

103^D CONGRESS
1ST SESSION

S. 1021

To assure religious freedom to Native Americans.

IN THE SENATE OF THE UNITED STATES

MAY 25 (legislative day, APRIL 19), 1993

Mr. INOUE (for himself, Mr. BAUCUS, Mr. CAMPBELL, Mr. FEINGOLD, Mr. HATFIELD, Mr. PELL, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To assure religious freedom to Native Americans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Native American Free Exercise of Religion Act of 1993”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Policy.
Sec. 3. Definitions.

TITLE I—PROTECTION OF SACRED SITES

Sec. 101. Findings.
Sec. 102. Federal land management; use and preservation.
Sec. 103. Notice.
Sec. 104. Consultation.

- Sec. 105. Burden of proof.
- Sec. 106. Tribal authority over Native American religious sites on Indian lands.
- Sec. 107. Application of other laws.
- Sec. 108. Confidentiality.
- Sec. 109. Criminal sanctions.

TITLE II—TRADITIONAL USE OF PEYOTE

- Sec. 201. Findings.
- Sec. 202. Traditional use of peyote.

TITLE III—PRISONERS' RIGHTS

- Sec. 301. Rights.

TITLE IV—RELIGIOUS USE OF EAGLES AND OTHER ANIMALS AND PLANTS

- Sec. 401. Religious use of eagles.
- Sec. 402. Other animals and plants.

TITLE V—JURISDICTION AND REMEDIES

- Sec. 501. Jurisdiction and remedies.

TITLE VI—MISCELLANEOUS

- Sec. 601. Savings clause.
- Sec. 602. Severability.
- Sec. 603. Authorization of appropriations.
- Sec. 604. Effective date.

1 SEC. 2. POLICY.

2 It is the policy of the United States, in furtherance
 3 of the policy established in the joint resolution entitled
 4 “Joint Resolution American Indian Religious Freedom”,
 5 approved August 11, 1978 (42 U.S.C. 1996), to protect
 6 and preserve the inherent right of any Native American
 7 to believe, express, and exercise his or her traditional reli-
 8 gion, including, but not limited to, access to any Native
 9 American religious site, use and possession of sacred ob-
 10 jects, and the freedom to worship through ceremonials and
 11 traditional rites.

1 **SEC. 3. DEFINITIONS.**

2 For the purposes of this Act, the following definitions
3 shall apply:

4 (1) AGGRIEVED PARTY.—The term “aggrieved
5 party” means any Native American practitioner, Na-
6 tive American traditional leader, Indian tribe, or Na-
7 tive Hawaiian organization as defined by this Act.

8 (2) FEDERAL AGENCY.—The term “Federal
9 agency” means any department, agency, or instru-
10 mentality of the Federal Government.

11 (3) FEDERAL OR FEDERALLY ASSISTED UN-
12 DERTAKING.—The term “Federal or federally as-
13 sisted undertaking” means any regulation relating to
14 or any project, activity, or program pertaining to the
15 management, use, or preservation of land (including
16 continuing and new projects, activities, or programs)
17 which is funded in whole or in part by, or under the
18 direct or indirect jurisdiction of, a Federal agency,
19 including—

20 (A) those carried out by or on behalf of the
21 agency;

22 (B) those carried out with Federal finan-
23 cial assistance;

24 (C) those requiring a Federal permit, li-
25 cense or approval; and

1 (D) those subject to State regulation ad-
2 ministered pursuant to a delegation or approval
3 by a Federal agency.

4 The term “Federal or federally assisted undertak-
5 ings” does not include regulations, projects, activi-
6 ties, or programs operated, approved, or sponsored
7 by Indian tribes, including, but not limited to, those
8 projects, activities, or programs which are funded in
9 whole or in part by Federal funds pursuant to con-
10 tract, grant or agreement, or which require Federal
11 permits, licenses or approvals.

12 (4) GOVERNMENTAL AGENCY.—The term “gov-
13 ernmental agency” means any agency, department,
14 or instrumentality of—

15 (A) the United States; or

16 (B) a State, in the case of a Federal or
17 federally assisted undertaking described in
18 paragraph (3)(D).

19 The term “governmental agency” does not include
20 an agency, department, or instrumentality of an
21 Indian tribe.

22 (5) INDIAN.—The term “Indian” means—

23 (A) an individual of aboriginal ancestry
24 who is a member of an Indian tribe,

1 (B) an individual who is an Alaska Native,
2 or

3 (C) in the case of California Indians, an
4 individual who meets the definition in section
5 809(b) of the Indian Health Care Improvement
6 Act (25 U.S.C. 1679(b)), except that an Indian
7 community need not be served by a local pro-
8 gram of the Indian Health Service in order to
9 qualify as an Indian community for purposes of
10 this definition.

11 (6) INDIAN LANDS.—The term “Indian lands”
12 means all lands within the limits of any Indian res-
13 ervation; public domain Indian allotments; all other
14 lands title to which is either held in trust by the
15 United States for the benefit of any Indian tribe or
16 individual or held by any Indian tribe or individual
17 subject to restriction by the United States against
18 alienation; all dependent Indian communities; and all
19 fee lands owned by an Indian tribe.

