ASSESSMENT OF COMPLIANCE REQUIREMENTS OF
P.L. 95-341
for the
NATIONAL PARK SERVICE

Contents

INTRODUCTION ......................................................... 1
ASSESSMENT TO DATE ................................................. 3
RECOMMENDATIONS:
  Legislation ......................................................... 5
  Policy and Regulations ............................................. 6
  National Park Service Actions ................................. 7

March 23, 1979
DRAFT ASSESSMENT OF COMPLIANCE REQUIREMENTS OF
P.L. 95-341
for the
NATIONAL PARK SERVICE

INTRODUCTION

Public Law 95-341, approved August 11, 1978 states "that henceforth 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 exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." It further directs the President to "...direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation 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 the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action."

The mission of the National Park Service, -- to preserve and provide for the appropriate use of natural and cultural resources of national importance, -- identifies it as an agency with inherent concern for the conservation and interpretation of Native American cultures as well as inherent responsibility to honor commitment to the exercise of religious freedoms by Native Americans. Units of the National Park System encompass historic and archeological parks, monuments, memorial, seashores and recreation areas. Many of these were established to commemorate the cultural heritage of the Native American or historical events associated with that heritage. Sitka National Historical Park in Alaska is the site of the Tlingit Indian resistance of 1804; Casa Grande National Monument in Arizona encompasses ruins of a massive four-story building constructed of high-lime desert soil by Indians who farmed the Gila Valley 600 years ago; Hovenweep National Monument and Mesa Verde National Park in Colorado protect and interpret pre-Columbian cliff dwellings; Ocmulgee National Monument in Georgia and Knife River Indian Villages National Historic Site in North Dakota protect remains of mounds and villages which tell the story of the cultural evolution of the farming Indian village civilizations in the Eastern United States; Natchez Trace Parkway generally follows the old Indian traces, or trail, between Nashville, Tennessee and Natchez, Mississippi. Other parks contain significant archeological sites such as Shiloh National Military
contain significant archeological sites such as Shiloh National Military Park in Tennessee with its village mound complex which was a hub of ceremonial and trading activities for the region. Big Bend National Park, Texas, Glen Canyon National Recreation Area, Utah—Arizona and Canyonlands National Park, Utah contain numerous prehistoric remains of Native Americans. More than 20 National Park areas are located contiguous to Indian reservations.

Recent additions of monuments in Alaska contain archeological resources significant to Aleuts, Eskimos and American Indians.

To assess the requirements of the National Park Service necessary to comply with P.L. 95-341, the following steps are being carried out:

**Item 1.** Review of Servicewide documents for impacts on Native American religious freedoms—Management Policies, Code of Federal Regulations, Directives, Guidelines, Program Objectives, etc.

**Item 2.** Inventory of each park to determine conflicts between park procedures and Native American religious practices.

**Item 3.** Development of recommendations for resolving conflicts in documents or practices.

**Item 4.** Consultation with native traditional religious leaders and Native American organizations.
Regional Offices have conducted a park by park assessment of actions required to comply with P.L. 95-341. The Washington Office Divisions have conducted similar assessments. An initial review of NPS management policies and the Code of Federal Regulations (CFR 36-Parks, Forests and Public Property and CFR 43-Public Lands: Interior) has been done by the Office of Management Policy. This material, along with the NPS Native American Task Force Report of June 30, 1978 is being studied. The following broad needs have been identified:

1. To develop a program to assure consistent Service-wide treatment of Native American Religious Freedom issues and to guide general relationships with Native American groups. This will require a thorough review and revision of relevant NPS Policies, Directives, Guidelines and CFR's.

2. To develop a research program to identify, inventory and evaluate traditional religious uses and practices related to sites or resources on park lands in order to:

   a. provide for physical protection and appropriate [privacy of] use of sites;
   b. allow reasonable and prudent access to sites and provision for the collecting, taking or receiving of natural resources used in the exercise of Native American religious practices;
   c. identify and protect those sites and resources within parks that are associated with Native American cultural and religious heritage;
   d. develop adequate baseline data necessary to formulate general program and management decisions.

In addition, the following issues need explication and resolution to the extent possible:

1. The conflict between the equal protection and the First Amendment rights of other park visitors and the public use mandate of park areas and the desire on the part of Native Americans to be assured of privacy or exclusive use and to enforce standards of decorum against other visitors when the native americans are exercising their religious freedoms.

2. Legislative authority for special physical protection of sites in parks related to Native American Cultural heritage and used for religious/ceremonial purposes is not clearly spelled out.
3. The Freedom of Information Act requires disclosure of sites if they are carried in a Service inventory. Native American groups and the Service may prefer that this inventory be kept confidential.

4. There is conflict between the generally accepted principle of freedom of academic/scientific inquiry and Native American beliefs and attitudes towards anthropological and archeological studies of their culture, past and present. There is not, at this time any consensus among Native Americans concerning the need for and scope of academic research. Many are suspicious of the motivations behind such studies. Most Native American groups have developed fairly successful means of protecting traditional religious beliefs and esoteric ceremonial knowledge. Some Native Americans claim that it violates their religious beliefs to be the subject of study, asserting that it is an exploitive and desecrating activity. Other Native Americans favor anthropological research, but prefer to undertake it themselves and retain control over what is made available to external sources and what is retained as esoteric knowledge. Still others see such research as a necessary means to record and hold on to traditional practices and beliefs that are being lost from their culture. The Service will need to take a policy position on the extent to which anthropological and archeological studies infringe upon Native American religious practices.

5. There is a conflict between contemporary Society's perceived right to knowledge and understanding of current and past lifeways and the right of Native Americans to protect from desecration sacred and esoteric knowledge concerning their religious values and practices. This is related to the broad issue that information acquired in the conduct of Service programs is in the public domain and in conformity with our policy of acquiring and presenting accurate and factual interpretation of history.

6. Concern about potential expansion of use of park lands for traditional religious activities and their potential adverse impacts on park resources or general public use. Accordingly, we shall set limits on use based on adequate research. The underlying purpose of this research should be to enable the Service to balance the relative values, needs and benefits of its programs (i.e., resource preservation, archeological investigation) against the Native Americans interests in the exercise of their religious beliefs, and to formulate alternative strategies to minimize the degree of government impingement thereon. However, in no event should the Service compromise the basic mandates embodied in authorizing legislation.
RECOMMENDATIONS

Legislation

1. Seek legislation to provide a blanket amendment to all National Park System statutes to give the Secretary of the Interior discretionary authority, providing it will not compromise the basic values for which an area was established nor significantly alter established strategies for resource management — to allow, under special circumstances (criteria to be developed by individual bureaus at a later time) the taking of surplus animals and plants except endangered or threatened species. Such taking would be judged on a case-by-case basis and would be, so far as management could determine for bona fide endeavors.

