (12) QUALIFIED NATIVE HAWAIIAN CON-  
19          STITUENT.—For the purposes of establishing the  
20          roll authorized under section 8, and prior to the rec-  
21          ognition by the United States of the Native Hawai-  
22          ian governing entity, the term “qualified Native Ha-  
23          waiian constituent” means an individual who the  
24          Commission determines has satisfied the following

1 criteria and who makes a written statement certi-  
2 fying that he or she

3 (A) is—

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

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

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

15 (ii) an individual who is 1 of the in-  
16 digenous, native people of Hawaii and who  
17 was eligible in 1921 for the programs au-  
18 thorized by the Hawaiian Homes Commis-  
19 sion Act, 1920 (42 Stat. 108, chapter 42),  
20 or a direct lineal descendant of that indi-  
21 vidual;

22 (B) wishes to participate in the reorganiza-  
23 tion of the Native Hawaiian governing entity;

24 (C) is 18 years of age or older;

25 (D) is a citizen of the United States; and



1 (E) maintains a significant cultural, social,  
2 or civic connection to the Native Hawaiian com-  
3 munity, as evidenced by satisfying 2 or more of  
4 the following 10 criteria:

5 (i) Resides in the State of Hawaii.

6 (ii) Resides outside the State of Ha-  
7 waii and—

8 (I)(aa) currently serves or served  
9 as (or has a parent or spouse who  
10 currently serves or served as) a mem-  
11 ber of the Armed Forces or as an em-  
12 ployee of the Federal Government;  
13 and

14 (bb) resided in the State of Ha-  
15 waii prior to the time he or she (or  
16 such parent or spouse) left the State  
17 of Hawaii to serve as a member of the  
18 Armed Forces or as an employee of  
19 the Federal Government; or

20 (II)(aa) currently is or was en-  
21 rolled (or has a parent or spouse who  
22 currently is or was enrolled) in an ac-  
23 credited institution of higher edu-  
24 cation outside the State of Hawaii;  
25 and

1 (bb) resided in the State of Ha-  
2 waii prior to the time he or she (or  
3 such parent or spouse) left the State  
4 of Hawaii to attend such institution.

5 (iii)(I) Is or was eligible to be a bene-  
6 ficiary of the programs authorized by the  
7 Hawaiian Homes Commission Act, 1920  
8 (42 Stat. 108, chapter 42), and resides or  
9 resided on land set aside as “Hawaiian  
10 home lands”, as defined in such Act; or

11 (II) Is a child or grandchild of an in-  
12 dividual who is or was eligible to be a ben-  
13 eficiary of the programs authorized by  
14 such Act and who resides or resided on  
15 land set aside as “Hawaiian home lands”,  
16 as defined in such Act.

17 (iv) Is or was eligible to be a bene-  
18 ficiary of the programs authorized by the  
19 Hawaiian Homes Commission Act, 1920  
20 (42 Stat. 108, chapter 42).

21 (v) Is a child or grandchild of an indi-  
22 vidual who is or was eligible to be a bene-  
23 ficiary of the programs authorized by the  
24 Hawaiian Homes Commission Act, 1920  
25 (42 Stat. 108, chapter 42).

1 (vi) Resides on or has an ownership  
2 interest in, or has a parent or grandparent  
3 who resides on or has an ownership inter-  
4 est in, “kuleana land” that is owned in  
5 whole or in part by a person who, accord-  
6 ing to a genealogy verification by the Of-  
7 fice of Hawaiian Affairs or by court order,  
8 is a lineal descendant of the person or per-  
9 sons who received the original title to such  
10 “kuleana land”, defined as lands granted  
11 to native tenants pursuant to Haw. L.  
12 1850, p. 202, entitled “An Act Confirming  
13 Certain Resolutions of the King and Privy  
14 Council Passed on the 21st day of Decem-  
15 ber, A.D. 1849, Granting to the Common  
16 People Allodial Titles for Their Own Lands  
17 and House Lots, and Certain Other Privi-  
18 leges”, as amended by Haw. L. 1851, p.  
19 98, entitled “An Act to Amend An Act  
20 Granting to the Common People Allodial  
21 Titles for Their Own Lands and House  
22 Lots, and Certain Other Privileges” and as  
23 further amended by any subsequent legis-  
24 lation.

1 (vii) Is, or is the child or grandchild  
2 of, an individual who has been or was a  
3 student for at least 1 school year at a  
4 school or program taught through the me-  
5 dium of the hawaiian language under sec-  
6 tion 302H-6, Hawaii Revised Statutes, or  
7 at a school founded and operated primarily  
8 or exclusively for the benefit of Native Ha-  
9 waiians.

10 (viii) Has been a member since Sep-  
11 tember 30, 2009, of at least 1 Native Ha-  
12 waiian membership organization.

13 (ix) Has been a member since Sep-  
14 tember 30, 2009, of at least 2 Native Ha-  
15 waiian membership organizations.

16 (x) Is regarded as Native Hawaiian  
17 and whose mother or father is (or if de-  
18 ceased, was) regarded as Native Hawaiian  
19 by the Native Hawaiian community, as evi-  
20 denced by sworn affidavits from two or  
21 more qualified Native Hawaiian constitu-  
22 ents certified by the Commission as pos-  
23 sessed expertise in the social, cultural,  
24 and civic affairs of the Native Hawaiian  
25 community.

1           (13) SECRETARY.—The term “Secretary”  
2 means the Secretary of the Interior.

3           (14) SPECIAL POLITICAL AND LEGAL RELA-  
4 TIONSHIP.—The term “special political and legal re-  
5 lationship” shall refer, except where differences are  
6 specifically indicated elsewhere in the Act, to the  
7 type of and nature of relationship the United States  
8 has with the several federally recognized Indian  
9 tribes.