20 (7) INDIAN TRIBE.—The term “Indian tribe”
21 means—

22 (A) any tribe, band, nation, pueblo, or
23 other organized group or community of Indians,
24 including any Alaska Native village (as defined
25 in, or established pursuant to, the Alaska Na-

1 tive Claims Settlement Act (43 U.S.C. 1601 et
2 seq.)), which is recognized as eligible for the
3 special programs and services provided by the
4 United States to Indians because of their status
5 as Indians,

6 (B) any Indian group that has been for-
7 mally recognized as an Indian tribe by a State
8 legislature or by a State commission or similar
9 organization legislatively vested with State trib-
10 al recognition authority,

11 (C) any Indian tribe whose federally recog-
12 nized status has been terminated, and

13 (D) any non-federally recognized tribe that
14 has—

15 (i) filed a petition for acknowledge-
16 ment with the Branch of Federal Acknowl-
17 dgement of the Bureau of Indian Affairs
18 of the Department of the Interior or is the
19 subject of pending legislation in the Con-
20 gress seeking federally recognized status,
21 and

22 (ii) is recognized as an Indian tribe by
23 other Indian tribes, communities or
24 groups.

1 The definition contained in subparagraph (D)
2 shall not apply if the Department of the Inte-
3 rior has acted to deny such tribe's petition for
4 acknowledgement and all appeals of the Depart-
5 ment's determination have been exhausted and
6 have been decided in support of the Depart-
7 ment's determination.

8 (8) LAND.—The terms “land”, “lands”, or
9 “public lands” mean surface and subsurface land
10 within the jurisdiction of the United States or the
11 respective States, including submerged land of any
12 kind or interest therein and all water and waterways
13 occupying, adjacent to, or running through the land.

14 (9) NATIVE AMERICAN.—The term “Native
15 American” means any Indian or Native Hawaiian.

16 (10) NATIVE AMERICAN PRACTITIONER.—The
17 term “Native American practitioner” means—

18 (A) any Native American who practices a
19 Native American religion, or

20 (B) any Native Hawaiian with an obliga-
21 tion to protect a Native Hawaiian religious site,
22 or any Native Hawaiian who practices a Native
23 Hawaiian religion or engages in a Native
24 Hawaiian ceremonial or ritual undertaking.

1 (11) NATIVE AMERICAN RELIGION.—The term
2 “Native American religion” means any religion—

3 (A) which is practiced by Native Ameri-
4 cans, and

5 (B) the origin and interpretation of which
6 is from within a traditional Native American
7 culture or community.

8 (12) NATIVE AMERICAN RELIGIOUS SITE.—The
9 term “Native American religious site” means any
10 place or area, including, but not limited to, any
11 geophysical or geographical area or feature—

12 (A) which is sacred to a Native American
13 religion;

14 (B) where Native American practitioners
15 are required by their religion to gather, harvest,
16 or maintain natural substances or natural prod-
17 ucts for use in Native American religious cere-
18 monies or rituals or for spiritual purposes, in-
19 cluding all places or areas where such natural
20 substances or products are located; or

21 (C) which is utilized by Native American
22 religious practitioners for ceremonies, rituals, or
23 other spiritual practices.

1 (13) NATIVE AMERICAN TRADITIONAL LEAD-
2 ER.—The term “Native American traditional leader”
3 means any Native American who—

4 (A) is recognized by an Indian tribe, Na-
5 tive Hawaiian organization, or Native American
6 traditional organization as being responsible for
7 performing cultural duties relating to the cere-
8 monial or religious traditions of the tribe or tra-
9 ditional organization, or

10 (B) exercises a leadership role in an Indian
11 tribe, Native Hawaiian organization or Native
12 American traditional organization based upon
13 its cultural, ceremonial, or religious practices.

14 (14) NATIVE HAWAIIAN.—The term “Native
15 Hawaiian” means any individual who is a descend-
16 ant of the aboriginal Polynesian people who, prior to
17 1778, occupied and exercised sovereignty and self-
18 determination in the area that now comprises the
19 State of Hawaii.

20 (15) NATIVE HAWAIIAN ORGANIZATION.—The
21 term “Native Hawaiian organization” means any or-
22 ganization which is composed primarily of Native
23 Hawaiians, serves and represents the interests of
24 Native Hawaiians and whose members—

1 (A) practice a Native American religion or
2 conduct traditional ceremonial rituals, or

3 (B) utilize, preserve and protect Native
4 American religious sites.

5 (16) STATE.—The term “State” means any
6 State of the United States and any and all political
7 subdivisions thereof.

8 **TITLE I—PROTECTION OF**
9 **SACRED SITES**

10 **SEC. 101. FINDINGS.**

11 The Congress finds that—

12 (1) throughout American history, the free exer-
13 cise of traditional Native American religions has
14 been intruded upon, interfered with, and, in some in-
15 stances, banned by the Federal Government and the
16 devastating impact of these governmental actions
17 continues to the present day;

18 (2) the religious practices of Native Americans
19 are integral parts of their cultures, traditions and
20 heritages and greatly enhance the vitality of Native
21 American communities and tribes and the well-being
22 of Native Americans in general;

23 (3) as part of its historic trust responsibility,
24 the Federal Government has the obligation to enact
25 enforceable Federal policies which will protect Native

1 American community and tribal vitality and cultural
2 integrity, and which will not inhibit or interfere with
3 the free exercise of Native American religions;

4 (4) just as other religions consider certain sites
5 in other parts of the world to be sacred, many Na-
6 tive American religions hold certain lands or natural
7 formations in the United States to be sacred, and,
8 in order for those sites to be in a condition appro-
9 priate for religious use, the physical environment,
10 water, plants and animals associated with those sites
11 must be protected;

12 (5) such Native American religious sites are an
13 integral and vital part of, and inextricably inter-
14 twined with, many Native American religions and
15 the religious practices associated with such religions,
16 including the ceremonial use and gathering, harvest-
17 ing, or maintaining of natural substances or natural
18 products for those purposes;

19 (6) many of these Native American religious
20 sites are found on lands which were part of the ab-
21 original territory of the Indians but which now are
22 held by the Federal Government, or are the subject
23 of Federal or federally assisted undertakings;

24 (7) lack of sensitivity to, or understanding of,
25 Native American religions on the part of Federal

