The third consultation was held in Honolulu, Hawaii, on June 13. Coordinated by the National Park Service State Director and attended by local representatives of Task Force member-agencies, the consultation involved Native Hawaiian religious leaders and practitioners from several of the Islands. The Department of the Navy held a special consultation on the morning of the same day, in connection with ongoing litigation, and participated in the afternoon session of the general consultation.

The fourth consultation took place on June 14-15, 1979, at the Chief Joseph Cultural Center on the Confederated Tribes of the Colville Reservation, Nespelem, Washington. Represented were the Department of the Navy, Tennessee Valley Authority, U.S. Commission on Civil Rights, Forest Service and Department of the Interior (BIA, BLM, FWS, HCRS and NPS). As guests of the Nez Perce Band, Indian people of all tribes and religions Reservation-wide attended, as well as Indians from other tribes throughout the Northwest.

The Customs Service Committee on Indian Affairs and the Task Force combined efforts for a single consultation on cross-border issues, June 19-20, 1979, at Great Falls, Montana. American and Canadian Indian people from New York to Washington across the U.S.-Canada border attended, along with Canadian and U.S. Customs officials, and Fish and Wildlife, Forest Service, Indian Affairs and U.S. Commission on Civil Rights representatives.

The consultation at the Pueblo of Zuni took place on June 22-23, 1979, with religious leaders from most of the 19 Pueblos, as well as Apache, Navajo and Ute representatives. The Zuni religious leadership, following many hours of internal discussion, attended the proceedings and made statements at the consultation's end. Never before had they participated in such a meeting in their ceremonial positions. Federal representation included the Department of Energy, Tennessee Valley Authority, U.S. Commission on Civil Rights, Forest Service and the Department of the Interior (BIA, BLM, FWS, HCRS and NPS).

In Norman, Oklahoma, June 26-27, 1979, the seventh consultation was held at the University of Oklahoma, attended by DOE, Interior and TVA representatives and by religious leaders of the Arapaho, Cheyenne, Kickapoo, Kiowa, Muscogee and other tribes from Oklahoma, Kansas and Colorado.
The eighth and ninth consultations were held on June 29, in the Reno-Sparks Tribal Building, Reno, Nevada, and June 30 at the Qualla Civic Center, Eastern Band of Cherokee Indians, Qualla Boundary, Cherokee, North Carolina, where Interior and TVA representatives met with local leaders and representatives. And, the final consultation, conducted by the BIA and NPS in Anchorage, Alaska, on July 12, 1979, was attended by Native Alaska people representing state-wide concerns.

Testimony was taken from all persons who wished to make statements, with priority attention given to the Native traditional religious leaders. In some instances, the religious leaders preferred to make no statement or to speak only through representatives. Some religious leaders spoke informally to the federal representatives, but were precluded by tribal customary law from appearing formally in a non-ceremonial capacity. Still others, whose religions carry no such prohibitions, preferred to await the report of the Task Force, in order to ascertain the sincerity of the federal effort. Several of those elders who did make statements spoke in their language, and their transcribed remarks were translated into the English language by persons of their choosing.

Some of the Native religious leaders and practitioners expressed fear that this Act and its implementation would generate a new wave of religious persecution, while most felt that the law would help them in their goal of religious freedom. The Cheyenne Sacred Arrow Keeper, Mr. Edward Red Hat, attended the two days of the consultation in Norman, Oklahoma, stating at its conclusion:

"I knew it was supposed to help the people, and now I still have my ceremonies. I just got through at the ceremonies here not too long ago, Arrow Ceremony, Sun Dance, and I was sick...but it really helped, and I hear a lot of people here talking. That's real good talk they make....I was thinking all the time, they are getting help...That was the first time I know that people listening about this Indian religion. And I was up in Washington last summer and I made a speech over there, and that's how this religion came up. They passed on it, and I feel good."
The consultation at Zuni Pueblo began with a detailed listing of needs and concerns of the Mescalero Apache religious leaders, succinctly stated by Ms. Bernice Yucos:

"What I have to put before you, all of you, is the right that the Indian people have to have religion wherever they want and wherever they meet because, to a white people, religion is open to them. Wherever they go, there's a church. There's the Bible; the Bible is open to them in public. And our Indian people are set back; they would not let us go to the mountains...to worship as we want; to the federal land, it's restricted to us. They have restricted us from entering the state and federal lands to get our food and to practice our religious ways.

"There are four mountains that represent the Mescalero Apaches....This is our freedom of religion before the white man came. We are there, praying for our people, not only for our people but for the whole United States so that we have freedom, that there will be no war, that we'll have peace. That's why we have these four mountains and they are all sacred to us.

"And, for food, we need to get in there for mescal, sumacs, berries, and cane from the mosquero. We use that for religious reasons. And for the Indian feathers which are not free to us, we have to steal them to get it and that's not fair. As for the white person, they don't have to steal for their religion; they don't have to fight for their religion. But our Indian people have to fight and that's not fair. We should be free to get our eagle feathers as we wish, as we did a long time ago. We should just keep that.

"And for the plants and paint in basketweaving, we get it from the yucca flowers and to a white man, that's the state flower. We respect the New Mexico State Flower, too, but that was a food a long time before the white man came. We used it for food and for basketmaking. Today, we have to steal it. And for the mosquero, today we have to pay for it; mescal is our food. Among the Apache people, this is our food. It's given to us by our fathers for strength and for our uses. Why are we stopped from that?
"And for the Indian bananas for our people, the Apache people, that's their food, our food. It was long before, we used the bananas. That's our food. Why do we have to go out and steal that? We go out of the reservation, we try to get it. Somebody else holds a gun against us and said, 'That's mine. That's my land. Stay out of it.' And it's inside the federal land and that's not fair. And it's inside the state land and that's not fair.

"And for the White Sands, this is going into the medicine part...We need the sage that we use for our religious medicines. We have to steal that and that's not fair. We have to go behind the bushes to get it and there's other medicines in the federal land that we should get free, as an Indian, because God gave us a different religion. God gave us different medicines to live by, to 'live by' means to help people, our people, to go on. This is our strength. This is our belief. We should keep it. That's the way we Apaches look at it. And there's dirt and rocks that we need to get outside of our reservation, but there's the gun to stop us, against us, too. We need, our people need it. We feel that we should be free to get it.

"And for the cane from the mosquero, we should have the freedom to get that, to use it. We use a lot of that. And that sumac berries, we try to go out and get it. The white people, they don't use it. The other people may use it, but among our Apache people, we use it for the ceremonial purposes, of using it for bringing up our young girls, coming of age. That's what we need, and I want to see that we have the freedom to use that. And the medicine, we should have the freedom to cross the border of New Mexico to get what we want from there instead of being stopped. We should go get it out as free people, like years ago.

"The mesquite beans, we are stopped from getting mesquite beans from the highway people or other federal lands and that's not fair for us. These are our food, for Apache peoples, and we wish that it will go on so that we'll have things that were given to us by God for our people, our Indian people for now getting long and for the purpose of having freedom in the United States. And this is why I stand before you today, that I hope that you will respect my wishes on behalf of my Mescalero religious leaders."
These consultations, extensive and rich as they were, point to the need for continuing dialogue at the tribal and local level, and to the need for ongoing Congressional oversight. Many problems identified in consultation are under Congressional consideration at present, particularly with regard to Native Hawaiian claims and federal relationship, Alaska Native lands and protection of sacred sites and objects of Native Americans. Other important Native religious freedom issues are before the courts or in varying stages of negotiation. Significant issues in these categories, which are not within the executive forum, are addressed only generally here, although they may have been major topics of discussion during consultation sessions.

The concerns raised throughout the consultation period appear in condensed form in Part III, Recommendations, as statements of issues and examples of identified problems. General concerns expressed by Native traditional religious leaders, agency representatives and others are addressed in Part IV, Conclusion.
III. RECOMMENDATIONS

A. Land

1. Background - Statement of Issues

The attachment of the Native American people to the land is a fact well noted in American history. Treaties, agreements, executive orders and special statutes have provided for a land base for most Indian governments and their citizenry. While the use of the reservation system in this country has successfully accomplished the intended purpose, the rigid application of this same system, over time, has produced an unintended result. Many Native people have been effectively denied access to off-reservation areas used for the gathering of natural products necessary for healing and ceremonial purposes, and access to areas containing sacred sites or holy places revered in Native traditions.

Many of these places are now held by the federal government for a variety of purposes, most of which are compatible with the Native religious use. The accommodation of Native religious uses within federal land management programs must take into account their desire for these lands to remain in their natural state.

The indigenous natural substances of the land are an integral part of the Native religions. Proper gathering of the natural products is essential to ensure their efficacy in later use. The time chosen for the gathering may be determined in a number of ways: 1) the immediacy of the need for a particular substance; 2) the problems of arranging travel to distant places for a specific natural product; and 3) the tribal tradition or the individual's particular belief, which may require a certain period for gathering, often based on the occurrence of the seasons or other natural events, with the time of day prescribed similarly.

The persons who are to engage in the gathering may be subject to specific religious laws regarding their immediate past behavior, and may have undergone preparatory rituals. The presence of others is often controlled because of beliefs that the substance itself may be affected by the proximity, behavior or condition of all persons. Those who are to gather the substance are often required to achieve a proper state of mind prior to entering the physical presence of the natural product to be gathered.
The place of the gathering may be determined by tradition, known availability of the natural product and accessibility, or may involve a ritual search. The gathering may be carried out immediately or it may take place for a long time, depending on the amount needed and the religious instructions governing supply and method of gathering. The amount gathered varies according to the purpose of the gathering: one deer four times a year for certain ceremonies, a small collection of first shoots of a particular plant, a year's supply of clay to make paint, for example.

