Appendix A

Background - Legislative History

Signing Statement, August 12, 1978

Joint Resolution - American Indian Religious Freedom,
P.L. 95-341

Department of the Interior Statement on S.J. Res. 102,
February 27, 1978

Department of Agriculture Statement on S.J. Res. 102,
February 27, 1978

Interior Assistant Secretary - Indian Affairs Memorandum
Proposing Intra-Departmental Task Force on Issue of
American Indian Religious Freedom, February 24, 1978

President's Letter to Senator Abourezk on Issue of Religious
Freedom for American Indians, November 26, 1977

Senator Abourezk's Letter to the President on Issue of
Religious Freedom for American Indians,
November 16, 1977
A. Background - Legislative History

Senate Joint Resolution 102 was introduced on December 18, 1977, and referred to the Senate Select Committee on Indian Affairs. A companion measure, H.J. Res. 738, was introduced on February 14, 1978, and referred to the House Interior Subcommittee on Public Lands and Indian Affairs. These historic measures proposed to set forth United States policy to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The resolutions recognized that abridgements of Native American religious freedom had resulted from a lack of consistent policy and insensitive, inflexible regulatory enforcement at the federal level. Federal laws pertaining to the preservation of endangered species, for example, inadvertently infringe on the rights of Native people because their interest was not considered by the Congress in passing such laws.

Efforts to organize Indian concern began in the early 1970s, following the arrest of members of the Cheyenne and Arapaho Tribes of Oklahoma for sale and possession of eagle feathers in violation of the Bald Eagle Protection Act. Strict enforcement of this law against the Nation's only people with a religious duty attached to feathers caused considerable concern among tribes throughout the country. At a 1974 national meeting of traditional Native religious leaders in New Mexico, concerns were expressed that wilderness and wildlife conservation laws had the effect of inhibiting Native people exclusively in the exercise of their religion. Access to ceremonial sites, even cemeteries, had been denied. Sacred relics had been confiscated, and purified medicine bags opened and desecrated by authorities at state and national borders. As a result of this meeting and subsequent negotiations with federal officials, certain administrative accommodations were made in regard to the American Indian use and possession of eagle feathers.

In 1977, the Senate Select Committee on Indian Affairs held several conferences to address ways to alleviate the adverse impact of pertinent laws and procedures on the Native religions. Although there was clear potential for legislative action, consensus at these conferences was that much could be gained from executive action and a consultation process with traditional Native religious leaders. It was agreed that close consultation at every stage of the effort would better define problem areas and afford the enforcing agencies a clearer view of changes needed. The Committee chairman, Mr. Abourezk, communicated this intended action to the White House. The President responded on November 28, 1977, with assurances of "thorough, sensitive, and prompt attention and consideration."
On February 24, 1978, the Senate Committee held hearings on S.J. Res. 102. Testimony was received from more than thirty traditional American Indian and Hawaiian Native religious leaders expressing enthusiastic support for the measure. The All-Indian Pueblo Council offered commendation for the Committee's "deep and unwavering interest in the preservation of the Indian community, their religion and their culture." 1/ The Church of Hawaii Nei wrote, "Mahalo nui loa for your efforts on our behalf." 2/ The Crow representative observed, "The laws that protect birds, animals, plants and our Mother Earth from people who have no respect for these things serve to inhibit the free exercise of religion and the free use of religious artifacts and free access to religious sites when these American Indians pose no threat to them." 3/

Statements by Committee members were no less supportive. Mr. Bartlett of Oklahoma stated:

"We do not need to add continued violation of American Indian religious freedom to the long list of rights consistently abridged by the Federal government. It should be a relatively simple matter to establish a federal policy to preserve and protect Indian freedom of religion, and develop a new sensitivity to traditional Indian culture." 4/

Mr. Inouye of Hawaii expressed his support of S.J. Res. 102, relating it to his knowledge of Native culture and religion in his home state:

"... despite the progressive demise of the Hawaiian culture including its religious component, certain traditions and beliefs remain. To those individuals who still harbor these traditions and beliefs, the ability to freely express and practice them is of utmost importance to their identity as Hawaiians and to their spiritual well-being." 5/

On March 12, 1978, S.J. Res. 102 was reported amended by the Senate. Senate Report No. 95-709 contains this observation from Mr. Abourezk:

2. Id., p. 46.
3. Id., p. 25.
4. Id., p. 7.
5. Id., p. 9.
"Even the most ardent conservationist cannot match the need of traditional Indians for preserving eagles and hawks. For some plains Indians, much of their religion depends on the existence of these species. Yet, prohibiting the possession and exchange by Indians of feathers in one's family for generations, or the use of feathers acquired legally does not help preserve endangered species. It does prevent the exercise of American Indian religions. Although the enforcement problems create more difficult administrative issues and require more careful consideration of regulation changes in this area, it is possible to both uphold the intent of the laws and allow for religious freedom." 6/

On April 3, 1978, S.J. Res. 102 passed the Senate as reported by a voice vote.