1 agencies has resulted in the absence of a coherent
2 policy for the protection of Native American reli-
3 gious sites and the failure by Federal agencies to
4 consider the impacts of Federal and federally as-
5 sisted undertakings upon Native American religious
6 sites;

7 (8) the Supreme Court of the United States, in
8 the case of *Lyng v. Northwest Indian Cemetery As-*
9 *sociation*, 485 U.S. 439 (1988) ruled that the free
10 exercise clause of the First Amendment does not re-
11 strict the Government's management of its lands,
12 even if certain governmental actions would infringe
13 upon or destroy the ability to practice religion, so
14 long as the Government's action does not compel in-
15 dividuals to act in a manner which is contrary to
16 their religious beliefs;

17 (9) the holding in the case of *Lyng v. North-*
18 *west Indian Cemetery Association* creates a chilling
19 and discriminatory effect on the free exercise of
20 Native American religions;

21 (10) the Supreme Court of the United States,
22 in the case of *Employment Division v. Smith*, 494
23 U.S. 872 (1990) extended the *Lyng* doctrine to all
24 "valid and neutral laws of general applicability" not
25 intended to specifically infringe upon religious prac-

1 tice and held that the First Amendment does not ex-
2 empt practitioners who use peyote in Native Amer-
3 ican religious ceremonies from complying with “neu-
4 tral” State laws prohibiting peyote use, notwith-
5 standing the chilling effect of such laws upon their
6 right to freely practice their religion;

7 (11) Native Hawaiians have distinct rights
8 under Federal law as beneficiaries of the Hawaiian
9 Homes Commission Act, 1920 (42 Stat. 108) and
10 the Act entitled “An Act to provide for the admis-
11 sion of the State of Hawaii into the Union”,
12 approved March 18, 1959 (73 Stat. 4);

13 (12) the United States trust responsibility for
14 lands set aside for the benefit of Native Hawaiians
15 has never been extinguished;

16 (13) the Federal policy of self-determination
17 and self-governance is recognized to extend to all
18 Native Americans;

19 (14) Congress has enacted numerous laws
20 which regulate and restrict the discretion of Federal
21 agencies for the sake of environmental, historical,
22 economic, and cultural concerns, but has never en-
23 acted a judicially enforceable law comparably re-
24 stricting agency discretion for the sake of the site-

1 specific requirements associated with the free exer-
2 cise of Native American religions;

3 (15) the lack of a judicially enforceable Federal
4 law and of a coherent Federal policy to accommo-
5 date the uniqueness of Native American religions
6 imposes unique and unequal disadvantages on Na-
7 tive American religions, gravely restricting the free
8 exercise of Native American religions and impairing
9 the vitality of Native American communities and
10 Indian tribes; and

11 (16) Congress has the authority to enact such
12 a law pursuant to section 8, Article I, of the Con-
13 stitution and the First and Fourteenth Amend-
14 ments.

15 **SEC. 102. FEDERAL LAND MANAGEMENT; USE AND PRESER-**
16 **VATION.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of law each Federal agency shall manage any lands
19 under its jurisdiction in a manner that complies with the
20 provisions of this Act.

21 (b) PLANNING PROCESS.—Each Federal agency in-
22 volved in Federal or federally assisted undertakings, in-
23 cluding, but not limited to, activities pursuant to the Na-
24 tional Forest Management Act (16 U.S.C. 1600 et seq.),
25 and the Federal Land Policy and Management Act (43

1 U.S.C. 1701 et seq.), shall as part of its planning proc-
2 ess—

3 (1) consult with Indian tribes and Native Ha-
4 waiian organizations identified pursuant to section
5 103, as well as Native American traditional leaders
6 who can be identified by the agency to have an inter-
7 est in the land in question;

8 (2) provide for notice of all Federal or federally
9 assisted undertakings with the potential to have an
10 impact on certain specified lands to an Indian tribe,
11 Native Hawaiian organization, or Native American
12 traditional leader if such tribe, organization, or lead-
13 er places the agency on notice, in writing, that it is
14 interested in receiving notice of all such undertak-
15 ings;

16 (3) ensure that its land management plans are
17 consistent with the provisions and policies of this
18 Act; and

19 (4) maintain the confidentiality of specific de-
20 tails of a Native American religion or the signifi-
21 cance of a Native American religious site to that re-
22 ligion in accordance with the procedures specified in
23 sections 107 and 108 of this Act.

24 (c) ACCESS.—

1 (1) IN GENERAL.—Unless the President deter-
2 mines that national security concerns are directly af-
3 fected, in which case the provisions of section 105
4 shall apply, Native American practitioners shall be
5 permitted access to Native American religious sites
6 located on Federal lands at all times, including the
7 right to gather, harvest, or maintain natural sub-
8 stances or natural products for Native American
9 religious purposes.

10 (2) PROHIBITION AGAINST VEHICLES.—Para-
11 graph (1) does not authorize the use of motorized
12 vehicles or other forms of mechanized transport in
13 roadless areas where such use is prohibited by law,
14 nor affect the application of the Endangered Species
15 Act, except as provided for by section 501(b) of this
16 Act.

17 (3) TEMPORARY CLOSING.—Upon the request
18 of an Indian tribe, Native Hawaiian organization, or
19 Native American traditional leader, the Secretary of
20 the department whose land is involved may from
21 time to time temporarily close to general public use
22 one or more specific portions of Federal land in
23 order to protect the privacy of religious cultural ac-
24 tivities in such areas by Native Americans. Any such
25 closure shall be made so as to affect the smallest

1 practicable area for the minimum period necessary
2 for such purposes.