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

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

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

15           (2) the United States has a special political and  
16 legal relationship with the Native Hawaiian people,  
17 which includes promoting the welfare of Native Ha-  
18 waiians;

19           (3)(A) Congress possesses and hereby exercises  
20 the authority under the Constitution, including but  
21 not limited to Article I, Section 8, Clause 3, to enact  
22 legislation to better the conditions of Native Hawai-  
23 ians and has exercised this authority through the en-  
24 actment of—

1 (i) the Hawaiian Homes Commission  
2 Act, 1920 (42 Stat. 108, chapter 42);

3 (ii) the Act entitled “an Act to pro-  
4 vide for the admission of the State of Ha-  
5 waii into the Union”, approved March 18,  
6 1959 (Public Law 86–3; 73 Stat. 4); and

7 (iii) more than 150 other Federal laws  
8 addressing the conditions of Native Hawai-  
9 ians;

10 (B) other sources of authority under the  
11 Constitution for legislation on behalf of the in-  
12 digenous, native peoples of the United States,  
13 including Native Hawaiians, include but are not  
14 limited to the Property, Treaty, and Supremacy  
15 Clauses, War Powers, and the Fourteenth  
16 Amendment, and Congress hereby relies on  
17 those powers in enacting this legislation; and

18 (C) the Constitution’s original Apportion-  
19 ment Clause and the 14th Amendment Citizen-  
20 ship and amended Apportionment Clauses also  
21 acknowledge the propriety of legislation on be-  
22 half of the native peoples of the United States,  
23 including Native Hawaiians;

24 (4) Native Hawaiians have—

1 (A) an inherent right to autonomy in their  
2 internal affairs;

3 (B) an inherent right of self-determination  
4 and self-governance;

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

7 (D) the right to become economically self-  
8 sufficient; and

9 (5) the United States shall continue to engage  
10 in a process of reconciliation and political relations  
11 with the Native Hawaiian people.

12 (b) PURPOSE.—The purpose of this Act is to provide  
13 a process for the reorganization of the single Native Ha-  
14 waiian governing entity and the reaffirmation of the spe-  
15 cial political and legal relationship between the United  
16 States and that Native Hawaiian governing entity for pur-  
17 poses of continuing a government-to-government relation-  
18 ship.

19 **SEC. 5. UNITED STATES OFFICE OF HAWAIIAN RELATIONS.**

20 (a) ESTABLISHMENT.—There is established within  
21 the Office of the Secretary the United States Office of Ha-  
22 waiian Relations.

23 (b) DUTIES.—The Office shall—

1           (1) continue the process of reconciliation with  
2 the Native Hawaiian people in furtherance of the  
3 Apology Resolution;

4           (2) upon the reaffirmation of the government-  
5 to-government relationship between the single Native  
6 Hawaiian governing entity and the United States,  
7 effectuate and coordinate the special political and  
8 legal relationship between the Native Hawaiian gov-  
9 erning entity and the United States through the  
10 Secretary, and with all other Federal agencies;

11          (3) provide timely notice to, and consult with,  
12 the Native Hawaiian governing entity before taking  
13 any actions that may have the potential to signifi-  
14 cantly affect Native Hawaiian resources, rights, or  
15 lands;

16          (4) work with the Interagency Coordinating  
17 Group, other Federal agencies, and the State of Ha-  
18 waii on policies, practices, and proposed actions af-  
19 fecting Native Hawaiian resources, rights, or lands;  
20 and

21          (5) prepare and submit to the Committee on  
22 Indian Affairs and the Committee on Energy and  
23 Natural Resources of the Senate and the Committee  
24 on Natural Resources of the House of Representa-  
25 tives an annual report detailing the activities of the



1 Interagency Coordinating Group that are under-  
2 taken with respect to the continuing process of rec-  
3 onciliation and to effect meaningful consultation  
4 with the Native Hawaiian governing entity and may  
5 provide recommendations for any necessary changes  
6 to Federal law or regulations promulgated under the  
7 authority of Federal law.

8 (c) APPLICABILITY TO DEPARTMENT OF DE-  
9 FENSE.—This section shall have no applicability to the  
10 Department of Defense or to any agency or component  
11 of the Department of Defense, but the Secretary of De-  
12 fense may designate 1 or more officials as liaison to the  
13 Office.

14 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
15 **GROUP.**

16 (a) ESTABLISHMENT.—In recognition that Federal  
17 programs authorized to address the conditions of Native  
18 Hawaiians are largely administered by Federal agencies  
19 other than the Department of the Interior, there is estab-  
20 lished an interagency coordinating group, to be known as  
21 the “Native Hawaiian Interagency Coordinating Group”.

22 (b) COMPOSITION.—The Interagency Coordinating  
23 Group shall be composed of officials, to be designated by  
24 the President, from—

1           (1) each Federal agency whose actions may sig-  
2           nificantly or uniquely impact Native Hawaiian pro-  
3           grams, resources, rights, or lands; and

4           (2) the Office.

5           (c) LEAD AGENCY.—

6           (1) IN GENERAL.—The Department of the Inte-  
7           rior and the White House Office of Intergovern-  
8           mental Affairs shall serve as the leaders of the  
9           Interagency Coordinating Group.

10          (2) MEETINGS.—The Secretary shall convene  
11          meetings of the Interagency Coordinating Group.