2. Seek legislation or procedures to provide excepted appointments, hiring as consultants or the payment of non-salary expenses to Native Americans who, by virtue of their experience and position within a Native American group, possess "credentials of eminence" certifying them to be knowledgeable in their group's cultural values and beliefs.

3. Seek legislation to exempt the Service from the requirements of the Federal Advisory Committee Act in utilizing Native Americans in an advisory capacity for addressing Native American issues relevant to the use and administration of the National Park System Act.

4. Seek legislation that will clarify the ownership of artifacts and establish a process for addressing, consistent with other legal requirements, public policy and scientific values, requests by Native Americans for the return of sacred objects associated with traditional Native American religious practices or special treatment of such objects.
Policy and Regulations

1. As an interim measure, refine and update Special Directive 78-1 to provide an immediate blanket revision to existing policies and regulations so that within existing authority reasonable accommodation can be made to Native Americans religious practices.

2. Expand the definition of Native Americans in Special Directive 78-1 to include native descendents on Guam, the Northern Mariana Islands and American Samoa.

3. Establish a policy to provide that the results of anthropological research in parks, or supporting park programs, be made available, in an understandable and usable manner to groups affected, especially Native Americans.

4. Establish as part of our program development guideline, a process insuring consultation with Native American groups affected in determining
   - General Management Plans
   - anthropological and archeological research
   - areas of esoteric knowledge or sites of religious value
This consultation will not compromise the scientific validity of the study nor the managerial usefulness of the data.

5. Establish a process by which to resolve use, ownership and possession conflicts as regards religious freedom between NPS and Native Americans. Process will be based on legislation, management policies, available research data and sound management techniques.

6. Establish a policy with regard to excavating burial sites associated with Native Americans as follows:
   - When it is known or expected that burial sites will be disturbed by Service projects, including research, consultation with the appropriate Native American group will be initiated by the Service.

   Burials from the historic period will be reinterred by the Service or the Service will assist the appropriate Native American group in their reinternment, unless specifically requested to dispose of the remains in another manner. The Service reserves the right to archeologically excavate the remains and to undertake on-the-site anthropological measurements of skeletal material on the general principle of advancing scientific knowledge of the human past. This does not apply to any burial that can reasonably be linked to known living descendents. In such an instance, the wishes of the living descendents will be respected. Descendents will be defined by the relevant Native American group and NPS staff.
Burials from the prehistoric period will not be reinterred nor turned over to Native American groups for reinterment. They will be made available for scientific study on the principle of advancing scientific knowledge of the human past. (Exceptions may be made for prehistoric sites where the connection to contemporary Native Americans is known or the possibility is strong.) Notwithstanding, consultation with appropriate Native American groups concerning such burials will occur prior to their removal. The purpose of such consultation will be to determine their views and to accommodate their reasonable and feasible requests for special treatment of such remains provided it will not compromise the scientific values of the research.

7. Amend NPS policy on "Acquisition and Care of Historic Objects" (p. V-II) to state that "no such materials will be acquired where there is reasonable doubt that those from whom they are received have the right to dispose of them".

8. Issue regulations governing appropriate decorum, and use and protection of park resources associated with Native American traditional religious practices.

In addition to the legislation, policy and regulations detailed above, NPS will undertake the following actions:

1. Where subsistence hunting, collecting, foraging, fishing and other traditional cultural activities or uses are authorized by law, conduct research to establish baseline data to determine the impacts of these activities on the conservation and public use of park resources.

2. Develop a comprehensive inventory by park unit as to the current and anticipated impacts of P.L. 95-341.

3. Establish research program to acquire baseline data necessary to support policy analysis, program evaluation, and managerial decisions related to Native American use of and impacts on park resources and visitor activities.

4. Establish Regional and park programs for consulting with Native American leaders.
5. Continue to provide to Native American Groups technical assistance in museum matters and assistance in developing programs to record and interpret their cultural history.

6. Continue full implementation of Title IV of P.L. 95-390 (FPM letter 550-70), which provides for compensatory time off for employees whose religious beliefs require that they abstain from work during certain periods of the work-day/week.

7. Initiate revision of relevant codes, management policies, directives, guidelines.
April 12, 1979

The Honorable Forrest J. Gerard  
Assistant Secretary of Indian Affairs  
U.S. Department of the Interior  
Washington, DC  20240

Dear Mr. Gerard:

In response to Secretary Andrus's memorandum of January 26, 1979, enclosed is the "Initial Report Concerning the Tennessee Valley Authority's Implementation of the Indian Religious Freedom Act of 1978."

If you have any questions concerning the report, please feel free to contact me.

Sincerely,

Thomas H. Ripley, Manager  
Office of Natural Resources

Enclosure
The following is an initial report concerning the Tennessee Valley Authority's (TVA) implementation of the Indian Religious Freedom Act of 1978. During evaluation of its policies and procedures as required by the Act, TVA has thus far concentrated on two general areas of concern: (1) protection of and access to sacred sites, and (2) protection of and access to sacred objects.

Protection of and Access to Sacred Sites

The Agency has general policies and procedures governing access to and protection of TVA property, including land which contains Indian sites. A copy of the TVA Code on these policies has previously been forwarded to the Department of the Interior for the information of the task force on Indian religious freedom. To summarize, most TVA properties are open to the public. However, access may be restricted in areas in which there is danger of injury to persons or property.

Due to incidents of vandalism and collection of artifacts by unauthorized persons, sensitive archaeological sites are considered restricted areas and may be fenced, posted, and patrolled for their protection. Also, sites are sometimes fenced to identify and protect them from Agency authorized construction or mining activities.

However, procedures exist by which persons may be permitted to enter a restricted area when there is a legitimate reason for their presence. These procedures have proven to be efficient in the past, and they appear to be flexible enough to accommodate
requests for access to sacred sites by practitioners of native traditional religions.

A problem concerning access and protection of sacred sites can occur when a proposed activity of the Agency may alter or permanently restrict access to a sacred site. In the event that such a situation exists, it is TVA's intent to seek a solution which will satisfy both the needs and goals of the Agency and the rights of Native Americans to meaningfully express their religious beliefs.

TVA is considering as a possible approach the use of the established environmental review process to identify any potential infringements on the free exercise of religion which might occur as a result of a proposed Agency activity. During the review process, TVA would investigate the project area to determine whether it is currently considered a sacred site or is related to religious activities of any native traditional religion.

If the site is found to be a subject of current religious practices, the Agency would consult with native traditional religious leaders to determine whether the proposed activity would infringe on the free exercise of native traditional religion. If it is found that the proposed activity would infringe on the free exercise of native traditional religion, then the Agency would prepare and examine alternate plans in consultation with native traditional religious leaders.

If the alternatives are not feasible and the proposed action is deemed necessary to carry out the Agency's programs or obligations, the justification for proceeding with the action
would be reviewed by an appropriate staff within TVA which is responsible for coordinating compliance with historic and cultural preservation requirements. The review's findings and justification for proceeding with the action would be included as part of the environmental documentation which is prepared and transmitted to the Board of Directors for its review along with the staff recommendation with respect to the project. A summary of the review's findings and justification for proceeding with the action would be communicated to native traditional religious leaders and other interested parties, along with notice of the final decision by the Board of Directors.