3 (d) REGULATIONS.—The Secretary of the Interior, in
4 consultation with Indian tribes and Native Hawaiian orga-
5 nizations, shall promulgate uniform regulations relating
6 to—

7 (1) Federal planning processes pertaining to
8 the management, use or preservation of land; and

9 (2) notice to and consultation with Indian
10 tribes, Native Hawaiian organizations, Native Amer-
11 ican traditional leaders and Native American practi-
12 tioners as required by sections 103 and 104 of this
13 Act.

14 The regulations shall be sufficiently flexible to enable con-
15 sultation to meet the unique needs of Indian tribes, Native
16 Hawaiian organizations, Native American traditional lead-
17 ers and Native American practitioners.

18 **SEC. 103. NOTICE.**

19 (a) IDENTIFICATION OF LANDS BY SECRETARY.—

20 (1) IN GENERAL.—For the purpose of assuring
21 that a governmental agency properly determines
22 whether a proposed undertaking will have an impact
23 on the exercise of a Native American religion and
24 which affected parties should be provided notice of
25 a proposed undertaking, the Secretary of the Inte-

1 rior, in conjunction with tribal governments, shall
2 identify land areas with which an Indian tribe has
3 aboriginal, historic, or religious ties.

4 (2) ONGOING IDENTIFICATION.—Paragraph (1)
5 does not preclude a tribal government from continu-
6 ing to conduct an ongoing identification process,
7 which may supplement the process required by this
8 subsection.

9 (b) DUTY OF AGENCIES.—

10 (1) TRIBAL LANDS.—Before a governmental
11 agency proceeds on lands identified pursuant to sub-
12 section (a) with any Federal or federally assisted un-
13 dertaking that may have an impact on the exercise
14 of a Native American religion, the agency shall pro-
15 vide a geographical description of the lands affected
16 by the undertaking (including information on metes
17 and bounds of the lands in question, where avail-
18 able) and a description of the undertaking to—

19 (A) the Secretary of the Interior;

20 (B) each Indian tribe which has aboriginal,
21 historic, or religious ties to the land affected by
22 a proposed Federal or federally assisted under-
23 taking; and

24 (C) each Native American traditional lead-
25 er known by the agency who may have an inter-

1 est in the land affected by the proposed under-
2 taking.

3 (2) LANDS IN HAWAII.—Before a governmental
4 agency proceeds on lands in the State of Hawaii
5 with any Federal or federally assisted undertaking
6 that may have an impact on the exercise of a Native
7 American religion, the agency shall publish a geo-
8 graphical description of the lands affected by the un-
9 dertaking (including information on metes and
10 bounds of lands in question, where available) and a
11 description of the undertaking in a newspaper of
12 general circulation for a period of 2 weeks.

13 (3) DOCUMENTATION.—The governmental
14 agency shall fully document the efforts made to pro-
15 vide the information to Indian tribes, Native Hawai-
16 ian organizations and Native American traditional
17 leaders as required by this section or any applicable
18 regulations, guidelines, or policies.

19 (c) NOTICE BY TRIBE.—

20 (1) IN GENERAL.—Within 90 days of receiving
21 the notice provided under subsection (b), or within
22 the time limit of any comment period permitted or
23 required by any Federal law applicable to the Fed-
24 eral or federally assisted undertaking, whichever is
25 later, an Indian tribe, Native Hawaiian organization,

1 or Native American traditional leader invoking the
2 protection of this title may provide notice to the gov-
3 ernmental agency whether the proposed Federal or
4 federally assisted undertaking may result in changes
5 in the character or use of one or more Native Amer-
6 ican religious sites which are located on lands with
7 which the Indian tribe or Native Hawaiian organiza-
8 tion has aboriginal, historic, or religious ties.

9 (2) NO DUTY TO RESPOND.—Paragraph (1)
10 does not impose a duty upon any Indian tribe, Na-
11 tive Hawaiian organization, or Native American tra-
12 ditional leader to respond to any notice under this
13 section.

14 (3) ADDITIONAL INFORMATION.—The Indian
15 tribe, Native Hawaiian organization, or Native
16 American traditional leader acting pursuant to para-
17 graph (1) may also provide the agency with informa-
18 tion as to any Native American traditional leaders or
19 practitioners who should be included in the notice
20 and consultation requirements of this section and
21 section 104.

22 (d) 90-DAY PROHIBITION AGAINST ACTIVITY FOL-
23 LOWING NOTICE TO TRIBES.—No action to approve, com-
24 mence, or complete a Federal or federally assisted under-
25 taking that is subject to this section shall be taken by a

1 governmental agency for a period of 90 days following the
2 date on which notice is provided under subsection (b) to
3 Indian tribes and Native Hawaiian organizations unless
4 or until—

5 (1) the matter is resolved pursuant to the pro-
6 cedures of this Act;

7 (2) the period of consultation required under
8 section 104 has been completed; or

9 (3) all parties entitled to such notice consent to
10 a shorter time period.

11 **SEC. 104. CONSULTATION.**

12 (a) IN GENERAL.—

13 (1) EFFECT OF NOTICE BY TRIBE.—If an In-
14 dian tribe, Native Hawaiian organization, or Native
15 American traditional leader indicates in writing
16 within 90 days of receiving notice under section 102,
17 or within the time limit of any comment period per-
18 mitted or required by any Federal law applicable to
19 the Federal or federally assisted undertaking, which-
20 ever is later, that a Federal or federally assisted un-
21 dertaking will or may alter or disturb the integrity
22 of Native American religious sites or the sanctity
23 thereof, or interfere with the access thereto, or ad-
24 versely impact upon the exercise of a Native Amer-
25 ican religion or the conduct of a Native American re-

1 religious practice, except as provided in paragraph (2),
2 the governmental agency engaged in the Federal or
3 federally assisted undertaking shall immediately dis-
4 continue such undertaking until the agency performs
5 the duties described in paragraphs (3) and (4).