12          (d) DUTIES.—The Interagency Coordinating Group  
13          shall—

14               (1) coordinate Federal programs and policies  
15               that affect Native Hawaiians or actions by any agen-  
16               cy or agencies of the Federal Government that may  
17               significantly or uniquely affect Native Hawaiian re-  
18               sources, rights, or lands;

19               (2) consult with the Native Hawaiian governing  
20               entity, through the coordination referred to in para-  
21               graph (1), but the consultation obligation established  
22               in this provision shall apply only after the satisfac-  
23               tion of all of the conditions referred to in section  
24               8(c)(8); and

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

4           (e) **APPLICABILITY TO DEPARTMENT OF DE-**  
5 **FENSE.**—This section shall have no applicability to the  
6 Department of Defense or to any agency or component  
7 of the Department of Defense, but the Secretary of De-  
8 fense may designate 1 or more officials as liaison to the  
9 Interagency Coordinating Group.

10 **SEC. 7. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**  
11 **RESENTATIVE.**

12           The Attorney General shall designate an appropriate  
13 official within the Department of Justice to assist the Of-  
14 fice in the implementation and protection of the rights of  
15 Native Hawaiians and their political and legal relationship  
16 with the United States, and upon the recognition of the  
17 Native Hawaiian governing entity as provided for in sec-  
18 tion 8, in the implementation and protection of the rights  
19 of the Native Hawaiian governing entity and its political  
20 and legal relationship with the United States.

1 **SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HA-**  
2 **WAIAN GOVERNING ENTITY AND REAFFIR-**  
3 **MATION OF SPECIAL POLITICAL AND LEGAL**  
4 **RELATIONSHIP BETWEEN UNITED STATES**  
5 **AND NATIVE HAWAIIAN GOVERNING ENTITY.**

6 (a) RECOGNITION OF NATIVE HAWAIIAN GOVERNING  
7 ENTITY.—The right of the qualified Native Hawaiian con-  
8 stituents to reorganize the single Native Hawaiian gov-  
9 erning entity to provide for their common welfare and to  
10 adopt appropriate organic governing documents is recog-  
11 nized by the United States.

12 (b) COMMISSION.—

13 (1) IN GENERAL.—There is authorized to be es-  
14 tablished a Commission to be composed of 9 mem-  
15 bers for the purposes of—

16 (A) preparing and maintaining a roll of  
17 qualified Native Hawaiian constituents; and

18 (B) certifying that the individuals on the  
19 roll of qualified Native Hawaiian constituents  
20 meet the definition of qualified Native Hawai-  
21 ian constituent set forth in section 3.

22 (2) MEMBERSHIP.—

23 (A) APPOINTMENT.—

24 (i) IN GENERAL.—Not later than 180  
25 days after the date of enactment of this  
26 Act, the Secretary shall appoint the mem-

1           bers of the Commission in accordance with  
2           subparagraph (B).

3           (ii) CONSIDERATION.—In making an  
4           appointment under clause (i), the Sec-  
5           retary may take into consideration a rec-  
6           ommendation made by any Native Hawai-  
7           ian membership organization or other enti-  
8           ty with expertise and experience in the de-  
9           termination of Native Hawaiian ancestry  
10          and lineal descendency.

11          (B) REQUIREMENTS.—Each member of  
12          the Commission shall demonstrate, as deter-  
13          mined by the Secretary—

14               (i) not less than 10 years of experi-  
15               ence in the study and determination of Na-  
16               tive Hawaiian genealogy (traditional cul-  
17               tural experience shall be given due consid-  
18               eration); and

19               (ii) an ability to read and translate  
20               into English documents written in the Ha-  
21               waiian language.

22          (C) VACANCIES.—A vacancy on the Com-  
23          mission—

24               (i) shall not affect the powers of the  
25               Commission; and

1 (ii) shall be filled in the same manner  
2 as the original appointment.

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

10 (4) DUTIES.—The Commission shall—

11 (A) prepare and maintain a roll of quali-  
12 fied Native Hawaiian constituents as set forth  
13 in subsection (c); and

14 (B) certify that the individuals on the roll  
15 of qualified Native Hawaiian constituents meet  
16 the definition of that term as set forth in sec-  
17 tion 3.

18 (5) STAFF.—

19 (A) IN GENERAL.—The Commission may,  
20 without regard to the civil service laws (includ-  
21 ing regulations), appoint and terminate an exec-  
22 utive director and such other additional per-  
23 sonnel as are necessary to enable the Commis-  
24 sion to perform the duties of the Commission.

25 (B) COMPENSATION.—

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

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

15 (6) DETAIL OF FEDERAL GOVERNMENT EM-  
16 PLOYEES.—

17 (A) IN GENERAL.—An employee of the  
18 Federal Government may be detailed to the  
19 Commission without reimbursement.

20 (B) CIVIL SERVICE STATUS.—The detail of  
21 the employee shall be without interruption or  
22 loss of civil service status or privilege.

23 (7) PROCUREMENT OF TEMPORARY AND INTER-  
24 MITTENT SERVICES.—The Commission may procure  
25 temporary and intermittent services in accordance

1 with section 3109(b) of title 5, United States Code,  
2 at rates for individuals that do not exceed the daily  
3 equivalent of the annual rate of basic pay prescribed  
4 for level V of the Executive Schedule under section  
5 5316 of that title.

6 (8) EXPIRATION.—The Secretary shall dissolve  
7 the Commission upon the reaffirmation of the spe-  
8 cial political and legal relationship between the Na-  
9 tive Hawaiian governing entity and the United  
10 States.

11 (c) PROCESS FOR REORGANIZATION OF NATIVE HA-  
12 WAIAN GOVERNING ENTITY.—

13 (1) ROLL.—

14 (A) CONTENTS.—The roll shall include the  
15 names of the qualified Native Hawaiian con-  
16 stituents who are certified by the Commission  
17 to be qualified Native Hawaiian constituents, as  
18 defined in section 3.