Protection of and Access to Sacred Objects

A second potential problem area which TVA has identified concerns access to sacred objects which are recovered on Federal property during construction, authorized excavation of archaeological sites, or other activities. As a general matter property recovered from lands there belongs to the United States. Artifacts may be lent for temporary periods to museums which meet standards established by the American Association of Museums, but the artifacts must eventually be returned to the designated Federal repository.

A problem can arise when permanent possession of publicly owned artifacts, including sacred objects, is sought by any other group or individual. A number of issues are involved in such situations, including right of ownership, availability of archaeological materials for scholarly research, and when sacred objects are involved, the free exercise of religion. This is a situation which may be faced not only by Federal agencies with land management
responsibilities, but also by other organizations and institutions. The caretaking of artifacts is an area in which the task force may be helpful in finding an appropriate and satisfactory resolution of the complex issues involved.

The protection of sacred objects is related to the protection of archaeological sites. The Agency is responsible for the protection of significant archaeological resources on TVA property. TVA actively seeks to avoid impacting significant archaeological resources by its activities. However, when it is found that an approved activity must impact an archaeological site, TVA contracts with qualified professionals to conduct appropriate data recovery.

A large number of archaeological sites on TVA property are not impacted by Agency activities, but need protection from vandalism and other disturbances. Due to the remoteness of many sites and the dispersed nature and size of the land areas which must be patrolled, the Agency has sometimes found it difficult to provide adequate protection for sensitive sites. In order to provide better protection for sites and the objects contained within them, TVA is in the process of increasing its budget for the execution of this responsibility.

TVA recognizes a need for more adequate protection for archaeological resources. Under present law, it is extremely difficult to prosecute persons accused of unauthorized collection of artifacts. Legislation to strengthen the ability of agencies to protect archaeological resources on Federally owned public lands is needed. The task force should analyze and consider supporting legislation which would appropriately increase the protection of archaeological resources, including sacred sites and sacred objects.
April 9, 1979

Honorable Forrest Gerard
Assistant Secretary for Indian Affairs
U. S. Department of the Interior
Washington, D. C. 20240

Dear Mr. Gerard:

This is a follow-up to the American Indian Religious Freedom Act of 1978 Task Force meeting of April 2. At this meeting the members of the Task Force were requested to have a report in by April 9 identifying any issues, status and problems of issues and any recommendations.

As I stated in my letter of March 29, the only operating unit of the Department of Commerce that may have policies and procedures which may affect this act is the National Marine Fisheries Service (NMFS) which is part of the National Oceanic and Atmospheric Administration (NOAA).

This unit (NMFS) has identified the Alaskan bowhead whale hunt and the activity in the salmon fisheries of the Pacific Northwest as the two primary current situations which involve potential impacts on Native American religious beliefs and practices.

As the harvesting of the whales are being regulated internationally by the International Whaling Convention and nationally by the U. S. Whaling Convention Act, it is recommended that a meeting be held with representatives of NMFS and the Task Force working staff.

Also, at the same time the salmon issue of the Pacific Northwest which comes under President Carter's Federal Task Force on Washington Fisheries can be discussed.

The National Marine Fisheries Service has been working very closely with the Alaskan Eskimos and the American Indians on both of these issues. It would be most advantageous if an immediate meeting can be held to discuss the problems and issues of both these matters.
After the meeting of April 2, I discussed several matters with Sam DeLoria regarding the Economic Development Administration (EDA). He stated that EDA may want to review how the funding of projects on Indian reservations may have problems with the protection of Indian historical, religious and cultural sites.

We have reviewed this issue and wish to report that all applications to EDA on construction type projects must be formally assessed with respect to compliance with the "Procedures for the Protection of Historic and Cultural Properties," which is published by the Advisory Council on Historic Preservation (Chapter VIII, Part 900, 36 CFR). In the case of Indian reservation projects, all applications are viewed by the State Historic Preservation Officer (SHPO).

The assessment must summarize the results of consultations with the SHPO and, based upon the review process and the views of the SHPO, must state whether or not a covered property will be affected by the construction project. If there is affect, all of the steps and protective measures taken to complete the "procedures" must be detailed, and the affected property and the nature of the affect must be described. The assessment must also include the results of the coordination process between EDA and the Advisory Council on Historic Preservation.

Prior to project approval, the agency must make a formal finding that such a project will not significantly affect the quality of the human environment.

Following project approval, every construction contract is reviewed to assure that the contract terms and conditions reflect any special requirements placed upon the project as a result of the SHPO review and determinations of EDA.

Additionally, all contractors must agree to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction, to consult with the State Historic Preservation Officer for disposition of the items. (Reference - National Historic and Preservation Act of 1966 - 80 Stat. 915, 16 USC 470 - and Executive Order No. 11593 of May 31, 1971.)
After you and your Task Force staff have had the opportunity to review this letter and have questions or desire additional information, please do not hesitate to call.

Sincerely,

RAY E. TANNER
Task Force Member Representative
U.S. Department of Commerce
March 29, 1979

Honorable Forrest Gerard
Assistant Secretary for Indian Affairs
U. S. Department of the Interior
Washington, D. C. 20242

Dear Forrest:

This is a status report on the activities to date regarding the internal reviews and evaluations of all the operating units of the U. S. Department of Commerce as they may affect the religious rights and cultural integrity of Native Americans.

Enclosed is a listing of the Commerce operating units that we have determined have no affect on the American Indian Religious Freedom Act of 1978. There may be some concerns by the Indian religious leaders pertaining to one or more of these operating units that can be addressed when questions arise.

There is one operating unit of Commerce, the National Oceanic and Atmospheric Administration, that may have policies and procedures that may have to be evaluated to more fully determine how they affect the Indian religious and cultural rights. It is my understanding that a member of your staff, Ms. Sue Hvalsoe spent some time with NOAA to determine what are the Indian religious and cultural rights. Due to the uncertainty of what all these rights may be, representatives of NOAA will be in attendance at the April 2 meeting to obtain additional information so that recommendations in their act, if necessary, can be taken care of.

I look forward to seeing you at the April 2 meeting of the Task Force and to receive a briefing on how input from the tribal religious leaders will be obtained to assist us in providing the information required.

Sincerely,

RAY E. TANNER
Special Assistant
for Indian Affairs

Enclosure
COMMERCE DEPARTMENT'S OPERATING UNITS CONTACTS FOR THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

Bureau of the Census
Bureau of Economic Analysis
Economic Development Administration
International Trade Administration
Maritime Administration
National Bureau of Standards
National Fire Protection and Control Administration
National Technical Information Service
Office of Product Standards
Office of Telecommunications
Office of Minority Business Enterprise
Patent & Trademark Office
U. S. Travel Service
General Counsel
TO:       Raymond E. Tanner
Special Assistant for Indian Affairs
Economic Development Administration, DoC

FROM:    Terry L. Leitzell
Assistant Administrator for Fisheries

SUBJECT:    American Indian Religious Freedom Act

This is a supplement to our memorandum of March 21, 1979, concerning laws and policies that the National Marine Fisheries Service (NMFS) administers which may affect American Indian religious rights and practices.