6 (2) INADVERTENT DISCOVERY.—If in the proc-
7 ess of a Federal or federally assisted undertaking, a
8 Native American religious site is inadvertently dis-
9 covered, the governmental agency engaged in the un-
10 dertaking shall immediately discontinue such under-
11 taking until the agency performs the duties set forth
12 in paragraphs (3) and (4).

13 (3) CONSULTATION.—The governmental agency
14 shall consult with any interested party, including
15 Native American practitioners with a direct interest
16 in the Native American religious site in question,
17 concerning the nature of the adverse impact and al-
18 ternatives that would minimize or prevent an ad-
19 verse impact, including any alternatives identified by
20 an Indian tribe, Native Hawaiian organization, or
21 Native American traditional leader that has filed a
22 written objection under this subsection.

23 (4) EVALUATION OF COMMENTS.—The govern-
24 mental agency shall prepare and make available to
25 the tribe, organization or traditional leader, as well

1 as Native American practitioners who have been in-
2 volved in the consultation process, a document evalu-
3 ating and responding to the comments received. The
4 document shall include an analysis of adverse im-
5 pacts upon the site and the use thereof and an anal-
6 ysis of alternatives to the proposed action, including
7 any alternative offered by an Indian tribe, Native
8 Hawaiian organization, or Native American tradi-
9 tional leader submitting a written objection under
10 paragraph (1) and a no action alternative.

11 (5) ADDITIONAL INFORMATION.—In any case
12 where the governmental agency is also required to
13 prepare a document analyzing the impact of its un-
14 dertaking or decision pursuant to the National Envi-
15 ronmental Policy Act (43 U.S.C 4321 et seq.), the
16 National Historic Preservation Act (16 U.S.C. 470
17 et seq.) or any other applicable law, such agency
18 shall incorporate the analysis required by this sec-
19 tion into the contents of the document.

20 (b) CASES WHERE SECRECY IS REQUIRED.—

21 (1) IN GENERAL.—In the case of those Indian
22 tribes whose traditional religious tenets prohibit dis-
23 closure of information concerning their Native Amer-
24 ican religious sites or religious beliefs or practices,
25 and mandate secrecy and internal sanctions to en-

1 force those prohibitions, and where the tribal govern-
2 ment of the affected Indian tribe so certifies and
3 invokes this subsection—

4 (A) the tribal government shall not be re-
5 quired to reveal the location of the Native
6 American religious site or in what manner the
7 undertaking would have an impact on the site
8 or any information concerning their religious
9 beliefs or practices;

10 (B) the tribal government shall not be re-
11 quired to explain in what manner any proposed
12 alternative is or is not less intrusive upon the
13 adversely affected Native American religious
14 practice or religious sites which may be ad-
15 versely affected than the original proposed Fed-
16 eral or federally assisted undertaking; and

17 (C) in engaging in consultation and pre-
18 paring any document required by this Act, the
19 governmental agency shall not include an analy-
20 sis of adverse impacts upon the site or the use
21 thereof or the Indian tribe's religious beliefs
22 and practices.

23 (2) AFTER CONSULTATION.—If after consulta-
24 tion—

1 (A) the governmental agency agrees to
2 pursue a less intrusive alternative proposed by
3 the Indian tribe or some other alternative which
4 the Indian tribe agrees would be less intrusive;
5 or

6 (B) if no alternative is identified which the
7 Indian tribe agrees is less intrusive;
8 the governmental agency shall be deemed to have
9 met its obligation to consider and pursue the least
10 intrusive alternative under this Act in regard to the
11 objection raised to the Federal or federally assisted
12 undertaking by the Indian tribe invoking this sub-
13 section.

14 (c) RULE OF CONSTRUCTION.—Where the provisions
15 of subsection (b) have been invoked, those requirements
16 shall control in all circumstances and shall supersede any
17 conflicting provisions in this Act or any other provision
18 of law.

19 (d) DISCLOSURE REQUIRED.—Within 30 days of re-
20 ceipt of any written objection under subsection (a), the
21 governmental agency proposing the Federal or federally
22 assisted undertaking which gave rise to that notice shall
23 disclose to and shall make available to the objecting party,
24 all plats, maps, plans, specifications, socioeconomic, envi-
25 ronmental, scientific, archaeological or historical studies,

1 and comments and information in that agency's possession
2 bearing on said undertaking.

3 (e) SPECIAL RULE FOR PUEBLOS REGARDING
4 STANDING.—In the case of a proposed Federal or feder-
5 ally assisted undertaking affecting the management, use,
6 or preservation of public land involving potential adverse
7 religious impacts on any of the Indian pueblos of New
8 Mexico or any of their religious sites, the only party with
9 standing to file an objection or participate in consultation
10 under this section, or to file an action under section 105
11 or 501, shall be the governor of the affected pueblo or
12 the governor's designee.

13 **SEC. 105. BURDEN OF PROOF.**

14 (a) IN GENERAL.—

15 (1) BURDEN ON AGGRIEVED PARTY.—Except as
16 provided in subsection (b), in any action brought
17 under section 501(a), the aggrieved party shall have
18 the burden of proving that the Federal or federally
19 assisted undertaking or the State action having an
20 impact upon the management, use, or preservation
21 of public land, is posing or will pose a substantial
22 threat of undermining or frustrating a Native Amer-
23 ican religion or a Native American religious practice.

24 (2) BURDEN ON AGENCY.—If the aggrieved
25 party meets its burden of proof under paragraph

1 (1), the Federal agency or State shall have the bur-
2 den of proving that the governmental interest in the
3 Federal or federally assisted undertaking or the
4 State action is compelling.