19 (B) FORMATION OF ROLL.—Each indi-  
20 vidual claiming to be a qualified Native Hawai-  
21 ian constituent shall submit to the Commission  
22 documentation in the form established by the  
23 Commission that is sufficient to enable the  
24 Commission to determine whether the individual  
25 meets the definition set forth in section 3; pro-



1 vided that an individual presenting evidence  
2 that he or she satisfies the definition in Section  
3 2 of Public Law 103–150 shall be presumed to  
4 meet the requirement of section 3(12)(A)(i).

5 (C) DOCUMENTATION.—The Commission  
6 shall—

7 (i)(I) identify the types of documenta-  
8 tion that may be submitted to the Commis-  
9 sion that would enable the Commission to  
10 determine whether an individual meets the  
11 definition of qualified Native Hawaiian  
12 constituent set forth in section 3.

13 (II) recognize an individual’s identi-  
14 fication of lineal ancestors on the 1890  
15 Census by the Kingdom of Hawaii as a re-  
16 liable indicia of lineal descent from the ab-  
17 original, indigenous, native people who re-  
18 sided in the islands that now comprise the  
19 State of Hawaii on or before January 1,  
20 1893; and

21 (III) permit elderly Native Hawaiians  
22 and other qualified Native Hawaiian con-  
23 stituents lacking birth certificates or other  
24 documentation due to birth on Hawaiian  
25 Home Lands or other similar cir-

1           cumstances to establish lineal descent by  
2           sworn affidavits from 2 or more qualified  
3           Native Hawaiian constituents;

4           (ii) establish a standard format for  
5           the submission of documentation and a  
6           process to ensure veracity; and

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

9           (D) CONSULTATION.—In making deter-  
10          minations that each individual proposed for in-  
11          clusion on the roll of qualified Native Hawaiian  
12          constituents meets the definition of qualified  
13          Native Hawaiian constituent in section 3, the  
14          Commission may consult with bona fide Native  
15          Hawaiian membership organizations, agencies  
16          of the State of Hawaii, including but not lim-  
17          ited to, the Department of Hawaiian Home  
18          Lands, the Office of Hawaiian Affairs, and the  
19          State Department of Health, and other entities  
20          with expertise and experience in the determina-  
21          tion of Native Hawaiian ancestry and lineal  
22          descendancy.

23          (E) NOTIFICATION.—The Commission  
24          shall—

1 (i) inform an individual whether they  
2 have been deemed by the Commission a  
3 qualified Native Hawaiian constituent; and

4 (ii) inform an individual of a right to  
5 appeal the decision if deemed not to be a  
6 qualified Native Hawaiian constituent.

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

10 (i) submit the roll containing the  
11 names of those individuals who meet the  
12 definition of qualified Native Hawaiian  
13 constituent in section 3 to the Secretary  
14 within 2 years from the date on which the  
15 Commission is fully composed; and

16 (ii) certify to the Secretary that each  
17 of the qualified Native Hawaiian constitu-  
18 ents proposed for inclusion on the roll  
19 meets the definition set forth in section 3.

20 (G) PUBLICATION.—Upon certification by  
21 the Commission to the Secretary that those list-  
22 ed on the roll meet the definition of qualified  
23 Native Hawaiian constituent set forth in section  
24 3, the Commission shall publish the notice of  
25 the certification of the roll in the Federal Reg-

1           ister, notwithstanding pending appeals pursuant  
2           to subparagraph (H).

3           (H) APPEAL.—The Secretary, in consulta-  
4           tion with the Commission, shall establish a  
5           mechanism for an administrative appeal for any  
6           person whose name is excluded from the roll  
7           who claims to meet the definition of qualified  
8           Native Hawaiian constituent in section 3.

9           (I) PUBLICATION; UPDATE.—The Commis-  
10          sion shall—

11           (i) publish the notice of the certifi-  
12           cation of the roll regardless of whether ap-  
13           peals are pending;

14           (ii) update the roll and provide notice  
15           of the updated roll on the final disposition  
16           of any appeal;

17           (iii) update the roll to include any  
18           person who has been certified by the Com-  
19           mission as meeting the definition of quali-  
20           fied Native Hawaiian constituent in section  
21           3 after the initial publication of the roll or  
22           after any subsequent publications of the  
23           roll; and

24           (iv) provide a copy of the roll and any  
25           updated rolls to the Council.

1           (J) EFFECT OF PUBLICATION.—The publi-  
2 cation of the initial and updated roll shall serve  
3 as the basis for the eligibility of qualified Na-  
4 tive Hawaiian constituents whose names are  
5 listed on those rolls to participate in the reorga-  
6 nization of the Native Hawaiian governing enti-  
7 ty.

8           (2) ORGANIZATION OF COUNCIL.—

9           (A) ORGANIZATION.—The Commission, in  
10 consultation with the Secretary, shall hold a  
11 minimum of 3 meetings, and each meeting shall  
12 be at least 2 working days, of the qualified Na-  
13 tive Hawaiian constituents listed on the roll es-  
14 tablished under this section—

15                   (i) to develop criteria for candidates  
16 to be elected to serve on the Council;

17                   (ii) to determine the structure of the  
18 Council, including the number of Council  
19 members; and

20                   (iii) to elect members from individuals  
21 listed on the roll established under this  
22 subsection to the Council.