On July 17, 1978, Mr. Udall of Arizona, a co-sponsor of the Resolution, delivered an eloquent and persuasive floor statement on H.J. Res. 738 consent action:

"It is stating the obvious to say that this country was the Indians' land before it was ours. For many tribes, the land is filled with physical sites of religious and sacred significance to them. Can we not understand that? Our religions have their Jerusalems, Mount Calvarys, Vaticans and Meccas. We hold sacred Bethlehem, Nazareth, the Mount of Olives, and the Wailing Wall. Bloody wars have been fought because of these religious sites.

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"It is the intent of this bill to insure that the basic right of the Indian people to exercise their traditional religious practices is not infringed without a clear decision on the part of the Congress or the administration that such religious practices must yield to some higher consideration." 7/

On July 18, 1978, H.J. Res. 738 was amended and passed by a voice vote. And, on August 11, 1978, the American Indian Religious Freedom Act was approved. The President concluded his signing statement on this note: "I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans."

CHRONOLOGY

42 U.S.C. 1996
Public Law 95-341, 92 Statute 469
S.J.R. 102 and Senate Report No. 95-709 - March 21, 1978

December 15, 1977
Introduced in the Senate by Mr. Abourezk, Mr. Humphrey, Mr. Kennedy, Mr. Inouye, Mr. Matsunaga, Mr. Hatfield, Mr. Stevens, Mr. Gravel and Mr. Goldwater,
Referred to the Senate Select Committee on Indian Affairs.

February 24, 1978
Hearings in the Senate before the Senate Select Committee on Indian Affairs.

March 12, 1978
Report amended by the Senate.
Report No. 95-709.

April 3, 1978
Passed the Senate as reported by a voice vote.
C.R. Vol. 124, S. 4590.

April 5, 1978
Referred to the House Committee on Interior and Insular Affairs.

July 17, 1978
Statement in the House by Mr. Udall relative to consent action on House Joint Resolution 738.
C.R. Vol. 124, H. 6842.

July 18, 1978
Amended to contain text of H.J.R. 738 as passed by a voice vote.

July 18, 1978
Passed the House as amended by a voice vote.
C.R. Vol. 124, H. 7017.

July 19, 1978
Explanation of vote on H.J.R. 738 by Mr. Cohen.
C.R. Vol. 124, H. 7017.

July 27, 1978
House amendments agreed to by the Senate by a voice vote. C.R. Vol.124, S. 11988.

August 11, 1978
Approved by the President to become P.L. 95-341.
FOR IMMEDIATE RELEASE

AUGUST 12, 1978

Office of the White House Press Secretary

THE WHITE HOUSE

The President has signed S.J. Res. 102, which declares Federal policy to protect freedom of religious belief and exercise on the part of Native Americans. A report to the Congress is required in twelve months after an Executive Branch evaluation of this issue. The resolution is designed primarily to assure that Federal programs (such as Federal land management and customs procedures) are administered to accommodate and be sensitive to traditional native religious beliefs and practices.

The President issued the following statement on S.J. Res. 102:

SIGNING STATEMENT
SENATE JOINT RESOLUTION 102
ON AMERICAN INDIAN RELIGIOUS FREEDOM

I have signed into law S.J. Res. 102, the American Indian Religious Freedom Act of 1978. This legislation sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express and exercise their traditional religions. In addition, it calls for a year's evaluation of the Federal agencies' policies and procedures as they affect the religious rights and cultural integrity of Native Americans.

It is a fundamental right of every American, as guaranteed by the First Amendment of the Constitution, to worship as he or she pleases. This act is in no way intended to alter that guarantee or override existing laws, but is designed to prevent government actions that would violate these Constitutional protections. In the past government agencies and departments have on occasion denied Native Americans access to particular sites and interfered with religious practices and customs where such use conflicted with Federal regulations. In many instances, the Federal officials responsible for the enforcement of these regulations were unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies interfered with such practices.

This legislation seeks to remedy this situation.