The Native peoples of this country believe that certain areas of land are holy. These lands may be sacred, for example, because of religious events which occurred there, because they contain specific natural products, because they are the dwelling place or embodiment of spiritual beings, because they surround or contain burial grounds or because they are sites conducive to communicating with spiritual beings. There are specific religious beliefs regarding each sacred site which form the basis for religious laws governing the site. These laws may prescribe, for example, when and for what purposes the site may or must be visited, what ceremonies or rituals may or must take place at the site, what manner of conduct must or must not be observed at the site, who may or may not go to the site and the consequences to the individual, group, clan or tribe if the laws are not observed.

The ceremonies may also require preparatory rituals, purification rites or stages of preparation. Both active participants and observers may need to be readied. Natural substances may need to be gathered. Those who are unprepared or whose behavior or condition may alter the ceremony are often not permitted to attend. The proper spiritual atmosphere must be observed. Structures may need to be built for the ceremony or its preparation. The ceremony itself may be brief or it may last for days. The number of participants may range from one individual to a large group.
Both gathering of substances and ceremonial uses of federal lands are limited by federal laws, regulations and practices, including certain federal procedures deferring to restrictive state laws or practices, particularly in the hunting, fishing and gathering areas. Native religious use has not been specifically included in the purposes for which the land is held by the federal agencies, nor has it been recognized as a use of such land. The American Indian Religious Freedom Act recognizes the need for a type of permanent easement for Native religious gathering and use of the federal lands, which is discussed later in this section.

The accommodation of Native religious use of federal lands has been accomplished in an uneven and arbitrary fashion, often involving arduous litigation or special legislation. Physical access to lands has been denied to Native people because of necessary military considerations, and some federal lands have controlled access because of the purposes for which the land is held, such as primitive and wildlife management areas. Native access is also limited by fire-control regulations.

This controlled access has severely limited the Native religious use, or has placed the Native peoples’ use outside the protection of the law. Gathering of natural products or substances on some federal land is controlled by specific statutes. Regulations on other lands allow for waiver of fees and exceptions for personal use, which now may be used for Native religious gathering. The leasing of some federal lands effectively prevents the Native religious use of these lands, and especially affects the gathering of natural products, which are often destroyed or damaged by the lessee’s use of the land. The gathering of a specific plant or animal may be forbidden or limited by conservation statutes. Prohibitions on the building of structures may limit Native use of ceremonials requiring the building or erecting of arbors and other structures. The condition of jurisdiction, in some cases, may subject the Native religious use to state and territorial laws.
Physical access to the land and its natural products must also include the preservation of the natural conditions which are the sine qua non of that access. The efficacy of the natural products and the spiritual well-being of the sacred sites are dependent upon physical conditions. Changing of physical conditions — the spraying and logging of trees, unlimited trapping or removal of original species, alteration of the terrain through river channelization, dams and other methods — not only damages the spiritual nature of the land, but may also endanger the well-being of the Native religious practitioners in their role and religious obligation as guardians and preservers of the natural character of specific land areas.

Preservation of the natural character of the land is often made needlessly difficult through such management practices as chaining to remove natural trees, failure to prevent overgrazing during dry periods and overlooking of sources of non-point source water pollution. These practices endanger the natural supply of the substances required by the Native religions, and may damage the character of land areas which are extremely sensitive to the actions and consequences of modern life.

Inadequate control of tourism threatens the offerings left at sacred sites and gathering areas. Often, easements across Native lands are granted to the general public without regard to their impact upon sacred sites and the privacy of Native religious practitioners. Vandalism at holy places, especially burial sites and ruins, endangers their very existence. Rituals which require differing forms of privacy have been covertly observed, interrupted and affected through the presence and activities of unauthorized observers. The privacy needed for rituals varies from tribe to tribe, ranging from the exclusion of certain members of the group from plant-gathering and other rites to the exclusion of all non-participants for the duration of the ceremony. All restrictions are designed to assure that the rituals and ceremonies are conducted, performed and observed, without interruption and in accordance with Native American religious laws.
The following section discusses problem areas encountered in the Native religious use of federal lands. (A tabular presentation of problems identified in consultations appears in Appendix C.) Section 3 contains statutory authorities for actions taken and to be taken by the federal entities in implementing the United States policy of preserving and protecting the Native traditional religions. Section 4 delineates the Task Force recommendations for uniform administrative procedure pursuant to the American Indian Religious Freedom Act and recommends statutory change in federal land laws necessary to adequately administer the American Indian Religious Freedom Act.

2. Identification of Problems - Response

During the period of consultation, many problems encountered in the Native religious use of federal lands were called to the attention of the Task Force. Several of the identified problems are being addressed by the appropriate agencies and, although resolution may not have been reached by the time of writing, dialogue and the search for settlement continues in each problem and policy area.

Many of these problems are in litigation or before the Congress at present, as noted in the tables in Appendix C. Some of the problems were addressed by the appropriate agencies prior to enactment of P.L. 95-341. As part of the continuing evaluation process, some of these problem areas may be examined in light of the policy commitment to the religious freedom of Native Americans. It is important to note here that certain problems result from adverse policies of the distant past and may defy resolution, particularly where irrevocable physical change has rendered the subject lands inaccessible.

Several specific problems have been resolved by mutual agreement between the affected agency and Indian tribe or Native group; several general problems affecting more than one tribe or Native group have been addressed by policy determinations within an agency. The following examples indicate the variety of agency approaches to resolution of identified problems.
Coso Hot Springs - The Department of the Navy has entered into an access agreement with the Owens Valley Paiute and Shoshone Band of Indians, providing for the Indian religious use of the medicinal muds and waters of the area. The Coso Hot Springs figure prominently in the Indian religious history of this area as a sacred place for spiritual and physical renewal and curing.

The Department of Navy acquired the Coso Hot Springs and surrounding lands following World War II, whereupon the China Lake Naval Weapons Center was established. Because of its use as ammunitions storage site, certain security restrictions were placed on its public use and access, including a prohibition against overnight and extended visits, bathing in the springs and entry without an escort.

Following a year-long dialogue regarding national security needs and tribal religious needs, the Department of Navy agreed to lift certain prohibitions on the duration of visits and authorized activities to allow for the tribal religious use of Coso Hot Springs. In a Memorandum of Understanding, the parties agreed that: the weekend and other visits will not interfere with the Navy mission; the scheduled visits are reserved exclusively for members of the Owens Valley Paiute-Shoshone Band of Indians and/or the Kern Valley Indian Community, with other requests for visits determined on a case by case basis; and medicine men who are visiting these tribes are also covered by the agreement. The Prayer Site, Coso Hot Springs, the old resort of the same name and a designated overnight camping area constitute the agreement area.

The agreement recognizes the provisions of P.L. 95-341 and may be reviewed at the request of either party following the submission of the President's evaluation to the Congress. All parties agree to scrupulously adhere to the Historic Preservation Act and to diligently pursue a preservation and management plan for the Coso Hot Springs National Register of Historic Places site. The tribal people agree that the springs and pond must not be permanently disturbed, and that they assume all risks associated with the hot springs area. Finally, the Navy will provide an escort who, upon request during any ceremony, shall withdraw to a discrete distance and shall not intrude on traditional rites.
Allocation of Buffalo on Federal Lands - The problem of the lack of access to buffalo on federal lands received prominent mention throughout the consultation period by traditional Indian people whose religions are based on or involve the American bison. These Indian tribes and people utilize every part of the buffalo, although the significance and need for a particular part of the animal varies from tribe to tribe and religion to religion. Certain Indian religions need buffalo meat for ceremonial feasts, while some ceremonies require the presence of a live buffalo among the participants. In other religions, certain ceremonies cannot begin until the participants have eaten buffalo tongue, and some cannot continue unless a buffalo skull is available. Tribal religious elders also spoke of the "spiritual sickness" which occurs when their people are unable to see and live near buffalo.

Under the federal conservation program, the American bison has made so spectacular a recovery from its previously diminished state that the herds on National Wildlife Refuge lands are thinned periodically and the excess buffalo sold under the lottery system. The Fish and Wildlife Service, in response to the Indian religious need, is developing a policy which will make available a percentage of the excess buffalo for Indian religious purposes. The buffalo will be made available at the fall roundup. This allocation policy, including provisions for methods of taking, will be developed and implemented in continuing consultation with Indian traditional religious leaders.

California Desert Conservation Plan - An excellent example of a federal agency working in close consultation with American Indians to achieve a mutually desirable goal is found in the California Desert Conservation Plan (CDCP). Established by the Federal Land Policy and Management Act, the CDCP is designed to protect the California Desert environment — including lands in Arizona and Nevada — and its cultural, archaeological and historical resources and sites.
In implementing this Plan, the Desert Planning Staff of the Bureau of Land Management (BLM) has initiated an inventory of Native American areas of concern. Their findings indicate that more than twenty tribes and Indian groups have sacred sites located in the CDP area. In ascertaining the locations and significance of these sites, the Staff ethnologist has worked closely with tribal elders, religious leaders and councils. In many instances, sites of significance were revealed only after the Indians were informed of the protectionist intent of the project and assured that no site-specific public disclosure would be made. Under BLM staff policy, only those areas previously known to the public can be identified publicly. These include Pilot Knob, Intaglio, Coachilla Valley, Saline Valley and Panamint Mountains, which are village sites and burial grounds presently threatened by urban encroachment. Other protected areas include those used for the gathering of plants and herbs used for nutritional, spiritual and medicinal purposes.

After an evaluation of the multidisciplinary study, the BLM hopes to develop an innovative approach to the management and protection of these designated areas, involving arrangements for the affected tribes and BLM to share the responsibility in achieving their mutual goal of preserving these sacred areas. Actively seeking the cooperation of Indian tribes in ascertaining what areas are of socio-cultural and religious significance to them, and the BLM efforts to preserve and protect those sites for Indian use, is without precedent.