5 (3) LEAST INTRUSIVE COURSE OF ACTION.—If
6 the aggrieved party fails to meet its burden of proof
7 under paragraph (1), but establishes that the Fed-
8 eral or federally assisted undertaking or the State
9 action will alter or disturb the integrity of a Native
10 American religious site or the sanctity thereof, or
11 will have an adverse impact upon the exercise of a
12 Native American religion or the conduct of a Native
13 American religious practice, or if the Federal agency
14 or State meets its burden of proof in paragraph (2),
15 the Federal agency or State shall have the burden
16 of proving that it has selected the course of action
17 least intrusive on the Native American religious site
18 or the Native American religion or religious practice.

19 (b) CASES WHERE SECRECY IS REQUIRED.—In the
20 case of any proceeding involving a Native American reli-
21 gious site or associated religious practices of an Indian
22 tribe described in section 104(b), if the Indian tribe ob-
23 jects to the Federal or federally assisted undertaking or
24 State action based upon any of the grounds specified in
25 section 104(a), the provisions of section 104(b) shall apply

1 and the Federal agency or State shall have the burden
2 of proving that—

3 (1) it has a compelling interest in pursuing the
4 Federal or federally assisted undertaking or the
5 State action as originally proposed;

6 (2) it is essential that the Federal agency's or
7 State's compelling interest be furthered as originally
8 proposed; and

9 (3) none of the less intrusive alternatives (if
10 any) identified in the consultation process, or by the
11 Indian tribe, will adequately advance that compelling
12 governmental interest.

13 The Federal agency or State shall retain this burden of
14 proof at all stages of any proceeding or decisionmaking
15 process involving an Indian tribe described in section
16 104(b) as to objections raised by that Indian tribe.

17 (c) FAILURE OF AGENCY TO MEET BURDEN.—If a
18 Federal agency or State does not meet its burden of proof
19 under this section, it shall not proceed with the proposed
20 undertaking. For purposes of this section and section 501,
21 the phrase “burden of proof” means the burden of produc-
22 tion and the burden of persuasion.

23 (d) ESTABLISHMENT OF ADMINISTRATIVE PROCE-
24 DURE.—

1 (1) IN GENERAL.—A Federal agency may, by
2 regulation, establish an administrative procedure to
3 implement the requirements of this section.

4 (2) EXHAUSTION REQUIREMENT.—An ag-
5 grieved party must use a procedure established
6 under paragraph (1) before filing an action in a
7 Federal court pursuant to section 501(a).

8 (3) NEW FACTUAL FINDINGS.—If an action is
9 filed in Federal court after exhaustion of administra-
10 tive remedies, the court shall not defer to the factual
11 findings of the Federal agency, but shall make its
12 own factual findings based upon the record compiled
13 by the Federal agency as well as other evidence that
14 may be permitted by the court under Federal law.

15 **SEC. 106. TRIBAL AUTHORITY OVER NATIVE AMERICAN RE-**
16 **LIGIOUS SITES ON INDIAN LANDS.**

17 (a) RIGHT OF TRIBE.—All Federal or federally as-
18 sisted undertakings on Indian lands which may result in
19 changes in the character or use of a Native American reli-
20 gious site or which may have an impact on access to a
21 Native American religious site shall, unless requested oth-
22 erwise by the Indian tribe on whose lands the undertak-
23 ings will take place, be conducted in conformance with the
24 laws or customs of the tribe.

1 (b) AGREEMENTS.—Any governmental agency pro-
2 posing a Federal or federally assisted undertaking on In-
3 dian lands which may result in changes in the character
4 or use of a Native American religious site or which may
5 have an impact upon access to a Native American religious
6 site, may enter into an agreement with the Indian tribe
7 on whose lands the undertaking will take place for pur-
8 poses of assuring conformance with the laws or customs
9 of the tribe.

10 (c) PROTECTION BY TRIBES.—Indian tribes may reg-
11 ulate and protect Native American religious sites located
12 on Indian lands.

13 (d) OTHER AUTHORITIES.—

14 (1) SOVEREIGN AUTHORITY OF TRIBES.—The
15 provisions of this section are in addition to and not
16 in lieu of the inherent sovereign authority of Indian
17 tribes to regulate and protect Native American reli-
18 gious sites located on Indian lands.

19 (2) NATIONAL SECURITY.—The provisions of
20 this section shall not apply if the President deter-
21 mines that national security concerns are directly af-
22 fected by a Federal or federally assisted undertak-
23 ing.

24 (3) DUTY TO NOTIFY.—This section does not
25 relieve a governmental agency of any duty pursuant

1 to section 103 to notify an Indian tribe of a Federal
2 or federally assisted undertaking on Indian lands
3 which may result in changes in the character or use
4 of a Native American religious site.

5 **SEC. 107. APPLICATION OF OTHER LAWS.**

6 (a) IN GENERAL.—Nothing in this title shall be con-
7 strued to deprive any person or entity of any other rights
8 which might be provided under the laws, regulations,
9 guidelines, or policies of the Federal, State, and tribal gov-
10 ernments, including but not limited to the National His-
11 toric Preservation Act (16 U.S.C. 470 et seq.), to receive
12 notice of, comment upon, or otherwise participate in the
13 decisionmaking process regarding a Federal or federally
14 assisted undertaking.

15 (b) EXISTING PROCEDURES.—To the maximum ex-
16 tent possible, the procedures required by this Act shall be
17 incorporated into existing procedures applicable to the
18 management of Federal lands and decisionmaking proc-
19 esses of Federal agencies engaged in Federal or federally
20 assisted undertakings.