I am hereby directing that the Secretary of the Interior establish a task force comprised of representatives of the appropriate Federal agencies. They will prepare the report to the Congress required by this Resolution, in consultation with Native leaders. Several agencies, including the Departments of Treasury and Interior, have already taken commendable steps to implement the intent of this Resolution.

I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans.

JIMMY CARTER

[Signature]
APPENDIX A

Joint Resolution

American Indian Religious Freedom

WHEREAS the freedom of religion for all people is an inherent right fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

WHEREAS the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

WHEREAS the religious practices of the American Indian (as well as Native Alaskans and Hawaiians) are an integral part of their culture, tradition and heritage, such practices forming the core of Indian identity and values systems;

WHEREAS the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

WHEREAS the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

WHEREAS such religious infringements result from the lack of knowledge or the inconsistent and ineffective enforcement of Federal policies and regulations premised on a variety of laws;

WHEREAS such laws were designed for other worthwhile purposes or conservation and preservation of natural species and resources but were never intended to relates to Indian religious practices and therefore, were passed without consideration of their effect on traditional American Indian religions;

WHEREAS such laws and policies often deny American Indians access to sacred sites required in their religious, including ceremonies;

WHEREAS such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

WHEREAS traditional American Indian ceremonials have been intruded upon, interfered with, and in a few instances banned; Now, therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and practice the traditional religions of the American Indian, Alaskan, Aleut, and Native Hawaiian, including but not limited to access to sites, law and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.

Sec. 2. The President shall direct the various Federal departments, agencies, and other instrumentalities responsible for administering Federal laws to develop policies and procedures to work cooperatively with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back to Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations as may have for legislative action.

[Signatures]

APPROVED

AUG 1 1978
STATEMENT BY GEORGE GOODWIN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S.J. RES. 102, AMERICAN INDIAN RELIGIOUS FREEDOM, FEBRUARY 27, 1978.

Mr. Chairman, members of the Committee, and staff, my name is George Goodwin, I am a member of the Minnesota Chippewa Tribe and Deputy Assistant Secretary of the Interior for Indian Affairs.

We recommend passage of S.J. Res. 102 with clarifying language which will be presented to you today by the Department of Justice. That language would insure that no provision of the resolution would be construed as amending existing law.

Mr. Chairman, we support and endorse the policy of the United States expressed in S.J. Res. 102 to protect and preserve for American Indians their right to believe, express, and exercise their traditional religions. Indians have often experienced interference with, and sometimes outright banning of, their religious ceremonies and the objects and artifacts associated with those ceremonies. That interference is often the result of administrative regulations and policies carried out with little awareness or concern for their impact on the practices of traditional Indian religion.

We believe that in order to make the policy of Indian self-determination meaningful it is necessary for the Federal government to address the conflicts between its policies and procedures and the practice of traditional Indian religions.
S.J. Res. 102 goes further than just stating policy, however. It directs the President to direct the various Federal departments, agencies, and other instrumentalities responsible for administering laws which affect Indian religious freedom to evaluate their policies, in consultation with Indian Native religious leaders, in order to determine and implement changes which may be necessary to protect and preserve Native American religious cultural rights and practices.

A group of representatives from the various agencies whose activities impact on traditional Indian customs and practices met last November with representatives of this Committee to discuss possible conflicts between their activities and Indian religious customs. It was decided at that meeting that such an interagency group should operate as a task force to be coordinated by the Department of the Interior. An important goal of such a task force, decided at this initial meeting, is to consult with Native American religious leaders in order to accommodate Indian tradition wherever possible in enforcement procedures and policies.

On-going conversations with the other federal agencies responsible for administering laws which affect Indian religious practices encourage us that there is widespread interest and support for a review of administrative procedures with a view to identifying and correcting, where possible, problems Indian traditionalists have with the ways our laws are being enforced. With such interest extending from the highest levels in this Administration and among the various Departments, we are
encouraged that such a review will be an effective one with gratifying results. Certainly, the Department of the Interior will welcome and cooperate with a congressional directive for a formal review of our procedures in protecting Indian religious rights.

Thank you for the opportunity to address this most important subject. My associates and I will be pleased to answer any questions the Committee may wish to ask.
Honorável James Abourezk
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I appreciate the opportunity to comment on S.J. Res. 102. The protection and preservation of religious freedom for American Indians is vital to their cultural integrity and to the democratic traditions of this country.

I know you are aware of my special interest and personal involvement as a Member of Congress in the many needs and problems of American Indians. Because of this concern, several weeks ago I established a Native American Task Force in the Department of Agriculture to improve the effectiveness of USDA's programs as they apply to Native Americans.