The lifestyle and heritage of the Native American groups in the area demonstrates a relationship with the desert of tremendous time and depth, and these lands and resources are a necessary part of an ongoing traditional lifestyle. This initial step by the BLM toward identifying Native American values and concerns in the California Desert will ensure their participation in the long-range management of the area.
3. **Statutory Authorities for Administrative Action**

a. This section contains existing statutory authorities for actions taken and to be taken by the federal entities in implementing the United States policy of preserving and protecting the Native traditional religions. The following statutes provide authority for federal land use planning, management and regulation in terms broad enough to require or permit the consideration of Native religious practices:

i. **Bureau of Land Management**

43 USC 2 (general authority in Secretary of Interior to administer public lands)

43 USC 1739(a) (authority in Secretary of Interior to establish advisory councils with members who represent major citizen interests in land use planning and management)

43 USC 1739(e) (requires public participation in public lands planning and management)

43 USC 1701(a)(8) (Federal Land Policy and Management Act, policy includes protection of the quality of historical, ecological and archaeological values)

43 USC 1702(c) (definition section includes natural science and historical values in multiple use)

43 USC 1761(a)(7) (authorizes rights of way)

43 USC 1763 (authorizes right of way corridors)

ii. **Public Lands**

43 USC 1732 (multiple use-sustained yield management policy; Secretarial authority to regulate use, occupancy and development of public lands through easements, permits, leases, licenses and rules and to take other action necessary to prevent degradation)

43 USC 1712(f) (requires provision for public involvement in formulation of public lands plans and programs)

43 USC 1714 (Secretarial authority to make land withdrawals under certain procedures)
vi. Fish and Wildlife Service

16 USC 668dd Wildlife Refuge System (prohibits destruction, disturbance of natural growth and taking of fish and wildlife, authorizes Secretary to restrict land uses, hunting and fishing to allow compatible use and access)

vii. Department of Defense

10 USC 2668 (authorizes the Secretary of a military department to grant easements on military lands for any purpose "he considers advisable")

10 USC 2671(d) (grant of wildlife jurisdiction to states does not modify Indian rights granted "by treaty or otherwise")

viii. Department of the Interior

31 USC 483(a) Alaska Native Claim Settlement Act (free permits for activities on federal lands)

b. In addition to the statutes listed above, the following statutes provide authority for protection of areas or natural resources important to Native religious practices:

i. Department of Transportation

49 USC 1651(b)(1) (requires special effort by DOT to preserve natural beauty of park, recreation, wildlife, waterfowl and historic areas)

ii. Office of Surface Mining

30 USC 1201 et seq. (protection of Indian and non-Indian lands from adverse environmental effects of surface mining)

iii. Department of Defense

16 USC 670a (authority for cooperative Defense-Interior program to develop wildlife, fish and game conservation and rehabilitation on military reservations)

92 Stat. 921 (substantially increases the amount of money available to Defense and Interior for conservation and rehabilitation of wildlife on military lands)
iv. Wild and scenic Rivers

16 USC 1284 (Secretarial authority to limit hunting)

v. Wilderness Preservation System

16 USC 1131 (provides for establishment of wilderness system to protect wilderness character of designated areas)

16 USC 1133(c) (prohibition of or limits on commercial enterprises, roads, motor vehicles in wilderness areas)

vi. National Environmental Policy Act

42 USC 4321 et seq. (encourages harmony between humans and environment; requires environmental impact statements for major federal action significantly affecting the environment)

vii. Mining on Federal Lands

30 USC 183 (cancellation of mining permits for failure to comply with permit conditions)

viii. Geological Survey

43 USC 31a (control of mineral leasing through land classification)

ix. Tennessee Valley Authority

43 USC 831u (authorizes planning for natural resource conservation)

4. Task Force Recommendations for Uniform Administrative Procedure

The Task Force recommends a number of administrative actions that can be taken to solve some of the problems experienced by Native Americans in this area. First, each federal agency can accommodate Native American religious practices to the fullest extent possible under existing federal land and resource management statutes. This accommodation could be reflected in each agency's regulations, policies and enforcement procedures with regard to access to federal land areas, gathering and use of natural substances endowed with sacred significance by Native American religious groups, provisions for group and individual activities on federal lands and any other appropriate subject matter.
Each federal agency can also revise existing regulations, policies and practices to provide for separate consideration of any Native American religious concerns prior to making any decision regarding use of federal lands and resources.

The appointment of American Indians, Alaska Natives and Native Hawaiians to existing boards, commissions and other citizen advisory groups affecting federal land and resource planning, management and practices should be considered by federal agencies. Each federal agency could determine whether it would be appropriate to create new boards, commissions and other citizen advisory groups designed specifically to assure adequate consideration of Native religious concerns in federal land and resource planning, management and practices.

To the fullest extent allowed under existing statutory authority, each federal agency can reserve and protect federal areas of special religious significance to Native Americans in a manner similar to its reservation and protection of areas of special scientific significance. They can also provide exemptions from restrictions on access to and gathering, use and possession of federal property for Native American religious purposes similar to those provided for scientific purposes.

Finally, whenever any federal agency cedes jurisdiction for any purpose to a state, it can reserve federal jurisdiction over Native American land and resources use by Native Americans for religious purposes.

5. Recommendation for Congressional Consideration

The Task Force has developed a number of recommendations for Congressional consideration in this area. These recommendations are currently being reviewed within the Administration. They concern federal land-use designation for areas containing sacred sites or shrines of the Native traditional religions, and site-specific federal land statutes which do not allow for Native religious use of federal property or federal land. The Task Force is also concerned about protecting information concerning sensitive Native religious matters and sacred sites given to land-managing agencies, similar to the provisions of 16 USC 470a(4). The enactment of S.490 or H.R.1825 is urged as both bills contain provisions for confidentiality with respect to these sites.
III. Recommendations

B. Land - Cemeteries

1. Background - Statement of Issues

Native American religions, along with most other religions, provide standards for the care and treatment of cemeteries and human remains. Tribal customary laws generally include standards of conduct for the care and treatment of all cemeteries encountered and human remains uncovered, as well as for the burial sites and bodies of their own ancestors. Grounded in Native American religious beliefs, these laws may, for example, require the performance of certain types of rituals at the burial site, specify who may visit the site or prescribe the proper disposition of burial offerings.

The prevalent view in the society of applicable disciplines is that Native American human remains are public property and artifacts for study, display and cultural investment. It is understandable that this view is in conflict with an repugnant to those Native people whose ancestors and near relatives are considered the property at issue. Most Native American religious beliefs dictate that burial sites once completed are not to be disturbed or displaced, except by natural occurrence.

Access to burial sites on federal lands is necessary for practitioners of those Native American religions which require the performance of ceremonies at these burial sites. (The issue of access to federal lands is treated in the preceding section.) Access to these burial sites is necessary in order to continue the use of the site as a burial ground for those Native Americans whose religions require burials at these sites.

The disturbance of Native American burial sites on federal lands may be purposeful or inadvertent. Purposeful disturbances include authorized archaeological and educational use of the site, as well as illegal abuse, pillage and vandalism of the site. Inadvertent displacements usually occur when federal roads, dams or other construction projects proceed in the absence of adequate site surveys and without consulting the affected Native Americans. Therefore, most existing protection is contained in administrative operating policies.
The next section identifies specific problems in this area, followed by a listing of existing statutory authorities for federal actions. (A listing of specific problems identified during the consultation period appears in Appendix C.)

2. Identification of Problems - Response

Although such statutes as the Antiquities Act of 1906 exist to protect and preserve the cultural property of the United States, these laws carry only minor penalties and have been successfully challenged in litigation and severe limitations placed on their enforcement.

It is the policy of Interagency Archeological Services, the major federal agency involved in the disturbance of human remains by federal construction, to require field officers to consult with relatives or tribal governments, in those cases where remains can be identified. A similar policy is now enforced by some Army Corps of Engineers offices, the Bureau of Land Management and the Tennessee Valley Authority.

The Bureau of Land Management (BLM), in response to P.L. 95-341, is reviewing its policies and procedures pertaining to the issuance of Antiquity Act permits for archeological work on BLM-administered land. Antiquity Act permits are issued by the Departmental Consulting Archeologist (DCA) in the Office of Archeology and Historic Preservation of the Heritage Conservation and Recreation Service. However, the BLM has the responsibility for processing and evaluating permit applications that involve actions on BLM-administered land and for providing recommendations to the DCA regarding such applications.

The BLM has developed draft procedures for processing and evaluating Antiquity Act permit applications, most of which are already in effect. For example, before an application for research excavation on BLM-administered land can be evaluated, an Environmental Analysis Record (EAR) must be conducted in order to ascertain the effect of the action (i.e., issuance of an Antiquity Act permit) on all values and resources in the area of work. Included in the analysis is a consideration of socio-cultural impacts on Native American religious values.
In addition to providing Native American input during the EAR process, the BLM is encouraging Antiquity Act permit applicants to consult with local Native American religious/tribal/group leaders prior to submittal of an application for archeological research. In this way, Native American concerns can be identified early in the process of determining whether to grant an application.

Included in the BLM draft Antiquity Permit procedures is a stipulation concerning human burials which would be attached to any permit issued for archeological investigations on BLM-administered land. If human burials are encountered during excavation, all work must stop in the immediate area and the responsible BLM officer must be notified. Appropriate parties must be contacted and consulted, including local Native Americans, the State Historic Preservation Officer, and the county coroner. Recommendations as to how best to proceed would be based on this consultation process.