In that memorandum, we described in general terms the nature of the provisions of laws under our responsibility which might affect American Indians, Eskimos, Aleuts, and Native Hawaiians. We have since sent a package of materials concerning the American Indian Religious Freedom Act to our regional offices and research centers and have requested from them information regarding their activities in these areas. A copy of the package is attached.

In addition, after surveying National Marine Fisheries Service activity from our perspective here in Washington we have identified the Alaskan bowhead whale hunt and the activity in the salmon fisheries of the Pacific Northwest as the two primary current situations under our purview which involve potential impacts on Native American religious beliefs and practices. In this memorandum, we would like to describe briefly these situations and the NMFS role in them.

The subsistence harvest of bowhead whales by Alaskan Eskimos is a traditional activity with complex, persuasive connections to the Eskimo religion and social and political structure. Harvest of whales is regulated internationally by the International Whaling Convention and nationally by the U.S. Whaling Convention Act. In addition, the bowhead whale is listed as "endangered" under the Endangered Species Act of 1973. Under this Act and the Marine Mammal Protection Act of 1972, exceptions have been made for subsistence whaling by indigenous peoples. The issue is one of trade-offs—harvesting whales from this population constitutes some danger to the whale population, but not allowing a harvest constitutes a danger to the health and well-being of the Eskimos who participate in the hunt. National Marine Fisheries Service personnel have participated significantly in assessment and consideration of the religious, social, and cultural implications of various harvest
levels and management regimes. The most recent of these activities was NMFS participation in organizing international panels of experts in cultural anthropology, nutrition, and wildlife science convened in Seattle in February 1979 under the auspices of the International Whaling Commission to assess and document the place of the bowhead whale hunt in the social and cultural structures of the North Alaskan Eskimo. Reports from these meetings are available and will form part of the basis upon which a working group of the International Whaling Commission will base consideration of that group's future actions. One of the major findings of the reports from these panels was that the Eskimos, themselves, must be integrally involved in the development of a management regime and in the assessment of the current religious and cultural context within which whaling occurs. We have followed, and will continue to follow, these recommendations through the use of public hearings, seeking the active participation of groups such as the Alaska Eskimo Whaling Commission in the development of management alternatives, and by other means. Unfortunately, some of the issues in the bowhead whale fishery are currently under litigation. For that reason, we recommend that, aside from ongoing U.S. involvement with the International Whaling Commission and the current NMFS research and monitoring programs, no further specific action be taken in this case with respect to the American Indian Religious Freedom Act until the legal issues have been resolved.

In the Pacific Northwest, the salmon and certain other fishery resources form an integral part of the complex of religious and cultural activities of the American Indian tribes in the region. Using salmon as a specific example, although most of the salmon management is under the jurisdiction of the states, NMFS has played a role in bringing the Indian and other interests together in two ways. First, the Pacific Fishery Management Council, with whom NMFS works closely in developing and implementing management plans for the salmon resources under the Council's jurisdiction, has Indian representation on many of the Council's advisory boards and panels. Second, and more general, NMFS representatives have been prominent on the regional teams of President Carter's Federal Task Force on Washington Fisheries. This task force has broad responsibilities in the investigation of the many problems which exist in the region's fisheries, including those involving Indian peoples. At every step in the task force and regional team activities, consultations were made between task force or team personnel and the Columbia River Inter-Tribal Fish Commission (Portland, Oregon), the Northwest Inter-Tribal Fish Commission (Olympia, Washington), and many local tribes and groups. It
has been NMFS general policy to make allocations for subsistence and ceremonial uses where these needs or uses can be demonstrated. Along with other activities centered in our regional office in Seattle, the activities cited above constitute NMFS ongoing attempts to deal on an informed basis with these issues.

Similar to the case of the bowhead whale issues, in light of NMFS ongoing activity in this area, we recommend that no further specific action be taken in the Northwest salmon case until the President's task force has had an opportunity to present their recommendations in full and all concerned parties have had an opportunity to review and respond to their findings.

These are the two major current situations within NMFS purview which bear directly on matters set out in the American Indian Religious Freedom Act. There are, of course, other situations which will arise and demand our attention. As we pointed out in our memorandum of March 21, we would welcome any information resulting from your task force activities which would help us to identify American Indian religious and cultural activities of which we may not be aware and upon which our actions may have an impact, or which would in any other way aid us in complying with the intent of this Act.

Attachments

cc: Arva Jackson
    Director, Office of Civil Rights, NOAA

I concur

Eldon V. C. Greenberg
General Counsel, NOAA

CLEARANCES: __________________________ _________
F3: MKO orbach __________________________
GCF: REGutting __________________________

Date
In reply refer to: FNW32/E-COR

Date: MAY 4 1979

To: Winfred H. Meiboom, Executive Director, FNW

From: Regional Director, FNW

Subj: American Indian Religious Freedom Act

This is in response to your memorandum F3/MKO dated April 6, 1979, concerning the "American Indian Religious Freedom Act". In that memorandum you requested by May 10 our comments relative to activities within the Northwest Region which may fall under the purview of the Act.

To date we have had only one incident (case report attached) in which American Indians raised the issue of religion while taking seals protected by the Marine Mammal Protection Act of 1972. Subsequent contact with the tribal religious leader developed information that marine mammals have been taken historically to manufacture articles of native handicraft, but that no religious significance, historical or otherwise, was attached to the taking.

Discussions with GCCW indicate present regulations concerning taking of marine mammals by natives (native exception) under the Marine Mammal Protection Act appear broad enough to permit modification to allow taking for religious purposes, if it becomes necessary. The present regional interpretation of the Marine Mammal Protection Act extends the native exception to natives residing in the lower 48 on the coast of the North Pacific Ocean, but only for the purposes of creating and selling authentic native articles of handicraft and clothing. This interpretation appears in conflict with one contained in a memorandum from Terry L. Leitzell to Arva Jackson dated March 21, 1979 (page 2, paragraph 5). If in fact the Marine Mammal Protection Act native exception is held applicable only to Alaskan natives, as is the Endangered Species Act, then amendments to both acts will be necessary to permit American Indian religious and cultural practices, if any, in the lower 48.