The Task Force, composed of four of my assistant secretaries and supporting agency staff people as required, will report to me quarterly. It occurs to me that a system such as our Task Force might be the type of vehicle that could be created in other executive departments to deal with the purpose of S.J. Res. 102, as well as the many other issues and problems that confront American Indians.

The difficulties experienced by American Indians in practicing their traditional religions have already been discussed by our Task Force. I thoroughly support your efforts to resolve any conflicts between American Indian religious practices and Federal policies. You may be assured I will cooperate fully with any Presidential directive having that objective.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

[Signature]

115
Memorandum

To: Assistant Secretary - Energy and Minerals
Assistant Secretary - Land and Water Resources
Acting Assistant Secretary - Policy, Budget, and Administration
Assistant Secretary for Fish and Wildlife and Parks

From: Assistant Secretary - Indian Affairs

Subject: Indian Religious Freedom Bills

One of the important issues that has faced this Administration, and more specifically the Department of Interior, is one of a basic recognition of the rights of Indian people to practice their religion, traditions and customs. In an attempt to reaffirm these rights, S.J. Resolution 102 has been introduced in the Senate and H.J. Resolution 738 has been introduced in the House. Copies of both are attached.

Oftentimes, these rights may conflict with various administrative procedures and practices of the various Bureaus within the Department. These conflicts deal with the possession by Indians of eagle feathers for ceremonial purposes, carrying out religious practices on public lands, or gathering roots and plants for medicinal purposes within park boundaries.

I am proposing that the various Assistant Secretaries form an intra-agency task force to deal with this issue and analyze our respective rules and regulations which we use to administer our programs and develop an action plan which would recognize the First Amendment rights of Indian people.

I would appreciate it if you would name a person or persons whom you feel could serve on a task force to address this issue and work toward finalizing a plan of action.

Please notify Deputy Assistant Secretary George Goodwin, extension 4174, by March 3 on whom your representative will be. The initial meeting will be scheduled the following week.

[Signature]

Attachments
To Senator James Abourezk

Thank you very much for your letter of November 16 and the background information on the issue of religious freedom for American Indians.

I have requested my Counsel, Bob Lipshutz, to coordinate with Stu Eizenstat, the Secretary of the Interior, and the Attorney General, for the purpose of working with you and your Committee on this matter.

Please be assured that this will be given thorough, sensitive, and prompt attention and consideration.

Best personal regards.

Sincerely,

[Signature]

Honorable James Abourezk
United States Senate
Washington, D. C. 20500
November 16, 1977

President Jimmy Carter  
THE WHITE HOUSE  
Washington, D. C.  20503

Dear Jimmy:

I want you to have this copy of the background memorandum prepared by the Senate Committee on Indian Affairs on the issue of religious freedom for American Indians.

Given your stand for human rights around the world and the significance of your own religious experience, I have confidence that you will give this problem your careful consideration. It is an area which is readily supported by most Americans and the concept is certainly fundamental to the Bill of Rights.

Key Senate and House leaders have indicated strong support for a Congressional Resolution on this matter which I plan to introduce later this month. The Resolution would clarify that the Federal policy is to protect and preserve the rights of Indians to their religious and cultural integrity. As a practical matter, the most effective approach should come from the Executive. A policy directive from you can directly address the neglect and insensitive regulations which have prevented Indians from the free exercise of their traditional religions.

Thank you for your concern. With warmest personal regards,

I am

Sincerely,

James Abourezk, Chairman  
Senate Select Committee on Indian Affairs

JA/ea
Appendix B

Memorandum, National Endowment for the Humanities Deputy Chairman, Preliminary Evaluation of Issues Related to Compliance with P.L. 95-341, August 6, 1979

Letter, U.S. Customs Service Chief Counsel, Report Review and Comment, August 3, 1979

Letter, Department of the Navy, Deputy Under Secretary of the Navy, Summary Statement, August 2, 1979

Letter, Department of Health, Education and Welfare, Intra-Departmental Council on Indian Affairs Chairman, Transmitting Summary Statement of Indian Health Service, July 26, 1979

Memorandum, National Park Service, Interior Deputy Assistant Secretary for Fish and Wildlife and Parks, Consultation with Native American Traditional Religious Leaders, July 20, 1979

Memorandum, Secretary of the Interior, Preparations of Final Report Required by P.L. 95-341, June 27, 1979

Letter, Secretary of Health, Education and Welfare, Transmitting Evaluations of Administration on Aging, Rehabilitation Services Administration, Education Division and Social Security Administration, May 31, 1979