3. Statutory Authority for Administrative Action

Statutes under which Native American burial sites on federal land may be protected:

16 USC 431-433 (requires permits for archeological excavations on federal lands)
16 USC 461, et seq. (provides for the preservation of historic sites)
16 USC 469, et seq. (provides for preservation of archeological data subject to flooding by dam construction)
16 USC 470, et seq. (expands federal role in historic preservation)
18 USC 641 (theft of government property)
18 USC 1163 (federal penalties for theft of tribal property)
18 USC 1361 (destruction of government property)
23 USC 138 (Secretary of Transportation authorized to plan in order to minimize harm to land of historic significance)

42 USC 4321, et seq. (NEPA - federal responsibility to preserve historic and cultural aspects of national heritage)

4. **Recommendation for Congressional Consideration**

In order to fully implement the policies expressed in 42 USC 1996, the Task Force has developed legislative recommendations concerning burial sites on federal land and protection of those sites. Those recommendations are currently under review within the Administration.
III. RECOMMENDATIONS

C. Sacred Objects

1. Background – Statement of Issues

Native traditional religions are based on the natural environment. Their practitioners rely on natural substances for their religious observances. Certain wildlife, plants and minerals – which may be worn, carried or simply present – are considered sacred and fundamental to the religious and ceremonial life.

The sacred objects of a ceremony or religion may be, for example, the salmon, eagle, buffalo, kit fox, hawk, shark, snake, deer, moose, elk, squirrel, turtle, bowhead or butterfly. Some religions or ceremonies may hold venerable claws, feathers, beaks, tusks, hides, fangs or quills; while particular plants – such as sage, tobacco, mescal, yucca, sweet grass, cedar, peyote – are central to others. Drums, arrows, masks, prayer feathers, pipes, totems, medicine bundles and other objects made from natural materials are held sacred in certain Native religions. Natural products may be roots or rocks, berries, gourds, leaves, shells or turquoise – they may be consumed, buried, held, carried or observed, and are commonly used for healing, purification or visions, according to religious customary law.

2. Identification of Problems – Response

In recent times, many animals, plants and mineral materials have not been available for use in Native American religions. Non-Native settlement of the country and the introduction of non-indigenous species inevitably led to a great reduction of the natural animal and plant species. Most notable was the almost complete annihilation of the buffalo, once extensively used in the religions of the Plains Indians.

This scarcity of natural substances used in Native American religions was exacerbated by large federal construction projects which greatly affected wildlife habitats and rendered inaccessible many deposits of mineral substances.
Prior to this century, many American Indian tribes and Native Hawaiian groups were removed by federal action to areas away from their traditional homelands, often far from fishing, gathering and hunting grounds. Time and distance have not diminished the need of many Native religious practitioners and leaders to return periodically to these places. While some tribal religions and geographical situations allow for the substitution of comparable materials, most do not. Despite great difficulty involved in these journeys, many religious leaders and practitioners travel to their traditional places to gather materials necessary for religious purposes. Once the journey is made, some are unable to gather the needed materials because of regulatory provisions or administrative procedures. For those Native people who are precluded from travel or from gathering, the continued practice of their deeply held religious beliefs becomes almost an impossibility.

In an effort to preserve the natural species of the country, conservation laws were passed. Because Native religious use of these species was taken into account only in the Bald Eagle Protection Act, these laws have not remedied problems in obtaining these species for Native religious use. Objections have been raised regarding existing administrative procedures under the Bald Eagle Protection Act. These procedures are being revised now by the Fish and Wildlife Service, in consultation with Native religious and tribal leaders.

The Fish and Wildlife Service (FWS) is also responding to a Native religious need in a related area. During the Task Force consultation in Oklahoma, traditional Muscogee leaders spoke of the need to take squirrel for ceremonial feasts throughout the year. Leaders of the Kickapoo also spoke of their need for 32 deer each year for religious purposes. The religious ceremonial need arises year-round, and only coincidentally with the Oklahoma hunting season. Similar situations were addressed by other tribal leaders in consultations throughout the country. As a matter of policy rather than statutory obligation, the FWS honors the applicable state fish and game regulations on federal lands under its control. The FWS recognizes that state regulations developed prior to enactment of P.L. 95-341 may not have taken these unique needs into account at time of promulgation, and that they do not meet these expressed needs at present. The FWS is now addressing these concerns.
Many Native Americans are unaware of present statutory and regulatory provisions allowing for the gathering of animals, plants and mineral substances on federal lands. For instance, fee waivers and use permits for most of such taking are allowed under existing statutory authorities, as outlined in the previous section dealing with federal lands. To lessen the problem of lack of information in the Native and tribal communities and reservations, the Interior Assistant Secretary for Indian Affairs will undertake a vigorous effort to disseminate relevant information nationwide. This effort will be coordinated with the appropriate federal agencies.

Native American religious use of peyote, allowed under the statutory authority of the Administrator of the Drug Enforcement Administration, is needlessly complicated through the use of the distribution system under Texas regulations. Although American Indians only are permitted to use peyote for religious purposes, only non-Indians are the authorized distributors. Further complications arise in the use of forms ill-suited to the needs of many of those who use peyote in religious ceremonies.

Increasing difficulties in obtaining peyote for religious use may be relieved administratively by allowing traditional Indian religious harvesting of peyote on federal lands in the Southwest and allowing the importation of peyote from Mexico for Native religious use. The Drug Enforcement Administration will continue to consult with practitioners of traditional peyote religions and the Native American Church on this issue.

Appendix C contains a tabular presentation of examples of problems identified by practitioners of Native religions in obtaining, possessing and using the animal, plant and mineral material necessary for religious use. Statutory authorities and applicable Task Force recommendations for uniform administrative procedure are then stated.
3. **Statutory Authorities for Administrative Actions**

Statutes authorizing or permitting the use of plants, animals and mineral materials by practitioners of Native American religions:

- **16 USC 668a** (Native American religious use of eagles permitted.)

- **16 USC 1371(b)** (Marine Mammal Protection Act, provision for Alaska Native subsistence use which may be applied to religious use.)

- **16 USC 1539(e)(1)** (Endangered Species Act, provision for Alaska Native subsistence use which may be applied to religious use.)

- **16 USC 704** (Migratory Bird Treaty Act, provision allowing Secretarial determination for taking, killing and possession.)

- **21 USC 952, 953** (Allows importation and exportation of peyote, a controlled substance, at discretion of Attorney General for lawful purposes.)

- **30 USC 601** (Authorizes Secretaries of Interior and Agriculture to dispose of mineral materials on public lands.)

- **16 USC 668dd(d)** (National Wildlife Refuge System, Secretarial interpretation that traditional Native religious uses, such as gathering of herbs and plants, are compatible with the major purposes of most refuges.)

4. **Task Force Recommendations for Uniform Administrative Procedures**

To further enable Native Americans to gather and use sacred objects, it is the recommendation of the Task Force that the Secretaries of Interior, Agriculture, Commerce and Treasury should establish a joint uniform set of administrative procedures to govern the disposition of surplus wildlife and plants or parts thereof which have been confiscated or gathered under the jurisdiction and control of the respective Secretaries. To the fullest extent allowed under existing statutory authority, the uniform procedures should be designed to increase the availability of natural products to Native American practitioners of Native traditional religions.
5. Recommendations for Congressional Consideration

The fifth, sixth, seventh and ninth whereas clauses of the Joint Resolution on American Indian Religious Freedom address the conservation laws as they relate to the Native American religious use and possession of sacred objects protected by statute:

* * *

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 insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

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

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

Resolved ... henceforth shall it 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 ... use and possession of sacred objects.

* * *

This policy indicates that administrative accommodations regarding Native religious use of the protected environment are now permissible under 42 USC 1996 and the discretionary authority of the Secretary of the Interior. The guiding principle for the nature and extent of any accommodation would be the preservation of the threatened species. Therefore, no specific recommendation is made at this time regarding any conservation law the Congress may consider in the future.
III. RECOMMENDATIONS

D. Sacred Objects - Border Crossings

1. Background - Statement of Issues

North American Indians, Eskimos and Polynesians travelled and traded freely throughout the western hemisphere prior to the arrival of the Europeans. Much of the trade which was developed involved raw materials for use in making articles such as tools, jewelry, baskets and clothes. Many of these items were used for religious purposes. There was also a steady trade in items purely for religious use, including medicinal and spiritual herbs from each area. These items varied from Central American parrot feathers for use in Pueblo ceremonies to abalone shells from the west coast used in the central plains.

When the boundary lines for the present countries were drawn, not only were many tribal groups divided, but much of the indigenous trade was curtailed. Crossings were restricted as the borders were surveyed and Customs Service facilities built. Sacred objects were sometimes searched, resulting in the impairment of their spiritual qualities. Confusion and misunderstandings about duties on the part of Native Americans, together with the border officials' lack of knowledge of Native American religious practices, led to confiscations of sacred objects, plants, feathers and animal parts.

2. Identification of Problems - Response

On September 15, 1978, the Commissioner of Customs issued a policy statement entitled "Policy to Protect and Preserve American Indian Religious Freedom" (which appears in Appendix B, Customs Service). The Commissioner's statement instructs Customs officials to institute measures to assure sensitive treatment in the course of Customs examinations of the articles used by American Indians in the exercise of their religious and cultural beliefs.

Prior to approval of the American Indian Religious Freedom Act, the Commissioner of Customs established a Committee on Indian Affairs composed of district directors from each of the geographic areas where border problems are presented. This committee has held several regional meetings with Native Americans to discuss specific problems so that they might be resolved at the local level. The communication links established through these meetings have resulted in a continuing dialogue to bring specific problems to the attention of appropriate officials.
An additional problem encountered in this area is the illicit sale and theft of Native sacred objects, resulting in the sale or resale of these objects abroad. Many sacred objects are owned by the tribal or Native group, with physical custody transferred to successive tribal citizenry or group members.

The Customs Service Indian Affairs Committee has met with tribal representatives in various parts of the country, in an effort to determine specific problem areas where, perhaps due to a lack of knowledge or unawareness of Native American beliefs or customs, Customs officers may be handling sacred objects in an insensitive manner. At one of these meetings, a representative of the Yaqui Tribe identified a problem arising in connection with the importation from Mexico of sacred masks and other paraphernalia, which could be mistaken for commercial importations and thus handled in a manner which would not be proper for sacred objects.