Recent Federal Court decisions have recognized that certain treaty Indians have salmon fishing rights not extended to non-treaty fishermen. In U.S. vs Washington the court recognized the Indians right to have the...
opportunity to harvest up to 50% of the returning salmon, and also the right to harvest salmon for ceremonial purposes. The court concluded that the salmon caught for Indian ceremonial purposes were not to be included in the computation for division of catch. This case and others have had a direct effect on salmon management and enforcement carried out under the Sockeye or Pink Salmon Fishing Act of 1947 and the Fishery Conservation and Management Act of 1976. In fact, today four Columbia River tribes petitioned the Federal Court to close the offshore troll season set under the authority of the Fishery Conservation and Management Act of 1976. This request was based on the argument that not enough salmon arrived at the Indians usual and accustomed fishing grounds to allow the opportunity to harvest 50% and to exercise their ceremonial fishing rights.

We have been aware for some time that Indians have rights which exceed those of other United States citizens and have been in contact with various tribes and Indian organizations attempting to make our programs responsive to Indian peoples needs wherever possible. We are planning a series of meetings in the near future with the various northwest Indian tribes to discuss what, if any, religious significances are attached to the taking, importing, or possessing of marine mammals. At the same time we will discuss certificates of inclusion issued under the Marine Mammal Protection Act and religious and cultural practices, if any, associated with the act of fishing. We will advise you as soon as these meetings have been concluded.

Donald R. Johnson
Attachment
Date: April 19, 1979

To: Fx3 - Winfred H. Meibohm

From: FAK - Harry L. Rietze

Subject: American Indian Religious Freedom Act
(Reference Mr. Meibohm's memo dated April 6, 1979)

We have reviewed the provisions of the subject Act and agree with the statement in your above referenced memo that NMFS has dealt in a reasonable and effective manner with these matters in those cases in which they have arisen and that we will continue to do so in the future. Members of your immediate staff are familiar with our programs in Alaska and we assume they will furnish any information the task force might require. Regional personnel are available to provide specific information to the Central Office staff.
TO: Winfred H. Meibohm  
Executive Director, NMFS,  
Washington, D.C., Fx3

FROM: William H. Stevenson  
Regional Director, FSE

SUBJECT: American Indian Religious Freedom Act

April 17, 1979

This is in response to your memo of April 6, 1979 requesting our comments on the potential or actual impact of subject Act on activities in this region. We foresee little or no impact on Indian religious freedom resulting from the laws administered and enforced by the Southeast Region. To the best of our knowledge only one American Indian has been involved in any of our enforcement cases (an import seizure) which was not related to religious articles or activities. Habitat protection programs have not affected any Indian Reservations to date but we will be alert to any Indian religious considerations in the future.
The Honorable
Forrest J. Gerard
Assistant Secretary of Interior
Washington, D. C. 20240

Dear Mr. Gerard:

This is in response to the task force meeting of April 2, 1979 relating to the American Indian Religious Freedom Act of 1978 (PL 95-341). At this meeting, as you will recall, it was requested that Federal agencies which may be impacting Native American religious freedom submit a report on the policies which they feel impact these freedoms.

As designated representative of Interagency Archeological Services, I am reporting the steps which this agency has undertaken to implement this Act.

The policy of Interagency Archeological Services has always been to protect any archeological resource threatened by construction activity. Although it is our desire to leave these resources in the ground undisturbed, it is often necessary to excavate them when there is no other method available to prevent their loss.

It is through these excavations that Interagency Archeological Services may be impacting the religious freedoms of the Native Americans of the United States, primarily through the disturbance of aboriginal burials and their associated grave offerings.

In order to provide a measure of consistency in the treatment of human remains, the Heritage Conservation and Recreation Service--of which Interagency Archeological Services is a branch--has developed a policy delimiting guidelines on the disposition of human remains. This policy states:

Where archeological investigations conducted by HCRS as an authorized Federal Undertaking disturbs marked or identified deliberate interments of human remains, all prudent and feasible efforts will be made to identify and locate those who can demonstrate direct kinship with or descent from those interred individuals. The Departmental Consulting Archeologist, in consultation with those most closely related members, will determine within 45 days the proper disposition of those remains. No remains will be reinterred until after appropriate documentation and study are completed.
This section of the policy addresses itself to those tribes of which there is an historical record, or where there is a knowledge of individuals in the area about the grave(s) discovered. In this way, the bones of relatives of living people will not be stored in a museum or educational institution.

If there are no individuals who can demonstrate direct kinship for a burial or group of burials, yet there is demonstrable ethnic affinity to specific living groups of Native Americans, "...all prudent and feasible efforts will be made to seek out traditional spiritual leaders, elders or spokesmen for these groups. The Departmental Consulting Archeologist, in consultation with these leaders, will make a decision within 45 days concerning the proper disposition of the remains."

Again, no remains will be reinterred until after appropriate documentation and study are completed.

In the event that the osteological remains "cannot be identified with a specific contemporary ethnic or Native American group, the interests of a particular group are not applicable, but the agency or institution charged with the care or custody of the collection shall continue to maintain the collection with responsible and sensitive attitudes in keeping with the dignity and respect to be accorded to all exhumed human skeletal remains."

The policy further states that the Federal agency responsible for funding the archeological data recovery programs which recover the interred human remains will bear the necessary expenses for proper disposition of these remains.

The concern for the religious practices of Native Americans and other ethnic groups is demonstrated through the implementation of this policy, as it shows a concern for those individuals who are descendants of the interred individuals. A conscious effort is being required to contact all those whose religious practices are involved, instead of allowing the excavation and storage of individuals who may be related to living ethnic groups. The burial policy is truly nondiscriminating toward any ethnic group. No differentiation is made between Native Americans, Afro-Americans, or Anglo-Saxons ("whites"). If the human remains can be identified to any specific ethnic group, they will be reinterred after the skeletal material are studied.

It is the disturbance of these interments, however, which is the major concern of many Native American groups throughout the United States. Many times these burials are discovered through construction activities (by being unearthed with power machinery). Other times they may appear as darker areas in the ground which turn out to be burial pits instead of the storage pits or trash pits they were originally thought to be. And in other instances, the burial pit may be recognized from the beginning.
The excavation of these burials provides information about the religious practices, dietary practices, and physical structure of the human groups of the past, as well as other information. The groups who are still present can benefit from the scientific study of the burials through an increased awareness of their history and social customs. This information is lost when a burial is encountered by a "pothunter" (a person who digs archeological sites for the artifacts found in them).

For comparison purposes, the scientific methods employed by the professional archeologist in the excavation of a burial (dental picks, brushes and other small tools) insures that nearly every bit of information that is present is recovered. A pothunter, in his quest for the burial goods which are often found with an interment, rarely cares about the bones of the burial, and even more rarely about the historical, societal, or cultural information present. Usually any bones encountered are left in the pile of dirt dug out of the grave—any reburials are either accidental or an attempt to prevent the discovery of the site by other pothunters or by a qualified archeologist.

As shown above, the excavation of aboriginal burials is important in providing various classes of information to the general and scientific communities. And, as an attempt to gain an understanding of Native American concerns about this issue, the Interagency Archeological Services office in Atlanta, Georgia, has sent copies of this policy to Native Americans asking for responses, comments, and questions about the policy. Feedback has been negligible at this point, although it is hoped that concerns will be made known through time.