Memorandum, Bureau of Land Management, Interior Assistant Secretary for Land and Water Resources, Preliminary Evaluation of Issues Related to Compliance with P.L. 95-341, April 17, 1979


Letter, Department of Commerce, Economic Development Administration Special Assistant for Indian Affairs, Reporting National Marine Fisheries Service as only Commerce unit that may apply under P.L. 95-341, April 9, 1979, March 29, 1979


Agenda, April 2, 1979, Meeting of the Task Force to Prepare the American Indian Religious Freedom Act Implementation Report

Letter, U.S. Commission on Civil Rights Assistant General Counsel, Report on Relevance to P.L. 95-341, March 30, 1979

Memorandum, Department of Energy Specialist for Indian Affairs, Initial Submission to Task Force on Religious Freedom, March 30, 1979

Letter, Deputy Assistant Secretary of Defense, Report on Department-wide Survey Regarding P.L. 95-341, March 22, 1979

Memorandum, American Folklife Center Director, Internal Review and Recommendations Pertaining to Implementation of P.L. 95-341, March 16, 1979


Letter, Department of Housing and Urban Development, Special Assistant to the Secretary - Indian and Alaska Native Programs, Review on P.L. 95-341 in Process, February 26, 1979

Memorandum, Secretary of the Interior, Establishment of Task Force to Prepare the Report to the Congress on Implementation of P.L. 95-341, January 26, 1979
MEMORANDUM

TO: Secretary of the Interior

ATTN: Assistant Secretary of Indian Affairs

FROM: Patricia McFate

Deputy Chairman

SUBJECT: Preliminary Evaluation of Issues Related to Compliance with the American Indian Religious Freedom Act, P.L. 95-341

The National Endowment for the Humanities is fully committed to the implementation of the American Indian Religious Freedom Act of 1978. All Endowment policy and programs are developed and administered in harmony with the goals of this Act. The Endowment firmly believes that the protection of Native American cultural rights is consistent and in accord with the agency's stated goals as directed by the Congressional act which established the National Endowment for the Humanities in 1965. These goals are:

-- to promote public understanding and use of the humanities and to relate the humanities to current conditions of national life;

-- to improve the quality of humanities programs in educational institutions, and to encourage and assist nontraditional ventures in humanistic learning;

-- to enrich and broaden the intellectual foundations for humanistic endeavors, and to support scholarly additions to humanistic knowledge;

-- to sustain and enhance essential facilities and resources which undergird humanistic pursuits and to help inform the future role of humanistic concerns.
The Endowment is establishing an internal agency task force to monitor and promote the application of Public Law 95-341 in the areas of new agency policy considerations, grant application guidelines, grant evaluation procedures, and agency staff education on the significance of the Law to all areas of Endowment policy and programs.

The National Endowment for the Humanities views the American Indian Religious Freedom Act (P.L. 95-341) as a significant measure in advancing research, education, and public activity in the humanities.
Ms. Suzan Harjo  
Special Assistant to the Assistant  
Secretary for Indian Affairs  
U. S. Department of Interior  
Washington, D. C. 20240

Dear Ms. Harjo:

This is in response to your request for review and comment upon the proposed report to the President pursuant to P.L. 95-341, the American Indian Religious Act of 1978. You also requested a succinct statement summarizing the activities of the Customs Service undertaken pursuant to the Act.

I have reviewed the draft copy of the report and find it to be excellent, both in substance and format. You and all who participated in its preparation are to be highly commended. Being somewhat familiar with the large volume of facts, data, etc. which you received by way of input, I have a real appreciation for what you have accomplished. The report is well organized and well written.

As discussed with you on the telephone, I believe that, for purposes of clarification, it would be appropriate to make a couple of insertions in the pages which cover the subject areas in which the Customs Service has a particular interest. In accordance with your suggestion, I am enclosing a couple of draft paragraphs, for your consideration, which may accomplish that objective.

Also enclosed is a summary statement of what the Customs Service has done during the past year to carry out the spirit and purpose of the Act.

I have also reviewed the copy of the transcript of the Great Falls consultation and am enclosing certain pages with needed corrections made thereon.
With the expectation that this summary will be included in the report and that the clarifications referred to above will be made, I fully concur in the proposed report, and to the recommendations made as to the content of the proposed Executive Order and needed legislation.

In conclusion, I wish to take this opportunity to say that it was a real privilege to have had the opportunity to serve with you and others on the Inter-Agency Task Force to carry out this very important and significant project.