In order to assist Customs officers in identifying the sacred Yaqui objects, the Tribe permitted Customs to photograph the sacred objects and the ceremonies in which they were used. The photographs were then reviewed by tribal elders and selected ones were assembled into a booklet with explanatory material. This booklet will be distributed to Customs officers at the appropriate ports of entry to assist them in identifying the sacred objects, so that they might be treated by Customs officers with due respect and sensitivity.

In addition to the problems involving transportation of sacred objects across international borders, the Customs Service Indian Affairs Committee also requested input from Native Americans regarding other problems with Customs. During the two meetings along the Canadian border, the northeastern tribes and, to a lesser extent, the Blackfeet/Blood Tribes expressed great concern regarding a diminution of the privileges their tribes had under the Jay Treaty to free passage regardless of citizenship and to the duty-free entry of their usual goods and effects. Recent court decisions have held that these provisions were abrogated by the War of 1812. Although domestic legislation continued the privilege until the 1890s, such provision was repealed in 1897.
Indian representatives have requested Customs assistance in drafting legislation to reaffirm these privileges, also requesting that the duty-free privilege be extended to household appliances which are purchased in one country and brought onto the reservation in the other country for the sole use of the purchaser. In addition, several tribal representatives suggested legislation which would treat Indian tribes as developing nations to enable handicrafts to be imported free of duty under GSP-General System of Preferences provisions. Canada would have to enact similar legislation for the Indians to achieve their stated goals. Representatives of Canadian Customs were present at the meeting where the duty-free subject was discussed and indicated that a revision of the Indian laws was under study and the Indians should make their wishes known to the Canadian Parliament.

Appendix C contains a tabular presentation of some of the customs problems faced by practitioners of Native American religions.

3. Task Force Recommendations for Uniform Administrative Procedure

It is the recommendation of the Task Force that, when crossing the borders of the United States, Native Americans carrying articles for use in the Native traditional religions should be treated with respect and dignity and, to the extent permitted under existing statutory authority, according to their own religious laws. It is also recommended that, insofar as is possible, the United States Customs Service should assist Native Americans with problems encountered with counterpart agencies of other countries in regard to Native religious practices.

4. Recommendation for Congressional Consideration

The Task Force has developed legislative recommendations concerning the tariff schedule of the United States, the export by non-Native Americans of sacred objects, and the Jay Treaty. Those recommendations are currently being reviewed within the Administration.
III. RECOMMENDATIONS

E. Sacred Objects - Museums

1. Background - Statement of Issues

Equally elaborate concepts of personal property have developed in both Native American and western legal traditions. The problems presented by the presence of Native American sacred objects in museums will be resolved only through careful determinations of what constitutes essential fairness in these conflicts between culturally distinct systems.

Sacred objects and their proper care and treatment vary from tribe to tribe. Some sacred objects are wrapped bundles containing hundreds of articles, others are distinctly shaped rocks or carefully prepared ceremonial clothing. The care of the sacred object may involve, for example, a simple ritual before or after its use, periodic offerings of tobacco or cedar, or intricate restrictions upon what actions are allowed in the physical presence of the object.

Often the Native American equivalent of legal ownership is reserved in the tribe or group as a whole and the interest of the individual owner or keeper resembles physical custody. This is especially evident of those sacred objects used in ceremonies participated in by the tribe or group as a whole. It is also evident of those sacred objects whose use is an integral component of a tribal ceremonial cycle. In most cases, Native Americans never envisioned any separation of these objects from the tribe or group.

Many sacred objects exist, and the proper care, treatment and disposition of each object is contained in the tribal customary laws. Classification of sacred objects by type is best done according to each tribe's particular distinctions, but under most systems it seems probable that the vast majority of items in museums are not of current significance in the practice of the Native religion. Significant items may vary widely but will most probably include:

1) Sacred objects which serve a continuing religious function, for example, objects whose presence serves as a guard or protection for land;
2) Sacred objects whose proper disposition according to tribal customary law was disturbed, for example, sun dance offerings, which are properly supposed to be allowed to disintegrate;

3) Sacred objects which were illegally "converted" under tribal customary law, for example, some pipe bundles are not to be transferred outside of the family, group or tribe.

The consequences to the tribe or group of the absence or mistreatment of a particular object may be such that the free exercise of the Native religion is severely restricted. Each case presented by practitioners of Native American religions seeking proper treatment or return of sacred objects must be considered with proper understanding and circumspection.

2. Identification of Problems - Response

The problems experienced by Native Americans in the use and possession of sacred objects which are controlled by federal and public museums are best examined within the context of acquisition methods and related laws and regulations.

Museum accession records show that some sacred objects were sold by their original Native owner or owners. In many instances, however, the chain of title does not lead to the original owners. Some religious property left original ownership during military confrontations, was included in the spoils of war and eventually fell to the control of museums. Also in times past, sacred objects were lost by Native owners as a result of less violent pressures exerted by federally-sponsored missionaries and Indian agents.

Most sacred objects were stolen from their original Native owners. In other cases, religious property was converted and sold by Native people who did not have ownership or title to the sacred object.

Today in many parts of the country, it is common for "pot hunters" to enter Indian and public lands for the purpose of illegally expropriating sacred objects. Interstate trafficking in and exporting of such property flourishes, with some of these sacred objects eventually entering into the possession of museums.
Many sacred objects are taken from Native graves located on Indian and public lands and donated to museums by persons possessing federal permits under 16 USC 432. By statute, all such gathering is undertaken for permanent preservation in public museums. No provision exists in 16 USC 432 and 43 CFR Part 3 for Native use and possession of sacred objects taken in this manner. Problems related to the protection of Native sacred sites and cemeteries are contained in Part C of this Report.)

Once museums obtain possession of sacred objects, Native Americans have little legal ground for recovery for religious use. For the most part, the museums have ignored the requests of numerous tribes and Native religious groups for return of their sacred objects. One recent exception is the Denver Art Museum’s return to the Zuni bow priests of a war god (a hayuta), which was stolen from them and later donated to the museum. At present, the Pueblo of Zuni is negotiating with the Smithsonian Institution for the return of another war god. While there have been other returns – kiva masks to Hopi elders by the Heard Museum, and the 1977 Wheelwright Museum return of 11 medicine bundles to Navajo medicine men – these examples are the exception.

Many problems related to museum possession of Native sacred objects are based upon the manner of display, handling, care and treatment of the objects. Many of the tribal and/or religious groups wish the return of their objects, while others may wish only to work with museums to assure against desecration of the objects.

The museums of the Departments of the Army, Navy and Air Force are presently reviewing their holdings for any object that may be of religious significance to practitioners of Native American traditional religions. Should any such objects be identified, the appropriate Native religious leaders will be notified and invited to discuss its return, long-term loan and/or care and handling.

The Institute of Museum Services (IMS-DHEW), which funds private museums and institutions, has suggested that a survey be conducted to determine the extent of museum holdings nationwide that would be claimed by Native American religious leaders. IMS proposes that the assessment should be conducted in light of the following issues: legality of claim to specific artifacts; method of resolving conflicting claims; and the consequences of establishing a precedent of returning a part of museum collections to the original owners.
An excellent example of federal/tribal/institutional cooperation on the removal and disposition of tribal heritage material can be found in the Ozette Archaeological Project. When an important archaeological site was discovered on the Makah Indian Reservation on the Washington coast, the Makah people were divided on the issue of permitting excavation. Tribal members were eager to learn more about their tribal history but feared the religious implications of the disturbance of this ancient site.

The Makah Tribal Council and Washington State University professors worked out an agreement to ensure that the sanctity of the site would be protected, that the participation of the Tribe in decisions regarding the project would be guaranteed and that the artifacts and other materials would remain in the possession of the Tribe.

To honor the agreement's final provision, the Tribe and University worked together to solicit funds for a major museum on the Makah Reservation. The museum building was funded by the Environmental Protection Agency. The National Endowment for the Arts and the Crown Zellerbach Foundation contributed funds for the displays, and the National Endowment for the Humanities funded a language program which is run through the museum.

The project was conducted with respect for the Makah traditional beliefs and needs, to the benefit of all participants. The Makah Museum, which opened on June 2, 1979, provides housing for the artifacts and jobs for the people. The Makah people have learned more about their past from this unique site and have the tangible evidence of their rich heritage.

3. Statutory Authorities for Administrative Action

a. The following statutes provide authority to prohibit the removal of Native traditional sacred objects from Native American possession and from public and Indian lands, and to assure Native use and possession of sacred objects necessary for the exercise of traditional rites and ceremonies:

   1. 16 USC 433 (prohibits excavation and removal of any objects of antiquity located on lands owned or controlled by the United States government)
ii. 16 USC 432 (requires federal permits for excavation and removal of antiquities located on lands owned or controlled by the United States under uniform administrative rules)

iii. 18 USC 1163 (a criminal offense to steal or possess stolen property belonging to any Indian tribal organization)

b. The following statutory authorities empower federal funding authorities to protect Native religious freedom against infringement by museums which receive federal funds.

i. 42 USC 2000a (all persons shall enjoy full and equal enjoyment of facilities, privileges and advantages in any place of public accommodation or place of exhibition or entertainment without being discriminated against on religious grounds)

ii. 42 USC 2000d (no person may be denied the benefits of or be subjected to discrimination under any program or activity receiving federal funds)

iii. 42 USC 2000d-1 (requires all federal departments and agencies which are empowered to make federal grants to effectuate 2000d by rules, regulations and orders, which may be enforced by the termination of or refusal to grant federal funds)

iv. 20 USC 965 (empowers the Director of the Institute of Museum Services to make federal grants to museums)

v. 20 USC 954(g) 956(c) (empowers the National Foundations of the Arts and Humanities to grant federal financial assistance to museums)

vi. 20 USC 65a(a) (authorizes the Director of the National Museum under the direction of the Secretary of the Smithsonian Institution to provide federal financial and other assistance to museums and educational institutions)
4. Task Force Recommendations for Uniform Administrative Procedure

The Task Force recommends a number of administrative actions that can be taken to solve some of the problems experienced by Native Americans in this area:

a. Federal museums should decline to acquire for their collections objects known to be of current religious significance to American Indian, Aleut, Eskimo or Native Hawaiian traditional religions, and should inform such Native American tribal and religious leaders of the presence on the market or in non-Native hands of such objects as come to their attention.

b. Federal museums should return to the tribe of origin objects in the museum's possession, to which unconsenting third parties assert no ownership interest, that were used or valued for religious purposes at the time of their loss from an American Indian tribe or Native American community, and were alienated from that community contrary to standards for disposition of such objects then prevailing in that community, provided that the successor or modern tribe or community requests them as needed for current religious practice.

c. Federal museums should consult traditional Native religious leaders for guidance as to the museums' practices regarding exhibition and labeling, conservation, and storage of Indian, Eskimo, Aleut and Hawaiian sacred objects in their possession.

d. Federal museums should facilitate periodic ritual treatment by appropriate religious practitioners of sacred objects in their possession, at the request of such practitioners.