In summary, then, it may be stated that IAS is attempting to change the policy of total curation of any human remains that may be recovered through archeological investigations to a policy where there is concern for the Native people of the United States, regardless of their origin.
Opening Remarks - Assistant Secretary - Indian Affairs
Forrest J. Gerard

Overview - Status Report - Special Assistant to the
Assistant Secretary - Indian Affairs
Suzan Shown Harjo

Introduction - Task Force Members and Project Representatives

Status Report from Task Force Members

Status Report from Project Representatives

Discussion - Report Preparation

1. Consultation
2. Public participation
3. Task Groups
4. Field Meetings
5. Schedule
6. Deadlines for Draft Report
March 30

Honorable Forrest J. Gerard
Assistant Secretary for Indian Affairs
Department of the Interior
Washington, D.C. 20240

Dear Mr. Gerard:

Thank you for your letter of March 5, 1979, concerning the American Indian Religious Freedom Act of 1978. I am pleased to serve as the U.S. Commission on Civil Rights representative to the Task Force preparing the report to be submitted to the Congress under P.L. 95-341.

Although the Commission is probably not an agency which administers or enforces federal laws, regulations or policies, it is an agency with authority to study issues of religious discrimination, and to make recommendations concerning such issues to the President and Congress.

In order to comply with the spirit of the work of the Task Force I have enclosed a brief outline of the functions of this agency which have an impact on American Indian Religious Freedom issues.

Sincerely,

[Signature]
Paul Alexander
Assistant General Counsel

Enclosure
A Functional Description of the
U.S. Commission on Civil Rights
For the Task Force on American Indian Religious Freedom

The U.S. Commission on Civil Rights is established as a factfinding agency within the Executive Branch. It is authorized by the Civil Rights Act of 1957, as amended, to study and collect information concerning legal developments constituting discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national origin, or in the administration of justice.

The Commission also has authority to appraise the laws and policies of the Federal Government, and to serve as a national clearinghouse for information with respect to these denials of equal protection of the law or discrimination. In addition, the Commission has jurisdiction to investigate allegations of voting rights deprivations based on these grounds.

Agency Functions

Employment

The Federal Employees Flexible and Compressed Work Schedules Act of 1978 requires agencies to make reasonable accommodations to the religious needs of its employees. The Commission has recently amended its attendance regulations to allow employees to observe religious obligations during the normal work day and to make up the time outside the normal work schedule. This provision does not pertain to any particular denomination, and would apply to American Indian religious observances as well as to others.
Complaints

The Agency has a Complaints Office for the purpose of referring civil rights complaints to agencies which have authority to take appropriate actions. There is a separate file for records of religious discrimination complaints, but these have not been categorized by denomination. In the future, the religion involved in the complaint will be noted, and will be traceable should the need arise.

Complaints lodged with regional office staff are routinely forwarded to the Washington, D.C. Office. On occasion, staff will be in a position to provide more immediate assistance, and will do so on an informal basis. For example, some regional office staff have assisted with complaints involving interference with Indian religious observances in prisons.

Projects

Based on our review of past projects, and current planning process there have been no projects nor are any currently contemplated designed to specifically address religious discrimination against American Indians. There will, however, be a consultation sponsored by the Commission in April 1979 to learn more about the nature and extent of religious discrimination. A consultation is a tool used by the Commission to assemble persons knowledgeable in a specific civil rights area and to hear their views and suggestions. It is expected that the consultation will provide a basis for future Commission studies or perhaps hearings on the subject of religious discrimination. There will be two presentations at the consultation on the issue of religious discrimination against American Indians.
Clearinghouse Functions

The Commission's statute authorizes the agency to act as a clearinghouse for civil rights information. Among the vehicles currently used to perform this function are the Civil Rights Clearinghouse Library located at the Commission's headquarters, the Civil Rights Digest (a quarterly magazine) and Clearinghouse reports issued by the Agency on various civil rights issues. The Commission clearly has the statutory authority to use all of these means to communicate to the public facts and issues involving religious discrimination against American Indians. To date, the only clearinghouse publication which has dealt with American Indian religious freedom is the American Indian Civil Rights Handbook. This publication, which is now being updated, is intended as a general guide to Federal civil rights laws and their applicability to Indian people living on and off reservations.

Publication of articles or documents specifically dealing with the issue of religious discrimination against Indians could be a useful contribution of this Commission. Suggestions by the Task Force involving Indian religious issues would be considered by this agency for publication as appropriate.
REPLY TO
Kathryn Harris Tijerina
Specialist for Indian Affairs/IR

SUBJECT
Religious Freedom for American Indians

TO
Susan Harjo
Special Assistant to the Assistant Secretary
Bureau of Indian Affairs/DOI

The attached is our initial effort for review and submission to the Inter-agency Task Force on Indian Religious Freedom.

Attachment
RELIGIOUS FREEDOM FOR AMERICAN INDIANS

For purposes of the Inter-agency Task Force on Indian Religious Freedom, the Department of Energy has identified the protection of sacred sites as a potential problem area during the evaluation of procedures required in the American Indian Religious Freedom Act, Public Law 95-341, 42 U.S.C. §1996. To avoid in a systematic manner future religious infringements, the Department is considering as a possible approach the following process, either as a regulation or as an internal issuance.

The Department of Energy is interested in seeing that the free exercise of religion is protected efficiently without setting up an unnecessarily cumbersome mechanism. Therefore, it seems likely that the process will be integrated into the environmental review process which is already established, perhaps as part of the Environmental Impact Statement. The process would likely apply to both substantial involvement by DOE or direct authority for DOE's proposed activity which affects any specific site for which an environmental review is required.

Before the Department of Energy would proceed with its proposed activity an investigation would be made to ascertain if the site at issue is related to the religious rites or ceremonies or is a sacred site of any traditional religion which is currently being sincerely practiced by any American Indian, Eskimo, Aleut and Native Hawaiian.
If the investigation finds indications that the site is currently a subject of religious practices, then the native traditional religious leaders shall be consulted in order to determine whether the Department's proposed action would infringe on the free exercise of religion in any way and to gain an understanding of any impact on the Native American traditional religions. We foresee that the most difficult issue for the Department will be whether its proposed alteration of a site would deny access to a sacred site or otherwise infringe on the free exercise of religion.

If consultation indicates that the proposed Department action may infringe on the free exercise of religion, then alternate plans will be prepared with additional consultation with the native traditional religious leaders. Alternate plans which do not infringe on the free exercise of religion will be examined to determine whether they adequately meet the goals of the Department of Energy for the site.