Sincerely,

Thaddeus Rojek
Chief Counsel

Enclosures
PURPOSE

To transmit Policy Statement 3300-02.

BACKGROUND

President Carter has signed into law Senate Joint Resolution 102, the American Religious Freedom Act of 1978. It sets forth the policy of the United States to protect and preserve for American Indian, Eskimo, Aleut and native Hawaiian people their inherent right to believe, express and exercise their traditional religions.

The intention of the resolution is to assure that certain Federal programs which affect Indians (such as Customs inspection procedures and Federal land management) are administered in a manner which reflects an awareness of and sensitivity to the traditional Indian beliefs and practices and to the various sacred and natural articles and objects (such as medicine bags or bundles, certain animal parts, hoofs, horns, certain grasses, reeds, herbs, roots, etc.) used in the exercise of those religious beliefs and customs.

An interagency task force established by the Secretary of the Interior is directed to evaluate agency policies and procedures which affect these religious rights and report to the President and Congress in 1 year the steps taken to implement this resolution. The Customs Service is represented on that task force and will participate fully in the efforts of that group. In addition Customs has established an American Indian Affairs Committee made up of representatives from each of the affected regions. Regional Commissioner Albert G. Bergesen is the chairman of this committee which has already met with Indian representatives. It has been learned from meetings held to date that sometimes a lack of knowledge or an unawareness of native Indian cultural or religious customs, practices, and beliefs on the part of Customs officers has led to insensitive handling or treatment by them of objects or articles considered sacred by Indians. Sometimes insensitive handling of such articles or objects by Customs officers has rendered them valueless for the religious, spiritual or cultural purpose they were intended to serve.

Attached for further background and ready reference are a copy of the Joint Resolution and the related White House Press Release.

NATURE OF THE ISSUANCE

The attached policy statement sets forth the Federal policy and sets forth measures to be undertaken by Customs to implement the Federal policy.
EFFECT ON OTHER ISSUANCES
None

REMOVAL AND INSERTION OF PAGES
Remove: None

INSERT: Policy Statement 3300-02 in a binder marked:
Policies of the United States Customs Service

AUTHENTICATION

[Signature]
Commissioner of Customs

Attachment
Recently enacted Senate Joint Resolution 102, the American Indian Religious Freedom Act of 1978, sets forth policy of the United States to protect and preserve for American Indians, Eskimos, Aleuts and native Hawaiians their inherent right to believe and practice their traditional religions. It is essential to assure that Federal programs which affect Indians (such as border inspection procedures) are administered in a manner which implements that policy.

Through both an inter-agency task force and Customs Indian Affairs Committee, we will attempt to identify and define problem areas more precisely, to identify and perhaps catalog the various articles and objects which have religious significance to the respective Indian tribes and will evaluate our policies and procedures in consultation with Indian religious leaders in order to determine what changes could or should be made in order to protect and preserve native American Indian religious cultural rights and practices.

In the interim, to carry out the spirit and purpose of the declared Federal policy, you should make certain that all Customs officers under your supervision who are responsible for examining and clearing articles accompanying American Indians, Eskimos, Aleuts and native Hawaiians crossing our land borders or otherwise arriving in the United States are fully aware of this policy and its intent and purpose. You should institute measures to assure that such Customs officers are made aware or more aware of the traditional Indian beliefs and practices in order to insure that in the course of their inspection and examination, they treat more sensitively the various articles that are used by Indians in the exercise of their religious and cultural beliefs.

You will be provided with appropriate guidelines covering this subject once they have been formulated.

As a Service we want to do whatever we can to carry out this policy of assuring religious freedom for all Americans.
Ms. Suzan Harjo  
U.S. Department of Interior  
Office of the Secretary  
Washington, D.C. 20240

Dear Suzan:

The following statement is forwarded for inclusion in the evaluation and reports section of the task force report to the President:

The Department of the Navy has been an active participant in the subject task force and has evaluated relevant policies and procedures in light of the American Indian Religious Freedom Act in order to determine what, if any impacts may occur upon the religious practices of Native Americans.

The Navy has identified two specific problem areas at China Lake, California and Kahoolawe, Hawaii. The Navy is diligently working to allow the desired access to these areas in a manner which is both safe to the participants and not disruptive to the Navy's mission.

In May of 1979 a message was sent to all Naval Stations by the Secretary making them aware of the requirements of the American Indian Religious Freedom Act and advising them to give deliberate consideration to legitimate religious concerns of Native Americans.