23           (B) POWERS.—

24                   (i) IN GENERAL.—The Council—

1 (I) shall represent those listed on  
2 the roll established under this section  
3 in the implementation of this Act; and

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

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

11 (iii) ACTIVITIES.—

12 (I) IN GENERAL.—The Council  
13 shall conduct, among the qualified  
14 Native Hawaiian constituents listed  
15 on the roll established under this sub-  
16 section, a referendum for the purpose  
17 of determining the proposed elements  
18 of the organic governing documents of  
19 the Native Hawaiian governing entity,  
20 including but not limited to

21 (aa) the proposed criteria  
22 for future membership in the Na-  
23 tive Hawaiian governing entity,  
24 provided that membership is vol-  
25 untary and can be relinquished;

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, including the  
16 rights protected under section  
17 202 of the Indian Civil Rights  
18 Act of 1968 (25 U.S.C. 1302);

19 (dd) the protection and pres-  
20 ervation of the rights vested on  
21 the date of enactment of this Act  
22 of those Native Hawaiians who  
23 are eligible to reside on the Ha-  
24 waiian homelands under the au-  
25 thority of the Hawaiian Homes

1 Commission Act, 1920 (42 Stat.  
2 108, chapter 42); and

3 (ee) other issues determined  
4 appropriate by the Council.

5 (II) DEVELOPMENT OF ORGANIC  
6 GOVERNING DOCUMENTS.—Based on  
7 the referendum, the Council shall de-  
8 velop proposed organic governing doc-  
9 uments for the Native Hawaiian gov-  
10 erning entity and may seek technical  
11 assistance from the Secretary on the  
12 draft organic governing documents to  
13 ensure that the draft organic gov-  
14 erning documents comply with this  
15 Act and other Federal law.

16 (III) DISTRIBUTION.—The Coun-  
17 cil shall publish to all qualified Native  
18 Hawaiian constituents of the Native  
19 Hawaiian governing entity listed on  
20 the roll published under this sub-  
21 section notice of the availability of—

22 (aa) a copy of the proposed  
23 organic governing documents, as  
24 drafted by the Council; and



1 (bb) a brief impartial de-  
2 scription of the proposed organic  
3 governing documents;

4 (IV) ELECTIONS.—

5 (aa) IN GENERAL.—Not  
6 sooner than 180 days after the  
7 proposed organic governing docu-  
8 ments are drafted and distrib-  
9 uted, the Council, with the assist-  
10 ance of the Secretary, shall hold  
11 elections for the purpose of rati-  
12 fying the proposed organic gov-  
13 erning documents.

14 (bb) PURPOSE.—The Coun-  
15 cil, with the assistance of the  
16 Secretary, shall hold the election  
17 for the purpose of ratifying the  
18 proposed organic governing docu-  
19 ments 60 days after publishing  
20 notice of an election.

21 (cc) OFFICERS.—On certifi-  
22 cation of the organic governing  
23 documents by the Secretary in  
24 accordance with paragraph (4),  
25 the Council, with the assistance

1 of the Secretary, shall hold elec-  
2 tions of the officers of the Native  
3 Hawaiian governing entity pursu-  
4 ant to paragraph (5).

5 (3) SUBMITTAL OF ORGANIC GOVERNING DOCU-  
6 MENTS.—Following the reorganization of the Native  
7 Hawaiian governing entity and the adoption of or-  
8 ganic governing documents, the Council shall submit  
9 the organic governing documents of the Native Ha-  
10 waiian governing entity to the Secretary.

11 (4) CERTIFICATIONS.—

12 (A) IN GENERAL.—Within the context of  
13 the future negotiations to be conducted under  
14 the authority of section 9(c)(1), and the subse-  
15 quent actions by the Congress and the State of  
16 Hawaii to enact legislation to implement the  
17 agreements of the 3 governments, not later  
18 than 180 days, which may be extended an addi-  
19 tional 90 days if the Secretary deems necessary,  
20 after the date on which the Council submits the  
21 organic governing documents to the Secretary,  
22 the Secretary shall certify or decline to certify  
23 that the organic governing documents—

24 (i) establish the criteria for member-  
25 ship in the Native Hawaiian governing en-

1           tity and provide that membership is vol-  
2           untary and can be relinquished;

3           (ii) were adopted by a majority vote of  
4           those qualified Native Hawaiian constitu-  
5           ents whose names are listed on the roll  
6           published by the Secretary and who voted  
7           in the election;

8           (iii) provide authority for the Native  
9           Hawaiian governing entity to negotiate  
10          with Federal, State, and local govern-  
11          ments, and other entities;

12          (iv) provide for the exercise of inher-  
13          ent and other appropriate governmental  
14          authorities by the Native Hawaiian gov-  
15          erning entity;

16          (v) prevent the sale, disposition, lease,  
17          or encumbrance of lands, interests in  
18          lands, or other assets of the Native Hawai-  
19          ian governing entity without the consent of  
20          the Native Hawaiian governing entity;

21          (vi) provide for the protection of the  
22          civil rights of the citizens of the Native  
23          Hawaiian governing entity and all persons  
24          affected by the exercise of governmental  
25          powers and authorities by the Native Ha-

1           waiian governing entity, including the  
2           rights protected under section 202 of the  
3           Indian Civil Rights Act of 1968 (25 U.S.C.  
4           1302);

5           (vii) provide for the protection and  
6           preservation of the rights vested on the  
7           date of enactment of this Act of those Na-  
8           tive Hawaiians who are eligible to reside  
9           on the Hawaiian homelands under the au-  
10          thority of the Hawaiian Homes Commis-  
11          sion Act, 1920 (42 Stat. 108, chapter 42);  
12          and

13          (viii) are consistent with applicable  
14          Federal law.