5. Recommendations for Congressional Consideration

The Task Force has developed legislative recommendations concerning theft or other unauthorized removal from Indian or Eskimo lands of objects of current religious significance to occupants of those lands; the export of important items of the Native American patrimony, sacred and other; the interstate transport or receipt of stolen Native American religious items; and the intentional conversion, theft, sale and possession of sacred objects belonging to Native Americans not presently protected by 18 USC 1163. Those recommendations are currently being reviewed within the Administration.

The Administration continues to recommend enactment of S.490 or H.R.1825, similar proposals entitled, "Archaeological Resources Protection Act of 1979," with the amendments offered in the Administration's reports on these bills.
III. RECOMMENDATIONS

F. Ceremonies and Traditional Rites

1. Background - Statement of Issues

Participation in ceremonies and traditional rites is an intrinsic part of the free exercise of Native American religions. A wide variety of ceremonies exists for such diverse purposes as the healing of diseases, the renewal of relationships with specific spiritual beings, the observance of seasonal and generative changes affecting particular sacred objects, the celebration of name-giving and initiations into spiritual societies and for the preparation of bodies for birth and death.

Tribal and societal customary law details the religious obligations of those involved and may decree, for instance, the duration and manner of preparation, the appropriate attire and appearance, the method of arrival and leave-taking, the proper conduct before and after the ceremony. Tribal traditional law may also mandate attendance and participation, as well as set standards for exclusion, and may proscribe conversation concerning details of certain ceremonies. Failure to observe these laws may hold severe consequences for the individual practitioner or the group as a whole.

These traditional ceremonial obligations have relation to certain federal practices and institutions. Many Native Americans are employed, housed and schooled by the federal government. Federal employment practices, geared towards a different concept of time and scheduled holidays, may interfere with these employees' needs and obligations regarding dates and duration of ceremonial events. Buildings constructed on Indian reservations with federal funds may not integrate relevant tribal cultural and religious concepts.

Native Americans in federal health care, educational or penal institutions may experience difficulty in access to necessary ceremonies and rites. Buildings constructed on Indian reservations with federal funds may not integrate relevant tribal cultural and religious concepts. Native American children in some foster and adoptive homes may be denied access to the cultural and religious life of their tribes and Native communities.
Some American Indian national divisions do not coincide with the geographical boundaries of the United States. Common cultural traditions continue on both sides of the border, but problems are often encountered when related people must cross borders in order to fulfill religious ceremonial obligations. (Cross-border issues involving transportation of sacred objects are discussed in Part III, D.)

Examples of problem areas and administrative responses are outlined in the next section, followed by a list of existing statutory authorities for these responses. (Particular problems identified are tabulated in Appendix C.)

2. Identification of Problems - Response

Identification of specific problems in this area is difficult, due to the existence of sanctions in many Native American religions against divulging information about ceremonies and traditional rites. Throughout the period of consultation there was an underlying suspicion that information would become the basis for further probing into the Native religious history and would result in excavations of traditional ceremonial sites by the applicable disciplines and agencies. History and past practice do little to allay this fear.

Child Welfare - Many problems identified during the consultation sessions relate to the Native American children who have been separated from their families, tribes and cultural heritage by placement in foster or adoptive homes. This problem was addressed effectively in the 95th Congress with the passage of the Indian Child Welfare Act of 1978, P.L. 95-608.

This Act establishes standards for the placement of Indian children and serves to prevent the breakup of Indian families, recognizing that Indian children have been separated from their parents and raised outside their homes at a shockingly higher rate than non-Indian children. The Act is now being implemented by the affected federal agencies and state and tribal courts, but its reversal effects will not be felt for a generation. Thus, this problem area will continue to be identified as a Native religious freedom impediment in relation to many of those children removed from their homes prior to 1978.
Education - Problems regarding federal educational institutions are being resolved through the contracting of those schools to tribes and the revision of BIA educational policies to ensure that the freedom of religion of students is not abridged. Increasing emphasis on the cultural content of federally-funded Indian education programs will necessarily increase the students' awareness of Native American religious beliefs.

In the newly published BIA regulations under the Education Amendments of 1978 (25 USC 2010, 2013), the religious freedom rights of Indian students are specifically noted in 25 CFR Part 31a, as the BIA policy to: "promote and respect the right to cultural practices, consistent with the provisions of the American Indian Religious Freedom Act."

In 25 CFR Part 31, the following are recognized: 1) the right to freedom of religion, and the right to be free from religious proselytization; 2) the right to cultural self-determination based upon tribal thought and philosophy; 3) the right to freedom of speech and expression, including choice of dress, and length of hair; 4) the basic right to an education requiring a staff which recognizes, respects and accepts the students' cultural heritage, its values, beliefs and differences; and 5) the right to a meaningful education which shall be designed to insure that tribal elders and members having a practicing knowledge of tribal customs, traditions, values and beliefs are utilized in the development and implementation of cultural programs.

Employment - Certain of the conflicts between federal employment practices and Native religious obligations were discussed during the consultation period. Unique problems arise where federal agencies are located upon the premises of an Indian Pueblo. A common occurrence is the closing of the Pueblo for religious ceremonies; often, there is no advance notice of the ceremony, the Pueblo people are required to remain at home, non-Pueblos are forbidden to observe and anyone working at the Pueblo must stay away.

This affects primarily the staffs of the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS). The Task Force was advised by the BIA school superintendent at San Felipe Pueblo that federal employment procedures do not provide for staff disposition when religious ceremonies prohibit non-Pueblo staff from going to work. Thus, both Pueblo and non-Pueblo staff are forced to take annual leave.
The major governmental employers of Native Americans, the BIA and the IHS, are examining their employment practices as they affect the religious obligations of some tribes. The IHS is discussing the problem with its Indian Health Board. The Interior Assistant Secretary for Indian Affairs has directed the BIA to develop a plan that seeks to accommodate employees' religious practices requiring time away from work, and to examine the problem as it affects student time away from school.

This plan is to be developed in consultation with the affected employees and tribal and traditional religious leaders. It is authorized under the Federal Employees Flexible and Compressed Work Schedules Act of 1978, as amended, which requires the Office of Personnel Management to prescribe regulations to permit federal employees to engage in compensatory work for time lost while meeting religious requirements.

Facilities - Problems with design of federally-funded or federally-constructed facilities may be resolved through consideration of the problem in discussion with the tribe or group affected. The Department of Housing and Urban Development is presently revising its regulations to provide for the building of homes which take into account traditional and cultural factors in design and materials.

The new Public Health Service facility at Laguna Pueblo includes space specifically designed for Native religious use. Title IV of the 1978 amendments to the Older Americans Act for the funding of multipurpose senior centers on reservations does not include the prohibition of religious use of centers found in Title III of the Act on the funding of centers outside of Indian country, demonstrating the continued awareness by the Congress of the right of Indian tribes to practice their religions.

Health Care - Problems related to health care facilities are adequately and appropriately addressed in the newly developed policy of the Indian Health Service, and in Public Health and Veterans Administration facilities. Official policy provides for the consideration of the religious needs of patients and for accommodations for Native religious ceremonies and practices. During the Task Force consultations, abuses of this policy were specifically mentioned and decried by DHEW and IHS representatives.
The Rehabilitation Services Administration considers Native American religions in its counselling of Native Americans. Recent amendments to the Rehabilitation Act permitting tribal operation of rehabilitation programs will facilitate the use of Native American religious beliefs and ceremonies in the rehabilitation of disabled Native Americans.

**Immigration** - The Kickapoo Indians of this country and Mexico have a longstanding border-crossing agreement which does not impede their travels in fulfillment of ceremonial obligations. Their procedural arrangement with the appropriate local officials allows for early resolution of specific difficulties encountered. (Cross-border problems relative to the transportation of sacred objects are detailed in Section III, D.) The Yaqui Tribe of Arizona has experienced difficulty with the entry into the United States of Yaqui people from Mexico, whose participation is essential to certain ceremonies.

The tribes whose people reside on both sides of the border find it ironic that they are subject to immigration laws at all, as their territorial residence predates the national divisions by many centuries. However, through the Customs Committee on Indian Affairs, these tribes are working with the appropriate agencies, as well as their Canadian and Mexican counterparts, on particular problems as they arise. Immigration restrictions on the Canadian border have been removed, and present laws regarding entry into the country are sufficiently broad to permit entry of members of related groups for Native American religious ceremonies.

**Penal Institutions** - Native Americans have a disproportionately high arrest and incarceration rate - the highest of any identifiable group in the country. Native people incarcerated in federal prisons and federally-funded state institutions are subject to the policies of the Bureau of Prisons and the Law Enforcement Assistance Administration. Many Native American prisoners experience substantial difficulty in the practice of ceremonies and traditional rites, possession of sacred objects and access to spiritual leaders.