The Navy will continue to cooperate with native traditional religious leaders in an ongoing effort to ensure the free exercise of religious rights while at the same time ensuring the safety of all personnel and the completion of its military mission.

Sincerely,

Mitzi M. Wertheim

128
July 26, 1979

Mr. Forrest Gerard
Assistant Secretary for
Indian Affairs
Bureau of Indian Affairs
Room 4600
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

Dear Mr. Gerard:

The Indian Health Service (IHS), within the Department of Health, Education, and Welfare, has completed an evaluation of its policies and procedures to determine compliance with the American Indian Religious Freedom Act. The Indian Health Service has stated that it recognizes the value and efficacy of traditional beliefs and practices and is committed to preserving the inherent right of American Indians to express and exercise their traditional religious beliefs.

Enclosed is the full text of the IHS evaluation report which details the agency's policies and procedures relevant to the American Indian Religious Freedom Act. The report is transmitted to you for inclusion in the Task Force report to Congress on implementation of the Act.

Sincerely,

A. David Lester
Chairman
Intra-Departmental Council on Indian Affairs

Enclosure
Policy and Procedures in reference to P.L. 95-341

Purpose:


Policy:

1. The policy of the Indian Health Service during the course of administering health services to American Indians and Alaskan Natives (referred jointly as Native Americans) is to protect and preserve the inherent right of all Native Americans to believe, express and exercise their traditional religions.

2. The Indian Health Service has continued to recognize the value and efficacy to traditional beliefs, ceremonies, and practices of the healing of body, mind and spirit. Faith is most often an integral part of the healing process and provides support for purposeful living. It is, therefore, the policy of the Indian Health Service to encourage a climate of respect and acceptance in which an individual's private traditional beliefs become a part of the healing and harmonizing force within his/her life.

Procedures:

1. The Indian Health Service Staff has been instructed to inform patients they have the freedom to practice native religion when desired by the individual, member of their family in case of minors, or when the patient's condition is such that he/she can not make the request.

2. When an Indian Health Service patient (guardian-family member) request assistance in obtaining the services of a native practitioner, every effort will be made to comply. Such efforts might include contacting a native practitioner, providing space or privacy within a hospital room for a ceremony, and/or the authorization of contract health care funds to pay for native healer consultation when necessary.

3. Each Area Office of the Indian Health Service has the responsibility to consult with the Native Americans within their respected area as to the desire of each tribe in relation to their religious beliefs concerning Autopsy and
other Postmortem operations, disposition of dead body, disposal of a limb, disposal/burial of fetus, and comply in respect to the belief. Individual consent is required by the Indian Health Service before action on any of the above can be made.

4. Since a person's religious and native beliefs are often very personal, the patient's right to privacy must be respected in these matters. No Indian Health Service employee should be guilty of uninvited probing or interference in a patient's private beliefs. Many Indian patients prefer to say nothing about these native beliefs and practices. This is a right that must be respected.

5. Within this policy, Indian Health Service staff must continue to be aware of, sensitive to, and respectful of traditional beliefs and practices of the Native Americans. Procedures which would tend to interfere with, dilute, or modify these historic beliefs and practices must be avoided. Carefulness must be exercised so that Indian Health Service support, in whatever form it takes, does not become a wedge which creates dependency or wrests control from the chosen and honored native practitioners of ancient and effective healing practices. The goal is that there be respect and complimentary interface between the two systems of medicine and religion. Care must be taken that apparent Indian Health Service and federal beneficence does not become a means of destroying a system of healing which has both a long history and contemporary relevance.

Dr. Emery A. Johnson, M.D.
Assistant Surgeon General
Director, Indian Health Service
Memorandum

To: Assistant Secretary for Indian Affairs

Attention: Susan Harjo, Legislation and Liaison

Through: Assistant Secretary for Fish and Wildlife and Parks

From: Deputy Director, National Park Service

Subject: Consultation with Native American Traditional Religious Leaders (P.L. 95-341).

Attached is an interim report of the National Park Service's consultations to date with Native American traditional religious leaders regarding compliance with P.L. 95-341.

Although this is as much as we are able to furnish at this time, meetings are continuing and we will do a periodic compilation of the data received. This data will become part of the information base utilized in our ongoing planning and management activity. If the Task Force or your office should desire, we will be happy to share information on contacts and other activity as it becomes available.

This document should be considered as a supplement to the "Assessment of Compliance Requirements of P.L. 95-341 for the National Park Service" which we submitted to you on April 2, 1979.