21 **SEC. 108. CONFIDENTIALITY.**

22 (a) IN GENERAL.—Notwithstanding any other provi-
23 sion of law, whenever information has been obtained as
24 a result of or in connection with a proceeding pursuant

1 to section 105 or 501 or consultation pursuant to sections
2 102 and 104, all references pertaining to—

3 (1) specific details of a Native American reli-
4 gion or the significance of a Native American reli-
5 gious site to that religion; or

6 (2) the location of that religious site;

7 shall be deleted from the record of a Federal agency or
8 court before the record is released to any party or the gen-
9 eral public pursuant to the Freedom of Information Act
10 (5 U.S.C. 552) or any other applicable law.

11 (b) SUPPLEMENTATION OF RECORD.—The agency or
12 court shall supplement the record described in subsection
13 (a) to include the general results and conclusions of the
14 administrative or judicial review to the extent necessary
15 to provide other interested parties with sufficient informa-
16 tion to understand the nature of, and basis for, a decision
17 by the Federal agency or court.

18 (c) EXCEPTIONS.—This section shall not apply—

19 (1) where all parties to a proceeding (excluding
20 the Federal Government) waive its application, and

21 (2) in case of a Native Hawaiian religious site,
22 where the information is sought by a Native Hawai-
23 ian organization for the purpose of protecting such
24 site.

1 (d) OTHER LAW.—Indian tribes, Native Hawaiian
2 organizations, Native American traditional leaders, and
3 Native American practitioners seeking to maintain the
4 confidentiality of information relating to Native American
5 religious sites may also seek redress through existing laws
6 requiring that certain information be withheld from the
7 public, including, but not limited to the National Historic
8 Preservation Act (16 U.S.C. 470w–3) and the Archae-
9 ological Resources Protection Act (16 U.S.C. huh).

10 **SEC. 109. CRIMINAL SANCTIONS.**

11 (a) DAMAGING RELIGIOUS SITES.—

12 (1) INITIAL VIOLATION.—Any person who
13 knowingly damages or defaces a known Native
14 American religious site located on Federal land, ex-
15 cept as part of an approved Federal or federally as-
16 sisted undertaking or an action authorized by a gov-
17 ernmental agency with the authority to approve such
18 activity, shall, upon conviction, be fined not more
19 than \$10,000, or imprisoned not more than 1 year,
20 or both.

21 (2) SUBSEQUENT VIOLATIONS.—In the case of
22 a second or subsequent violation, a person shall be
23 fined not more than \$100,000, or imprisoned not
24 more than 5 years, or both.

25 (b) RELEASE OF INFORMATION.—

1 (1) INITIAL VIOLATION.—Any person who
2 knowingly releases any information required to be
3 held confidential pursuant to this title shall, upon
4 conviction, be fined not more than \$10,000, or
5 imprisoned not more than 1 year, or both.

6 (2) SUBSEQUENT VIOLATIONS.—In the case of
7 a second or subsequent violation, be fined not more
8 than \$100,000, or imprisoned not more than 5
9 years, or both.

10 **TITLE II—TRADITIONAL USE OF** 11 **PEYOTE**

12 **SEC. 201. FINDINGS.**

13 The Congress finds that—

14 (1) some Indian people have used the peyote
15 cactus in religious ceremonies for sacramental and
16 healing purposes for many generations, and such
17 uses have been significant in perpetuating Indian
18 tribes and cultures by promoting and strengthening
19 the unique cultural cohesiveness of Indian tribes;

20 (2) since 1965, this religious ceremonial use of
21 peyote by Indians has been protected by Federal
22 regulation, which exempts such use from Federal
23 laws governing controlled substances, and the Drug
24 Enforcement Administration has manifested its con-
25 tinuing support of this Federal regulatory system;

1 (3) the State of Texas encompasses virtually
2 the sole area in the United States in which peyote
3 grows, and for many years has administered an ef-
4 fective regulatory system which limits the distribu-
5 tion of peyote to Indians for ceremonial purposes;

6 (4) while numerous States have enacted a vari-
7 ety of laws which protect the ceremonial use of pe-
8 yote by Indians, many others have not, and this lack
9 of uniformity has created hardships for Indian peo-
10 ple who participate in such ceremonies;

11 (5) the traditional ceremonial use by Indians of
12 the peyote cactus is integral to a way of life that
13 plays a significant role in combating the scourge of
14 alcohol and drug abuse among some Indian people;

15 (6) the United States has a unique and special
16 historic trust responsibility for the protection and
17 preservation of Indian tribes and cultures, and the
18 duty to protect the continuing cultural cohesiveness
19 and integrity of Indian tribes and cultures;

20 (7) it is the duty of the United States to pro-
21 tect and preserve tribal values and standards
22 through its special historic trust responsibility to
23 Indian tribes and cultures;

24 (8) existing Federal and State laws, regulations
25 and judicial decisions are inadequate to fully protect

1 the ongoing traditional uses of the peyote cactus in
2 Indian ceremonies;

3 (9) general prohibitions against the abusive use
4 of peyote, without an exception for the bona fide re-
5 ligious use of peyote by Indians, lead to discrimina-
6 tion against Indians by reason of their religious
7 beliefs and practices; and

8 (10) as applied to the traditional use of peyote
9 for religious purposes by Indians, otherwise neutral
10 laws and regulations may serve to stigmatize and
11 marginalize Indian tribes and cultures and increase
12 the risk that they will be exposed to discriminatory
13 treatment.

14 **SEC. 202. TRADITIONAL USE OF PEYOTE.**

15 (a) IN GENERAL.—Notwithstanding any other provi-
16 sion of law, the use, possession, or transportation by an
17 Indian of peyote for bona fide ceremonial purposes in con-
18 nection with the practice of a Native American religion
19 by an Indian is lawful and shall not be prohibited by the
20 Federal Government or any State. No Indian shall be pe-
21 nalized or discriminated against on the basis of such use,
22 possession or transportation, including, but not limited to,
23 denial of otherwise applicable benefits under public assist-
24 ance programs.