In federal prisons, where inmates' religious beliefs are recognized as important to the rehabilitative process, Native American religious needs are being administratively accommodated within existing statutory authorities and policy presently applied to the practice of other religions.
The Bureau of Prisons is presently preparing a policy statement on this subject. Additionally, it has established a special liaison team to work with the Office of Chaplaincy Services as a clearinghouse for Native concerns; modified prisoner placement and transfer criteria regarding the religious and cultural needs of Native prisoners; and permitted on a test-case basis sweat lodges, yuwipi ceremonies and possession of some items necessary to the practice of Native traditional religions.

The issue of use and possession of peyote is treated separately, however, because of its status as a controlled substance. The Task Force heard the views of traditional peyote religion and Native American Church leaders on this subject, who maintained that the peyote ceremonies could aid in rehabilitation and that Native American prisoners should have access to peyote roadmen, or ceremonial leaders. However, they took the position that peyote itself should not be brought into the prisons.

Examples of the problems faced by Native Americans in federal penal institutions and federally-funded state institutions are given tabular representation in Appendix C.

3. **Statutory Authorities for Administrative Actions**

5 USC 5550a (authorizes compensatory time off for federal employees for religious observances)

8 USC 1359 (exempts Canadian Natives from immigration laws)

25 USC 450 (Indian Self-Determination and Education Assistance Act of 1975 - allows for contracting of government programs to Indian tribes)

25 USC 1901 'Indian Child Welfare Act of 1978 - allows significant tribal direction in child custody and placement decisions)

29 USC 750 (allows tribes to establish rehabilitation programs for the disabled)

**Title IV of the 1978 amendments to the 1965 Older Americans Act** (funding provisions for senior centers on reservations allows for their use for Native American religious ceremonies under Title III of the Act)
IV. CONCLUSION

Speculative Possibilities

The American Indian Religious Freedom Act and the changes in federal policy which it mandates inevitably bring forth speculation regarding remote future possibilities that can be detrimental to the spirit of the law and to the subject as a whole. When the people of Taos Pueblo sought to restore their sacred Blue Lake area, forces opposing the restoration immediately began to speculate about possible commercial use of the heavily timbered lands. The return of Mount Adams to the Yakima Nation also spawned considerable speculation about the manner in which the Yakima people might use the land.

Generally, speculative questions regarding the Act's impact fall into three categories which can be easily identified: (1) possible future commercial use; (2) possible future controversy over minerals, commercial timber or water, which might be declared religious by Indians and Natives in an effort to seize control of the resources; and (3) possible future appropriation of Indian religious rites, ceremonies and substances by non-Indian groups. Although few facts can be found to demonstrate the viability of these fears, nevertheless, whenever the subject of protecting Native religious freedom and its exercise arises, these issues are raised in an attempt to both clarify and deter further action on the proposal.

A common characteristic of the speculative possibility is its abstract quality. No one points out specific locations which might be placed in jeopardy by guaranteeing religious freedom to Indians. What specific locations, mountains, rivers or valleys are being discussed when these issues are raised? Asking whether a broad and firm guarantee might pose future problems is simply rhetorical unless specific instances are made available as part of the inquiry. Neither traditional tribal nor any other religious groups are able to guarantee complete separation from controversy, unless they are given specific factual situations to which they can respond.
Another common characteristic of the speculative possibility is the Act's supposed national impact. Protecting the boundaries of state and church are certainly important, but to guarantee religious freedom to American Indians does not necessarily mean the establishment of traditional Native religions over and above other religions. All religious bodies face the possibility that some future action of the state may conflict directly with one or more of their beliefs. It is important to remember in this respect that traditional Native religions are not belief systems which require action in the abstract. Indian tribes and Native groups, as a matter of course, do not speculate on duties owed to either religion or the state without further consideration of the specific factual situation which might be encountered in the individual case. Thus, without venturing into comparison with any presently constituted religious body composed of non-Indians, it is possible to state that traditional Native religions have little chance of creating a national crisis in the church-state relationship.

Considering the three major categories of speculative questions outlined above, it is difficult to find a substantial reason for supposing that any would become critical factors inhibiting the enforcement of legislation, rules or regulations to guarantee American Indians freedom of religion. It is probably necessary, however, to review the three categories and discuss some of the possibilities which might be considered, and demonstrate the futility of speculating on remote possibilities.

Possible Future Commercial Use

The major sites of Native American religious ceremonials are already well known, and any future controversy must revolve around known sites, not any additional sites that might come into being. No tribes that are presently constituted and possess a living religious tradition can be expected to move beyond these ceremonies and rituals they are using already. The known shrines and sites originate in creation and migration traditions, which by their very nature are foreclosed for the remainder of this world.
Tribal religious people do not commemorate events of historical importance as patriotic religious shrines in a manner comparable to others. Thus, where non-Indians venerate Gettysburg, Arlington Cemetery and Mt. Rushmore as American shrines - giving rise to Robert Bellows' eloquent description of civil religion as a critical factor in the American emotional constitution - Indians do not venerate the Custer Battlefield, Sand Creek or any place that could be said to describe some of the most important incidents of recent history. It is the non-Indian who is just now discovering the religious value of places, and the danger of new shrines springing into being does not come from the Native American traditional people.

Commercialism with accompanying conflict already exists with respect to recreational expansion in several geographical areas of traditional religious significance to the Indian tribes and Native groups. In view of the contemporary demand for a changing, more energy-conscious life-style, approval of increased recreational development might be withheld for reasons having nothing to do with traditional Native religion, particularly in light of alternative sites which could be developed without injury to either the recreation industry or the Native shrines and sacred places.

American Indian resources have hardly been developed in non-sacred places on most reservations. The danger in discovering additional locations where development would be hampered by protecting the Indian use is minimal. But assuming that such a situation might occur, if the location is on a reservation, then Indians have the same rights as any other landowner and should not be forced to develop their lands. The best way to anticipate controversy and avoid it would be to survey the locations with real potential for conflict and begin planning now to confront these situations.
Native Efforts to Make Places Religious

Another commonly cited example is the instance in which Indians, discovering that a certain place has minerals, water or other resources, would declare the area to be religious and lay claim to it. This possibility projects behavior that can be anticipated from non-Indians to Indians, and is nothing more than a projected fear. No instance of this type of claim is known. Most Native people would summarily reject such an idea from the very beginning. Should such a situation occur, the motives behind the claim would be quite evident, and both Indians and non-Indians would act to prevent such a possibility from coming to fruition. The problems of evaluating such a claim do not differ inherently from those of other situations which call for the exposure of fraud.

Appropriation of Native Ceremonials by Non-Natives

In this area the responsibility lies wholly with the non-Natives to help Natives prevent non-Natives from exploiting Native culture. Too much of this exploitation now occurs with respect to Native history, dances, arts, crafts and songs; and most political bodies do nothing to prevent it. Sacred dances have been duplicated by non-Indian dance troupes, and this appropriation has been vigorously protested by Indians, with no visible results. Should non-Natives start to appropriate substances, costumes of particular religious significance or such specific materials as eagle feathers, Indians and Natives would act in concert with agencies to do as much as is legally possible to prevent such activities. It is not difficult to demonstrate that almost all Indian ceremonies, dances and songs originated in an event having the power and status of revelation by higher powers. Simply copying Native rituals is not practicing religion, as almost all theologians and historians of religion would testify. Indian replication of Christian ceremonials, for example, would not be within the Christian tradition, and would be identified as a very recent innovation, and traditional Native religions are entitled to the same recognition and protection.
Neither law nor religion sustains itself by refusing to act on the chance of remote possibilities that are raised by speculative ventures alone. The Constitution itself might not have been adopted or even written had the statesmen of those days refused to act because of the remote possibility that it would be misused by unknown future generations. Whether the Founding Fathers would now complain about the way public business is conducted is beside the point, since one cannot speak for personages long since departed. In the same manner, contemporary developments must confront contemporary and foreseeable conditions. They must not be subjected to remote possibilities with no factual structure to which one can respond.

Definition of Consulting Class

The American Indian Religious Freedom Act requires that administrative review occur in consultation with Native traditional religious leaders, with "Native" meaning American Indian, Aleut, Eskimo and Native Hawaiian people.

Important to the issue of consulting class under the Act are: 1) the definition of an American Indian; 2) the federal relationship to American Indian, Aleut, Eskimo and Native Hawaiian people and governments; and 3) the distinction, where it exists, between Native governments recognized by the United States and Native traditional governments, which may or may not be federally-recognized.

There are almost as many definitions of who is an Indian under federal law as there are statutes, programs or other reasons for defining an Indian. A common misconception among both Indians and non-Indians is that an Indian is a person who is one-fourth degree or more of Indian blood and a member of a federally-recognized tribe. This generalized definition, combining as it does a number of concepts, is not useful for purposes of the American Indian Religious Freedom Act.

The concept of federal recognition describes the political relationship between the United States and an Indian tribe. Recognition of a tribe by the Department of the Interior involves eligibility for federal services for Indians under a number of statutes, a trust relationship between the United States and tribes and preemption of much of the political power of the state on the tribe's reservation. All of these elements of federal recognition concern the status of the tribe itself as a political body and not necessarily that of individual Indians.
An individual Indian, on the other hand, may enjoy the legal status of an Indian in two basic ways: 1) the individual’s tribal membership, or citizenship, which is a political relationship between the individual and the tribe and for political purposes defined and controlled by the tribe; 2) an individual may be considered an Indian within a definition of eligibility established in a statute by the Congress for a particular purpose, such as eligibility for a service program created to benefit a class of Indians as specified in the statute. This latter kind of specific definition embodies the attention of Congress rather than the political membership of the tribe or the social and cultural characteristics of a individual tribe.