15          (B) RESUBMISSION IN CASE OF NON-  
16          COMPLIANCE.—

17                 (i) RESUBMISSION BY THE SEC-  
18                 RETARY.—If the Secretary determines that  
19                 the organic governing documents, or any  
20                 part of the documents, do not meet all of  
21                 the requirements set forth in subparagraph  
22                 (A), the Secretary shall resubmit the or-  
23                 ganic governing documents to the Council,  
24                 along with a justification for each of the

1 Secretary's findings as to why the provi-  
2 sions are not in full compliance.

3 (ii) AMENDMENT AND RESUBMISSION  
4 OF ORGANIC GOVERNING DOCUMENTS.—If  
5 the organic governing documents are re-  
6 submitted to the Council by the Secretary  
7 under clause (i), the Council shall—

8 (I) amend the organic governing  
9 documents to ensure that the docu-  
10 ments meet all the requirements set  
11 forth in subparagraph (A); and

12 (II) resubmit the amended or-  
13 ganic governing documents to the Sec-  
14 retary for certification in accordance  
15 with this paragraph.

16 (C) CERTIFICATIONS DEEMED MADE.—  
17 The certifications under this paragraph shall be  
18 deemed to have been made if the Secretary has  
19 not acted within 180 days after the date on  
20 which the Council has submitted the organic  
21 governing documents of the Native Hawaiian  
22 governing entity to the Secretary.

23 (5) ELECTIONS.—On completion of the certifi-  
24 cations by the Secretary under paragraph (4), the  
25 Council, with the assistance of the Secretary, shall

1 hold elections of the officers of the Native Hawaiian  
2 governing entity.

3 (6) PROVISION OF ROLL.—The Council shall  
4 provide a copy of the roll of qualified Native Hawai-  
5 ian constituents to the governing body of the Native  
6 Hawaiian governing entity.

7 (7) TERMINATION.—The Council shall cease to  
8 exist and shall have no power or authority under  
9 this Act after the officers of the governing body who  
10 are elected as provided in paragraph (5) are in-  
11 stalled.

12 (8) REAFFIRMATION.—Notwithstanding any  
13 other provision of law, the special political and legal  
14 relationship between the United States and the Na-  
15 tive Hawaiian people is hereby reaffirmed and the  
16 United States extends Federal recognition to the  
17 Native Hawaiian governing entity as the representa-  
18 tive sovereign governing body of the Native Hawai-  
19 ian people after—

20 (A) the approval of the organic governing  
21 documents by the Secretary under subpara-  
22 graph (A) or (C) of paragraph (4); and

23 (B) the officers of the Native Hawaiian  
24 governing entity elected under paragraph (5)  
25 have been installed.

1 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
2 **THORITY TO STATE OF HAWAII; GOVERN-**  
3 **MENTAL AUTHORITY AND POWER; NEGOTIA-**  
4 **TIONS; CLAIMS.**

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

12 (b) GOVERNMENTAL AUTHORITY AND POWER.—

13 (1) IN GENERAL.—Consistent with the policies  
14 of the United States set forth in section 4(a)(4), the  
15 Native Hawaiian governing entity shall be vested  
16 with the inherent powers and privileges of self-gov-  
17 ernment of a native government under existing law,  
18 except as set forth in this Act. Said powers and  
19 privileges may be modified by agreement between  
20 the Native Hawaiian governing entity, the United  
21 States, and the State of Hawaii pursuant to the ne-  
22 gotiations authorized in subsection (c)(1), and sub-  
23 ject to the enactment of implementing legislation  
24 and to the limit described by section 10(a).

25 (2) MEMBERSHIP.—Once the United States ex-  
26 tends Federal recognition to the Native Hawaiian

1 governing entity, the United States will recognize  
2 and affirm the Native Hawaiian governing entity's  
3 inherent power and authority to determine its own  
4 membership criteria, to determine its own member-  
5 ship, and to grant, deny, revoke, or qualify member-  
6 ship without regard to whether any person was or  
7 was not deemed to be a qualified Native Hawaiian  
8 constituent under this Act. The Native Hawaiian  
9 governing entity must provide that membership in  
10 the Native Hawaiian governing entity is voluntary  
11 and can be relinquished.

12 (c) NEGOTIATIONS.—

13 (1) IN GENERAL.—Upon the reaffirmation of  
14 the special political and legal relationship between  
15 the United States and the Native Hawaiian gov-  
16 erning entity, the United States and the State of  
17 Hawaii may enter into negotiations with the Native  
18 Hawaiian governing entity designed to lead to an  
19 agreement or agreements addressing such matters  
20 as—

21 (A) the transfer of State of Hawaii lands  
22 and surplus Federal lands, natural resources,  
23 and other assets, and the protection of existing  
24 rights related to such lands or resources;



1 (B) the exercise of governmental authority  
2 over any transferred lands, natural resources,  
3 and other assets, including land use;

4 (C) the exercise of civil and criminal juris-  
5 diction;

6 (D) the exercise of the authority to tax and  
7 other powers and authorities that are recog-  
8 nized by the United States as powers and au-  
9 thorities typically exercised by governments rep-  
10 resenting indigenous, native people of the  
11 United States;

12 (E) any residual responsibilities of the  
13 United States and the State of Hawaii; and

14 (F) grievances regarding assertions of his-  
15 torical wrongs committed against Native Ha-  
16 waiians by the United States or by the State of  
17 Hawaii.

18 (2) AMENDMENTS TO EXISTING LAWS.—Upon  
19 agreement on any matter or matters negotiated with  
20 the United States or the State of Hawaii, and the  
21 Native Hawaiian governing entity, the parties may  
22 submit—

23 (A) to the Committee on Indian Affairs of  
24 the Senate, the Committee on Energy and Nat-  
25 ural Resources of the Senate, and the Com-

1           mittee on Natural Resources of the House of  
2           Representatives recommendations for proposed  
3           amendments to Federal law that will enable the  
4           implementation of agreements reached between  
5           the governments; and

6                   (B) to the Governor and the legislature of  
7           the State of Hawaii, recommendations for pro-  
8           posed amendments to State law that will enable  
9           the implementation of agreements reached be-  
10          tween the governments.