The DOE will make all deliberate effort to adopt a course of action consistent with the policy enunciated in P.L. 95-341. We are very aware of the rulings of the United States Supreme Court that the Federal government may not abridge the free exercise of religion unless there is a compelling governmental interest at stake.
If no alternative is feasible and DOE finds upon consultation that its proposed action would deny the free exercise of religion, then the difficult question must be asked, how crucial is the project. To safeguard against the answer being made by the program people most intimately involved in the project, the finding will be made within the environmental review, as previously noted. Within the DOE the Assistant Secretary for Environment is structurally separate from the major program offices.

If the DOE's proposed action is deemed to be compelling and must proceed, then the findings and justification would be reviewed by the IR Secretariat which includes the Indian Affairs Office. Then the findings and justifications, accompanied by the Intergovernmental and Institutional Relations report, will be forwarded to the Secretary for his written approval before a final action is taken.

Upon the Secretary's final approval notice will be given. The findings and justification will be published and communicated to the native traditional religious leaders or other concerned parties.
The Honorable Cecil B. Andrus  
Secretary of the Interior  
U.S. Department of the Interior  
Office of the Secretary  
Washington, D.C. 20240

Dear Secretary Andrus:

This responds to your memorandum of January 26, 1979, concerning implementation of the American Indian Religious Freedom Act of 1978 (P.L. 95-341).

The Department of Defense has completed a department-wide survey of all programs, policies, regulations, etc., in an effort to determine which, if any, adversely affect the ability of Native Americans to exercise their religious cultural rights and practices. We have identified only two items which affect, or which may affect, the ability of Native Americans to exercise their religious rights:

(a) The Department of the Navy currently restricts access to two military installations (China Lake, California and a small island 25 miles off the coast of Maui, Hawaii) which are claimed to be religious sites by American Indians and Native Hawaiians, respectively. In both instances, the Department of the Navy has been working aggressively with representatives from each group to reach a solution. The Navy uses these designated areas for missile and bomb impact areas.

(b) The Department of the Army Pamphlet No. 165-13, "Religious Requirements and Practices," identifies the use of peyote by the Native American Church in their religious practices. The use of peyote, a consciousness altering substance, is contrary to Armed Forces regulations relating to drugs and alcohol.

Mr. Manuel Oliverez of this office will represent the Department of Defense on the Interagency Task Force to Prepare the Report to the Congress on Implementation of the American Religious Freedom Act of 1978 (P.L. 95-341).
We will continue to review and monitor future regulations, etc., of this department to insure compliance with P.L. 95-341.

Sincerely,

M. Kathleen Carpenter
Deputy Assistant Secretary
To: Secretary of the Interior  
From: Alan Jabbour  
Date: March 16, 1979  

The American Indian Religious Freedom Act of 1978 is very much in accord with the stated purposes of the American Folklife Preservation Act of 1976 (P.L. 94-201) to "preserve and present American folklife." Native Americans are a very important element in American folklife, and they have contributed greatly to the cultural richness of the Nation.

The American Folklife Center firmly believes that the religious rights and cultural integrity of Native Americans are in need of preservation. None of the provisions of the Center's enabling legislation interferes with the intended purpose of the American Indian Religious Freedom Act. In fact, our authority directs us to assist in the accomplishment of the purposes of this declaration, within existing personnel and financial resources of the Center at the Library of Congress.

It is our view and that of the folklife community that Native Americans be encouraged and assisted in preserving their religious and tribal beliefs and customs for present and future generations. One useful approach is through orderly and thorough documentation of these traditions.

The Center is anxious to encourage the preservation of these traditions primarily at the local level and in regional or national archives when consistent with the policies of tribal leaders. The Library of Congress with the financial assistance of the Bureau of Indian Affairs is undertaking a major project to transfer approximately 3,000 wax cylinder recordings to magnetic tape as part of an effort to preserve these recordings which contain in large part materials concerning Native American traditions. The cylinders are the property of the Library, the Smithsonian, and the National Archives. When the duplication is completed, the collection will be maintained by the Library and, in addition, copies will be made available to appropriate tribal institutions.
The Honorable
Forrest J. Gerard
Assistant Secretary of Interior
Washington, D. C. 20240

Dear Mr. Gerard:

This is in response to Secretary Andrus' memorandum of January 26, 1979, regarding implementation of the American Indian Religious Freedom Act of 1978 and your letter of March 5, 1979, on the same subject.

As the designated representative to the Interagency Task Force from the Treasury Department, United States Customs Service, I am reporting the steps which the Customs Service has undertaken to implement the Act since it was signed into law by President Carter on August 11, 1978.

On September 15, 1978, the Commissioner of Customs, Robert E. Chasen, issued a policy statement entitled "Policy to Protect and Preserve American Indian Religious Freedom." The policy statement also transmitted a copy of the Joint Resolution signed by the President together with the press release of the White House on the subject. A copy of that policy statement is enclosed for your information and ready reference.

In that policy statement, the Commissioner directed all Port Directors, District Directors and Supervisory Customs Inspectors, who have Customs officers working under their supervision who are responsible for examining and clearing articles accompanying American Indians crossing our land borders, to make certain that Customs officers working under their supervision are fully aware of this Federal policy of protecting and preserving for American Indians their inherent right to believe and practice their traditional religion. They are instructed to 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 examination for Customs purposes, they treat more sensitively the various articles that are used by American Indians in the exercise of their religious and cultural beliefs.
To the extent that the insensitivity which has sometimes led to embarrassment and frustration on the part of American Indians is traceable to a lack of understanding or knowledge of these matters on the part of some of our Customs officers, I believe that this directive of the Commissioner of Customs will go a long way toward resolving that problem for the future.

The policy statement also brings to the attention of Customs officers that there has been established not only a Customs Indian Affairs Committee but also an Interagency Task Force which will attempt to identify and define problem areas more precisely, to identify and perhaps catalogue the various articles and objects which have religious significance to the respective Indian tribes, and to have policies and procedures reevaluated in consultation with Native traditional 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.

We believe that the Interagency Task Force can play a most significant role in assisting the Customs Service to perfect additional procedures to implement the American Indian Religious Freedom Act. If, for example, we were to prepare an appropriate guidebook or manual for our Customs officers concerning the subject of sensitive treatment or handling of sacred articles and medicine bundles in the course of Customs examination, it would be necessary for us to identify such objects, at least in a general manner. At the same time, we understand that certain Native traditional religious leaders might be seriously offended if we were to use photographs of sacred articles or medicine bundles for such purpose. On the other hand, it is conceivable that if approached and presented properly, the Native traditional religious leaders might consent to the use of some representative photographs or illustrations if they fully understand the need and purpose to which they will be put. In this regard, the task force could serve as an intermediary between Customs and such traditional leaders in an effort to obtain their consent.

Furthermore, to assist us in informing Customs officers of the various kinds of natural objects which have a religious purpose and significance to Native Americans, we would like to compile as complete a listing of such articles as possible. A partial list of Indian Religious Articles was admitted into the record made at the hearings on the Joint Resolution before the United States Senate.
Select Committee on Indian Affairs on February 24 and 27, 1978. A copy is enclosed for your information and ready reference. We would like to submit this list to the Native traditional leaders for their review and comment, together with a request that they add to that list any articles which they believe should be included. Perhaps the task force could also serve as the intermediary with the Native traditional leaders for such purpose. We would be able to provide the task force with reprints of the list for distribution to the traditional leaders.