Enclosure
SUPPLEMENT TO

ASSESSMENT OF COMPLIANCE REQUIREMENTS OF

P. L. 95-341

FOR THE NATIONAL PARK SERVICE

July 10, 1979

Office of Management Policy
CONSULTATIONS

The consultation process employed by the National Park Service to identify issues to be addressed in complying with P.L. 95-341, American Indian Religious Freedom Act, drew from involvement with Native Americans that span a number of years and varieties of activities.

In the past, Devils Tower National Monument has been used for special ceremonies by the Sioux and Cheyenne Tribes. Badlands National Park, Mount Rushmore National Monument and Wind Cave National Park have allowed various Native American groups access for considered spiritual needs on several occasions. Aloha Week is held annually at Halemaumau Crater, Hawaii Volcanoes National Park.

Badlands, Theodore Roosevelt and Wind Cave National Parks have supplied buffalo for spiritual needs as a result of road kills, problem animals and surplus stock. (An interesting example is that Wind Cave National Park supplied the tip of a buffalo heart, liver and lungs to a medicine man in Oklahoma).

Many park areas have permitted Native Americans to gather certain plants for ceremonial purposes and have gathered and shipped certain plants to medicine men. Areas that collect fees have and will continue to waive fees for spiritual visits by Native Americans.

Pipestone has been obtained from Pipestone National Monument and given to local religious leaders. The National Park Service works cooperatively with the Navajo Indians in preserving the ruins at Canyon deChelly.

Planning and management activity for National Park Service areas always seeks to involve members of the concerned populace. Planning for Yosemite has involved members of the American Indian Council of Mairiposa County. Planning for Organ Pipe Cactus National Monument has involved members of the Quitabaquito Tribe and Death Valley staff maintain contact with members of the Shoshone and Paiute Tribes.

As part of the consultation process, a key person from each National Park Service Region has been appointed to act as a regional coordinator for facilitation of efforts involving Native Americans. This coordinator will serve as a liaison between local, regional and Washington Office staff within NPS and will assure continuance of the consultation process beyond August, 1979.

NPS consultation efforts to date have also included several contacts with Susan Harjo, Special Assistant to the Assistant Secretary - Bureau of Indian Affairs and members of the Advisory Board of the Native American...

The specific assessment issues as presently set forth have been discussed with representatives from the following groups: Duckwater (Shoshone), Ely (Shoshone), Gashute, Pit River, Atsuwegi, Yavapai-Apache, Papago, Modoc, Piscataway, Upper Skagit, Nez Perce, Lummi, Chiricahua, Havasupai, Hualalapai and Kaibad-Paiute Tribes; Timba-Sha Shoshone Band Tribal Council, Morongo Indian Reservation (Cahuilla and Serrano Tribes), American Indian Council of Mariposa County, Native Hawaiians (3 groups), Native American groups from the Channel Islands (5 meetings).

All groups agree that the major issues have been identified. However, priority differs from tribe to tribe. In many cases, the tribal representatives pointed out that their responses were not necessarily definitive answers as the voice for the tribe as a whole. Several will consider the Assessment more fully, discuss it with their individual tribes and provide NPS with more detailed comment if they deem it necessary.

There was indication that some Native Americans do not wish to reveal sites or plants of religious significance because religious practices are secret and they feel that this is the best protection for the site. They would however, welcome more interaction regarding non-religious matters.

The majority agreed with the credentials of eminence concept, though some felt that there were no people left who would qualify. It was suggested that the terminology could be offensive to some and that it should therefore be amended to read:

"by virtue of their experience and position within a Native American group, are recognized by their people to have authoritative knowledge of their group's cultural values and beliefs."

Consultation split about fifty-fifty regarding archeological research. Those against generally want sites preserved and undisturbed. They also felt that under no circumstances should graves be disturbed.
Those for research would like to have the research done by an anthropologist whom they are familiar with; would want to examine the proposal before it is initiated and have input before final decision regarding project is made. The Native Hawaiians would like to see some type of schooling funded for natives to become archeologist and anthropologists. There is also concern over control and ownership of artifacts.

Some of the participants (Native Hawaiians and Piscataway) indicated desire for preferential treatment in use of areas. They also felt that some sites should be restricted to natives only.

The groups in Hawaii indicated a preference for being referred to as "Native Hawaiian" instead of "Native Polynesian" or "Native American."

This initial effort did not allow a great deal of time for consideration of the issues. We will therefore, make further contact with those who wish to consider the issues more fully. We will also continue our initial and follow-up contacts with Native American traditional religious leaders as an integral part of the NPS planning/management process.