11           (3) During the period between the reaffirmation  
12          of the special political and legal relationship between  
13          the United States and the Native Hawaiian gov-  
14          erning entity, and the subsequent enactment of leg-  
15          islation to implement the agreement or agreements  
16          negotiated under paragraph (1):

17                   (A) There shall be no Indian country with-  
18                  in the State of Hawaii.

19                   (B) The United States shall not take land  
20                  in trust for the benefit of the Native Hawaiian  
21                  governing entity or for the benefit of members  
22                  of the Native Hawaiian governing entity.

23                   (C) The United States shall not restrict  
24                  the alienability of land owned by the Native Ha-  
25                  waiian governing entity.

1 (D) Members of the Native Hawaiian gov-  
2 erning entity shall continue to be subject to the  
3 civil and criminal jurisdiction of Federal and  
4 State courts.

5 (E) Nothing in this Act alters or preempts  
6 the existing legislative, regulatory, or taxation  
7 authority of the State of Hawaii over individ-  
8 uals who are members of the Native Hawaiian  
9 governing entity or over property owned by  
10 those individuals.

11 (F) The Native Hawaiian governing entity  
12 shall not exercise criminal, civil, adjudicative,  
13 legislative, regulatory, or taxation authority or  
14 jurisdiction over individuals who are not mem-  
15 bers of the Native Hawaiian governing entity  
16 without their express consent.

17 (G) The Native Hawaiian governing entity  
18 shall not exercise criminal, civil, adjudicative,  
19 legislative, regulatory, or taxation authority or  
20 jurisdiction over corporations or other associa-  
21 tions or entities that are owned wholly or in  
22 majority part by persons who are not members  
23 of the Native Hawaiian governing entity with-  
24 out their express consent.

1           (H) The Native Hawaiian governing entity  
2 shall be immune from any lawsuit in any Fed-  
3 eral or State court, with the exception described  
4 in section 10(c)(3) and the exceptions set forth  
5 in clauses (i) through (iii) of this subparagraph.

6           (i) The Native Hawaiian governing  
7 entity may waive its sovereign immunity,  
8 provided that it does so clearly and un-  
9 equivocally.

10          (ii) The Native Hawaiian governing  
11 entity shall not be immune from any law-  
12 suit brought by the United States in any  
13 Federal court.

14          (iii) Real property owned in fee simple  
15 by the Native Hawaiian governing entity  
16 shall not be immune from any in rem ac-  
17 tion filed by the State of Hawaii.

18          (I) Governmental, nonbusiness, non-  
19 commercial activities undertaken by the Native  
20 Hawaiian governing entity, or by a corporation  
21 or other association or entity wholly owned by  
22 the Native Hawaiian governing entity, shall not  
23 be subject to the regulatory or taxation author-  
24 ity of the State of Hawaii, provided that noth-  
25 ing in this subparagraph shall exempt any nat-

1            ural person (except an officer or employee of  
2            the Native Hawaiian governing entity, acting  
3            within the scope of his or her authority), from  
4            the regulatory, taxation, or other authority of  
5            the State of Hawaii. In determining whether an  
6            activity is covered by this subparagraph, due  
7            consideration shall be given to the constraints  
8            described in subparagraphs (A), (F), and (G).

9            (J) Commercial or business activities un-  
10           undertaken by the Native Hawaiian governing en-  
11           tity, or by a corporation or other association or  
12           entity owned, operated, or sponsored by the Na-  
13           tive Hawaiian governing entity, shall be subject  
14           to the regulatory and taxation authority of the  
15           State of Hawaii to the same extent as commer-  
16           cial or business activities undertaken by others.

17           (K) Subject to subparagraph (I), activities  
18           conducted on real property owned by, leased by,  
19           or subject to the control of the Native Hawaiian  
20           governing entity shall be subject to the regu-  
21           latory and taxation authority of the State of  
22           Hawaii to the same extent as activities con-  
23           ducted on real property owned by, leased by, or  
24           subject to the control of others.

1           (L) Subject to subparagraph (O), real  
2 property owned by, leased by, or subject to the  
3 control of the Native Hawaiian governing enti-  
4 ty, and development of such property, shall be  
5 subject to the regulatory and taxation authority  
6 of the State of Hawaii to the same extent as  
7 real property owned by, leased by, or subject to  
8 the control of others.

9           (M) Any commercial or business corpora-  
10 tion or other commercial or business association  
11 or entity owned, operated, or sponsored by the  
12 Native Hawaiian governing entity shall be sub-  
13 ject to the regulatory and taxation authority of  
14 the State of Hawaii to the same extent as com-  
15 mercial and business corporations and other  
16 commercial and business associations and enti-  
17 ties owned, operated, or sponsored by others.

18           (N) Any specific power, authority, or re-  
19 striction set forth in this paragraph shall expire  
20 upon enactment of legislation that implements  
21 an agreement or agreements negotiated under  
22 paragraph (1) and that expressly replaces or al-  
23 ters such power, authority, or restriction.

24           (O) Nothing in this paragraph diminishes  
25 any right or immunity (including any immunity

1 from State or local taxation) granted to Native  
2 Hawaiians or their property by the Hawaiian  
3 Homes Commission Act, 1920 (42 Stat. 108,  
4 chapter 42), the Act entitled “An Act to pro-  
5 vide for the admission of the State of Hawaii  
6 into the Union”, approved March 18, 1959  
7 (Public Law 86–3; 73 Stat. 4), or sections  
8 10001 through 10004 of the Department of  
9 Defense Appropriations Act, 1994 (sections  
10 10001 through 1004 of Public Law 103–139;  
11 107 Stat. 1418, 1480 (1993)).