As indicated in the policy statement issued by Commissioner Chasen, a Customs Committee on American Indian Affairs has been established under the Chairmanship of Albert G. Bergesen, Regional Commissioner for the Los Angeles Region. I also serve on that Committee as its legal advisor and Washington representative. Other members represent each of the Customs regions where Indians cross the land borders, i.e., Boston, Chicago, San Francisco, Los Angeles and Houston. The names of the Committee members, their addresses and a map reflecting the geographical alignment of our regional structure is enclosed.

The first meeting of the Committee was organizational in nature. It was held in Albuquerque, New Mexico, on July 13, 1978, where representatives of the American Indian Law Center and the Native American Rights Fund provided an excellent background briefing to the committee. It was decided that future meetings of the Committee should be held in different sections of the country so that as many tribal representatives as possible would have an opportunity to surface local problems they may be having with Customs officers upon crossing the border.

The second meeting of the Customs committee was held in Burlington, Vermont, on November 29 and 30, 1978. Twenty-six Indian participants attended together with the local Associate Regional Commissioner of the Immigration and Naturalization Service and two representatives from the Canadian Department of Revenue — the Canadian counterpart of the U.S. Customs Service. A list of the guest participants is enclosed for your information.
The third meeting of the Customs Committee was held in Tucson, Arizona, on February 13 and 14, 1979. Sixty-seven Indian representatives participated together with representatives from the Immigration and Naturalization Service, Department of Agriculture, Bureau of Indian Affairs, American Indian Law Center, Native American Rights Fund, and the offices of Senator Barry Goldwater and Congressman Morris Udall. When a typewritten list of attendees is available, I will forward it for your information.

A fourth meeting of the Committee is presently scheduled for mid-June 1979 in Great Falls, Montana. The following meeting is to be held at a yet-to-be-determined site somewhere in the mid-West near the United States-Canadian border.

Each of the regional meetings held to date has been very productive, particularly insofar as having served as a catalyst for the expression of apparently long-held grievances on the part of the respective Indian tribes or bands represented. A dialogue or communications link has been established with dedicated Indian representatives who have brought to our attention certain problems which should be addressed and, hopefully, resolved. Sometimes the problem was merely a lack of uniformity in the application of established rules and procedures on the part of Customs officers in a particular port of entry. Wherever this was brought to our attention, steps were taken to correct the matter and to assure uniformity in the future. Sometimes the problem stemmed from an unawareness on the part of some Indians of the full extent of their rights as returning residents to bring articles with them into the United States or that they could register valuable personal possessions with Customs before leaving the United States in order to avoid any hassle or possible assessment of Customs duty on their return.

In this regard, we had a news release prepared which highlights the daily and monthly entitlements to exemptions from payment of duty and similar rights which would be of particular interest to residents who live at or near the border and cross into Canada or Mexico on a frequent or even daily basis. We disseminated copies of this news release at the Tucson meeting with the hope that it might be published in tribal or other newspapers that are circulated amongst Indians. We could make additional copies available for a wider distribution if the task force has access to an mailing list of publishers of such newspapers.
At each of the regional meetings, a local Customs representative was designated as a contact point available to Indian representatives whenever a problem with Customs officers arises in that particular border area. As noted earlier, we believe that most problems that have been expressed to date can be resolved locally. In the event it can not be resolved at that level then it will, of course, be elevated to an appropriate policy-making level for resolution.

Only two problems have surfaced so far which have not been able to be completely resolved at the local level. One involves the manner and extent of examination of medicine bundles and sacred articles which, as noted above, is being addressed at the national level. The other involves the long-held grievance of Indians on both sides of the United States-Canadian border that rights given them under the Jay Treaty to cross and recross the border freely and to carry personal goods duty free across such borders have been unlawfully abrogated. This subject was discussed at some length at both the Burlington and Tucson meetings. The Indian representatives most directly concerned have expressed the hope that this particular subject will be included in the report to the President, together with a recommendation that appropriate corrective legislation to restore such rights be enacted.

If you have any questions concerning any of the foregoing I will be happy to respond. I can be reached by telephone at 566-5476. I look forward to seeing you at the upcoming meeting of the task force on April 2, 1979.

Sincerely yours,

Thaddeus Rojek

Enclosures
The Honorable Cecil D. Andrus  
Secretary  
U.S. Department of the Interior  
Washington, D.C. 20240

Dear Mr. Andrus:

Your letter of January 26, 1979 regarding the formation of a task force to prepare the Report to Congress on Implementation of the American Indian Religious Freedom Act of 1978 (P.L. 95-341) has been assigned to this office for reply.

We are in the process of coordinating evaluations and internal reviews at the Department of Housing and Urban Development, and the preparation of recommendations will be completed and mailed to you no later than March 12, 1979.

Thank you for the opportunity to make a substantive contribution to the President's policy which will assure religious freedom for all Americans.

Sincerely yours,

Irvin Santiago  
Special Assistant to the Secretary  
for Indian and Alaska Native Programs
MEMORANDUM

To: All Federal Departments, Agencies & Instrumentalities
From: Secretary of the Interior
Subject: Task Force to Prepare the Report to the Congress on Implementation of the American Indian Religious Freedom Act of 1978 (P.L.95-341)

The American Indian Religious Freedom Act of 1978 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.

The Act calls for an evaluation of the Federal agencies’ policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies’ findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience.

Specifically, the Act mandates that: 1) the Federal departments, agencies and other instrumentalities responsible for administering relevant laws evaluate their policies and procedures, in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices; 2) the evaluation be conducted in consultation with Native traditional religious leaders; and 3) the President report to the Congress the results of the evaluation, including any changes which were made in administrative policies and procedures, and any recommendations for legislative action, within twelve months after approval.

Upon signing S.J. Res. 102 into law, the President directed that "the Secretary of the Interior establish a task force comprised of representatives of the appropriate Federal agencies (to) prepare the report to the Congress required by this Resolution, in consultation with Native leaders." The report will be based upon the internal reviews of the appropriate agencies and the work of the Task Force will be undertaken in consultation with Native religious and tribal leaders.
If any office within your jurisdiction falls within the category of appropriate agencies, I am requesting that:

1. The attached form be returned no later than February 12, 1979, along with any questions you may have regarding the mandate or work of the Task Force (all questions will be answered upon receipt of form)

2. The internal reviews and recommendations be completed and sent to me no later than March 12, 1979

3. The policy-level designee(s) be available for a Task Force meeting on March 26, 1979.

I look forward to working with the Task Force on the report to the Congress. Thank you for your cooperation in this important effort.

Signed
Secretary of the Interior

Attachment