In fact, the tribal political definition and the Congressional statutory definition serve different purposes and may encompass different though overlapping groups. For example, a federal program may be designed to serve Indians of one-fourth or more degree of blood of federally-recognized tribes. Individuals of the tribes with highly restrictive membership requirements, one-half, for example, might have the blood quantum necessary to qualify for federal services, but not for membership if their blood quantum is between one-fourth and one-half. One tribe may require members to have been born on the reservation, making it possible to be a full-blood of that tribe and still not eligible for membership. In the case of tribes with more lenient membership requirements, individuals may be enrolled tribal members, but lacking one-fourth degree blood quantum, and ineligible for federal services.

A third purpose for defining an Indian concerns interests in individual and tribal property. An individual may be ineligible for both tribal membership and federal services but still own an interest in trust or restricted property and be subject to federal supervision in its management. Congress has defined the class of people eligible to share in a claims judgment, which may be substantially different from the contemporary tribal membership or reservation service population. Federal law may require that a person be allowed to participate in tribal property interests, even though the tribe has divested that person of tribal membership.

The above definitions are directed at the purposes for which the definitions are suited—political, property or services. None is suitable for the purposes of the American Indian Religious Freedom Act, which is designed to protect the cultural and religious interests of individual Native Americans and Indian tribes and Native groups as cultures, rather than simply as political entities. Perhaps the best approach to definition is to view the matter within the functional cultural context: individuals who are accepted as Indian in the community in which they live.
For the purposes of the American Indian Religious Freedom Act, the political relationships between the tribe and the United States, as governments, or between the tribe as a government and an individual Indian tribal citizen are clearly irrelevant, as is the eligibility of an individual Indian for a particular federal program. Instead, the relevant considerations would appear to be whether an Indian is sincerely attempting to exercise a first amendment right which is a matter of federal law and, where applicable, whether an individual Indian is authorized to perform a particular ceremony or possess a certain sacred object, which is a matter of tribal law or custom.

As stated at the outset of this report, the status of the United States relationship with Native Hawaiian and Alaska Native peoples is under Congressional jurisdiction at present and subject to change. This is also the case with those American Indian tribes whose relationship with the United States has been the subject of a standing act of termination.

This relationship between any non-federally-recognized Native group and the United States could change in the future as a result of actions in any of the three branches of government. In 1978, the Department of the Interior undertook the federal acknowledgement project, in recognition of the possibility that there are tribal groups who should receive, but do not, the benefit of the special federal-Indian relationship.

Under the administrative recognition process, the essential factors in determining which Indian groups will be acknowledged as Indian tribes are: whether the group has been identified as an Indian tribe on a substantially continuous basis in historical times to the present; and whether the tribe has inhabited a specific area and has maintained tribal political influence or authority over its members. The group must show that it is composed principally of persons who are not members of another Indian tribe, and it cannot be a tribe which has been terminated by Act of Congress.

At present, there are nearly 500 governmental entities, including Indian tribes, pueblos, bands, rancherias, communities and Alaska Native villages and corporations, which are recognized as eligible for BIA trust services. Thus far, over fifty Indian groups have petitioned the Secretary for recognition as Indian tribes.
Over the next ten years, this administrative process, coupled with Congressional considerations of the ongoing Native Hawaiian and Alaska Native claims and relationships, will have clarified the presently confused definitions of tribe, Native and Indian. For federal agencies in their consultative processes, this means that many Native groups not presently "recognized" may be in this category soon, while few now included will be excluded in the future.

Tribal and Native governing bodies can be expected to alter somewhat their structure and relationship to their traditional religious leaders over the coming years, as federal policy continues to acknowledge that culture and traditions are the fabric of tribal life.

Not all societies are structured in the same way and there is a considerable variety in their institutions, their concepts and their organization categories. Federal policies to "civilize" the Indian people have restricted the free exercise of Indian religions, frequently due to an inability to understand the integral nature of Indian cultures and the pervasive role of religion in Indian life. A persistent theme in the history of federal Indian policy has been to introduce institutions and procedures to Indian tribes which would appear to be Indian versions of civilized arts of government, but which had the effect of fragmenting Indian cultures and imposing unsuitable structures on otherwise integrated cultures.

Certainly, the changed circumstances of reservation life may have dictated some adaptation on the part of Indian cultures. The hindsight of history teaches that lasting and effective adaptations cannot be dictated from outside the culture, but can only emerge from within as a natural process which draws on the inner strengths of the culture and its people.

Historically, federal agencies have sought to undermine traditional Indian means of self-government and impose non-Indian forms and procedures. These have fragmented the authority and effectiveness of the traditional cultural means of bringing about social harmony through a combination of religious and political institutions. To a large degree, Indian tribes have adopted constitutional forms of government, not as a natural adaptation to new circumstances in their lives, but out of a conviction that only a constitutional form of government would have a hope of achieving any semblance of recognition by federal and state governments.
In a number of cases of federally-recognized tribes, the adoption of a constitutional form of tribal government resulted in the concentration of political power in the hands of a more accommodating and acculturated segment of the tribal population. At the same time, the balance of the tribe found itself unable to participate in tribal self-government, because of religious beliefs proscribing the style and pattern of behavior required for successful manipulation of a constitutional representative form of government.

In many instances, then, federal policy has created a political stalemate within the Indian tribes. The federal government recognizes and deals exclusively with the constitutional form of government, which controls tribal land and resources, formal political institutions, law-and-order systems and service delivery agencies. At the same time on many reservations, the effective authority in the life of the tribe—filling most of the traditional roles of religious, political and social control—is still an outgrowth of the traditional Indian culture, which makes little distinction between religion and other aspects of human life. In these traditional cultures, all laws are spiritual (in the sense of life and substance) and form the foundation of government; whereas, in western cultures, laws are separate from religion (in the sense of prayer and sometimes obligation) and church matters remain distinct from government.

As long as this stalemate and fragmented self-government is allowed to continue, Indian people will be denied the effective right to adapt themselves to modern circumstances in a way that is appropriate to their beliefs. Real progress in dealing with social and economic problems will be frustrated, and the reality of tribal constitutional government will be that it is more accountable to the federal government than to its own people.

In recognizing these facts, one does not denigrate the sincerity, leadership, honesty or sacrifice of generations of elected tribal officials who have tried to assure a semblance of tribal survival in the face of the realities of past federal policies that placed premiums on assimilation and penalties on cultural distinctiveness. It is consistent with the intent of Congress in passing the American Indian Religious Freedom Act to recognize that a more flexible approach to tribal self-government may well result in the evolution of forms of government which are adapted to the needs of the present day, while still consistent with fundamental Indian religious beliefs.
As the fiftieth year of the landmark Indian Reorganization Act nears, it is an opportune time for tribal leaders, appropriate agencies and the Congress to closely examine the extent to which the present forms and structures of tribal governments have been imposed from the outside and are inappropriate to the needs and religious beliefs of the Indian cultures and individuals which they now represent. Such scrutiny would have the intention of increasing flexibility in federal policy and in the structure of tribal governments, allowing for the full flowering of these cultures which have contributed so much to our present system of government.

Religious Freedom - Future Steps

Today, American society is making rapid gains in understanding as it confronts various problems. A multitude of legislation within the last two decades has served notice that the values of the majority are breaking down artificial barriers and now approaching a holistic view, comparable in most respects to the tradition carried forward by the American Indian community. But the potential for damage, albeit unwitting, to the Indian religious traditions remains the same as it always has been. Decisions by the people designated and authorized to administer institutional programs and enforce rules, regulations and statutes are not always grounded in a sophisticated understanding of the issues involved. More often, they reflect the popular conceptions of the time and in many instances these conceptions are remnants of past beliefs, not expressions of the most intelligent or progressive thinking of the day.

Many issues raised by the passage of the American Indian Religious Freedom Act reflect the prejudices and rigidity of past eras and not the matured understanding which characterizes contemporary America. Behind many objections may lurk the suspicion which the unfamiliar invokes in the mind before it comes to a more perfect understanding. It is clear from the direction of growth in understanding that has characterized American society in this century and from the adoption of a specific statement on American Indian religious freedom by the Congress, that a policy of removing barriers to Indian religious freedom is perceived as the next step in the growth of American religious freedom and political maturity. Such a step synthesizes progress already made in preventing not simply the establishment of a denomination under the Constitution, but the entrenchment of a particular cultural interpretation with the longstanding traditions of the indigenous peoples.
If, as Mr. Justice Holmes once remarked, the Fourteenth Amendment did not enact Mr. Herbert Spencer's Social Statistics, neither did it nor the Constitution entrench organizational and institutional participation as the criteria for identifying, respecting, protecting and understanding religious activities. Instead of the presumption that religious activities must occur in familiar forms and in restricted patterns of behavior, federal officials must come to recognize the integrity of internal discipline which the Indian tribal traditions emphasize. The requirement is merely a change of attitude from the negative prohibition on behavior because other groups do not follow the same procedures to a positive encouragement of allowing Indians the freedom of expression critical to the performance of their ceremonies.

In the future, as in the past, there will be mistakes in the interpretation of laws, rules and regulations and a certain degree of friction between misinformed federal officials and practitioners of the Indian religions. Past experience has shown that, when properly informed as to the importance of specific practices, all branches of the federal government make every effort to support and protect the practice of Indian religion.

In summary, the American Indian Religious Freedom Act is a major and positive step in protecting Indian religious activities from mistaken or thoughtless interference. It does not constitute the establishment of a religion. The premises of Native tribal religions differ so fundamentally from the religions of the majority in perspective and practice that the traditional dangers against which the establishment clause guards do not exist. Although past injustices have been visited upon practitioners of Native tribal religions, for the most part there has not been a systematic suppression of Indian religions because they were religions, and the injustices have been the product of a broader misapprehension of the nature of culture and society. Moving now to adjust attitudes and viewpoints to support the formal protection of tribal religions is a further step in the maturing process which has proven so beneficial to American society in this century.