12 (4) Nothing in paragraph (3) should be inter-  
13 preted as establishing any presumption about the  
14 powers or authorities that could properly be exer-  
15 cised by the United States, the State of Hawaii, or  
16 the Native Hawaiian governing entity after further  
17 legislation, including legislation enacted to imple-  
18 ment any agreement negotiated under this sub-  
19 section.

20 (d) CLAIMS.—Nothing in this Act—

21 (1) alters existing law, including case law, re-  
22 garding obligations of the United States or the State  
23 of Hawaii relating to events or actions that occurred  
24 prior to recognition of the Native Hawaiian gov-  
25 erning entity;

1           (2) creates, enlarges, revives, modifies, dimin-  
2           ishes, extinguishes, waives, or otherwise alters any  
3           Federal or State claim or cause of action against the  
4           United States or its officers or the State of Hawaii  
5           or its officers or any other person or entity, or any  
6           defense (including the defense of statute of limita-  
7           tions) to any such claim or cause of action, except  
8           in the case of claims or causes of action challenging  
9           the constitutionality or legality of programs benefit-  
10          ting Native Hawaiians to the extent that this Act  
11          creates or enlarges any defense to any such claim or  
12          cause of action;

13          (3) amends section 2409a of title 28, United  
14          States Code (commonly known as the “Quiet Title  
15          Act”), chapter 171 of title 28, United States Code  
16          (commonly known as the “Federal Tort Claims  
17          Act”), section 1491 of title 28, United States Code  
18          (commonly known as the “Tucker Act”), section  
19          1505 of title 28, United States Code (commonly  
20          known as the “Indian Tucker Act”), the Hawaii Or-  
21          ganic Act (31 Stat. 141), or any other Federal stat-  
22          ute, except as expressly amended by this Act; or

23          (4) alters the sovereign immunity of the United  
24          States or of the State of Hawaii.



1 **SEC. 10. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

2 (a) INDIAN GAMING REGULATORY ACT.—

3 (1) IN GENERAL.—The Native Hawaiian gov-  
4 erning entity and Native Hawaiians may not con-  
5 duct gaming activities as a matter of claimed inher-  
6 ent authority or under the authority of any Federal  
7 law, including the Indian Gaming Regulatory Act  
8 (25 U.S.C. 2701 et seq.) or under any regulations  
9 thereunder promulgated by the Secretary or the Na-  
10 tional Indian Gaming Commission.

11 (2) APPLICABILITY.—The prohibition contained  
12 in paragraph (1) regarding the use of Indian Gam-  
13 ing Regulatory Act (25 U.S.C. 2701 et seq.) and in-  
14 herent authority to game applies regardless of  
15 whether gaming by Native Hawaiians or the Native  
16 Hawaiian governing entity would be located on land  
17 within the State of Hawaii or within any other State  
18 or territory of the United States.

19 (b) SINGLE GOVERNING ENTITY.—This Act will re-  
20 sult in the recognition of the single Native Hawaiian gov-  
21 erning entity. Additional Native Hawaiian groups shall not  
22 be eligible for acknowledgment pursuant to the Federal  
23 Acknowledgment Process set forth in part 83 of title 25,  
24 Code of Federal Regulations, or any other administrative  
25 acknowledgment or recognition process.

26 (c) INDIAN PROGRAMS, SERVICES, AND LAWS.—

1           (1) IN GENERAL.—Notwithstanding any other  
2 provision of this Act, nothing in this Act extends eli-  
3 gibility for any Indian program or service to the Na-  
4 tive Hawaiian governing entity or its members un-  
5 less a statute governing such a program or service  
6 expressly provides that Native Hawaiians or the Na-  
7 tive Hawaiian governing entity is eligible for such  
8 program or service. Nothing in this Act affects the  
9 eligibility of any person for any program or service  
10 under any statute or law in effect before the date of  
11 enactment of this Act.

12           (2) APPLICABILITY OF OTHER TERMS.—Subject  
13 to paragraph (3), in Federal statutes or regulations  
14 in force prior to the United States recognition of the  
15 Native Hawaiian governing entity, the terms “In-  
16 dian” and “Native American”, and references to In-  
17 dian tribes, bands, nations, pueblos, villages, or  
18 other organized groups or communities, shall not  
19 apply to the Native Hawaiian governing entity or its  
20 members, unless the Federal statute or regulation  
21 expressly applies to Native Hawaiians or the Native  
22 Hawaiian governing entity.

23           (3) INDIAN CIVIL RIGHTS ACT OF 1968.—The  
24 Council and the Native Hawaiian governing entity  
25 shall be subject to sections 201 through 203 of the

1 Indian Civil Rights Act of 1968 (25 U.S.C. 1301–  
2 1303). Nothing in such Act, and nothing in this  
3 paragraph, shall be interpreted to expand the powers  
4 and authorities of the Council or the Native Hawai-  
5 ian governing entity that are described elsewhere in  
6 this Act.

7 (d) REAL PROPERTY TRANSFERS.—Section 2116 of  
8 the Revised Statutes (commonly known as the “Indian  
9 Trade and Intercourse Act”) (25 U.S.C. 177) does not  
10 apply to any purchase, grant, lease, or other conveyance  
11 of lands, or of any title or claim thereto, from Native Ha-  
12 waiians, Native Hawaiian entities, or the Kingdom of Ha-  
13 waii that occurred prior to the date of the United States’  
14 recognition of the Native Hawaiian governing entity.

15 **SEC. 11. SEVERABILITY.**

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

19 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

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

Passed the House of Representatives February 23,  
2010.

Attest: LORRAINE C. MILLER,  
*Clerk.*

Calendar No. 319

11<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session  
**H. R. 2314**

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## **AN ACT**

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.

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MARCH 16, 2010

Read the second time and placed on the calendar