1 (b) REGULATION AUTHORIZED.—This section does
 2 not prohibit such reasonable regulation and registration
 3 of those persons who import, cultivate, harvest or distrib-
 4 ute peyote as may be consistent with the purpose of this
 5 title.

6 (c) TEXAS LAW.—This section does not prohibit ap-
 7 plication of the provisions of section 481.111(a) of
 8 Vernon's Texas Code Annotated, in effect on the date of
 9 enactment of this Act, insofar as those provisions pertain
 10 to the cultivation, harvest or distribution of peyote.

11 **TITLE III—PRISONERS' RIGHTS**

12 **SEC. 301. RIGHTS.**

13 (a) IN GENERAL.—

14 (1) ACCESS.—Notwithstanding any other provi-
 15 sion of law, Native American prisoners who practice
 16 a Native American religion shall have, on a regular
 17 basis comparable to that access afforded prisoners
 18 who practice Judeo-Christian religions, access to—

19 (A) Native American traditional leaders
 20 who shall be afforded the same status, rights
 21 and privileges as religious leaders of Judeo-
 22 Christian faiths;

23 (B) subject to paragraph (6), items and
 24 materials utilized in religious ceremonies; and

25 (C) Native American religious facilities.

1 (2) MATERIALS.—Items and materials utilized
2 in religious ceremonies are those items and mate-
3 rials, including foods for religious diets, identified by
4 a Native American traditional leader. Prison au-
5 thorities shall treat these items in the same manner
6 as the religious items and materials utilized in cere-
7 monies of the Judeo-Christian faith.

8 (3) HAIR.—

9 (A) RIGHT OF PRISONER.—Except in those
10 circumstances where subparagraph (B) applies,
11 Native American prisoners who desire to wear
12 their hair according to the religious customs of
13 their Indian tribes may do so provided that the
14 prisoner demonstrates that—

15 (i) the practice is rooted in Native
16 American religious beliefs; and

17 (ii) these beliefs are sincerely held by
18 the Native American prisoner.

19 (B) DENIAL OF REQUEST.—If a Native
20 American prisoner satisfies the criteria in para-
21 graph (3)(A), the prison authorities may deny
22 such request only where they can demonstrate
23 that the legitimate institutional needs of the
24 prison cannot be met by viable less restrictive

1 means which would not create an undue admin-
2 istrative burden.

3 (4) DEFINITION OF “RELIGIOUS FACILITIES”.—

4 The term “religious facilities” includes sweat lodges,
5 teepees, and access to other secure, out-of-doors lo-
6 cations within prison grounds if such facilities are
7 identified by a Native American traditional leader to
8 facilitate a religious ceremony.

9 (5) DISCRIMINATION PROHIBITED.—No Native
10 American prisoner shall be penalized or discrimi-
11 nated against on the basis of Native American reli-
12 gious practices, and all prison and parole benefits or
13 privileges extended to prisoners for engaging in reli-
14 gious activity shall be afforded to Native American
15 prisoners who participate in Native American reli-
16 gious practices.

17 (6) SCOPE OF SUBSECTION.—Paragraph (1)
18 shall not be construed as requiring prison authorities
19 to permit (nor prohibit them from permitting) access
20 to peyote or Native American religious sites.

21 (b) COMMISSION TO INVESTIGATE RELIGIOUS FREE-
22 DOM.—

23 (1) IN GENERAL.—The Attorney General shall
24 establish the Commission on the Religious Freedom
25 of Native American Prisoners (hereafter in this sec-

1 tion referred to as the “Commission”) to investigate
2 the conditions of Native American prisoners in the
3 Federal and State prison systems with respect to the
4 free exercise of Native American religions.

5 (2) REPORT.—Not later than 36 months after
6 the date of enactment of this Act, the Commission
7 shall submit to the Attorney General and the Con-
8 gress a report containing—

9 (A) an institution-by-institution assessment
10 of the recognition, protection, and enforcement
11 of the rights of Native American prisoners to
12 practice their religions under this Act; and

13 (B) specific recommendations for the pro-
14 mulgation of regulations to implement this Act.

15 (3) COMPOSITION OF COMMISSION.—The Com-
16 mission shall consist of 5 members, at least 3 of
17 whom shall be Native Americans and—

18 (A) at least 1 of whom shall be a Native
19 American traditional leader;

20 (B) at least 1 of whom shall be a Native
21 American ex-offender; and

22 (C) at least 1 of whom shall be a Native
23 American woman.

24 (4) NOMINATIONS.—The Native American
25 members selected under paragraph (2) shall be ap-

1 pointed from nominations submitted by Indian
2 tribes, Native Hawaiian organizations and Native
3 American traditional leaders.

4 (5) CHAIRPERSON.—The Commission shall se-
5 lect 1 of its members to serve as Chairperson.

6 (6) COMPENSATION.—Each member of the
7 Commission who is not a Federal employee shall be
8 compensated at a rate equal to the daily equivalent
9 of that prescribed for level V of the Executive
10 Schedule under section 5316 of title 5, United
11 States Code. All members of the Commission while
12 away from home or their place of business, in the
13 performance of the duties of the Commission, shall
14 be allowed travel and other related expenses, includ-
15 ing per diem in lieu of subsistence, in the same man-
16 ner as persons employed intermittently in Govern-
17 ment services are allowed expenses under section
18 5703 of title 5, United States Code.

19 (7) STAFF.—The Commission may hire, with-
20 out regard to the provisions of title 5, United States
21 Code, governing appointments in the competitive
22 service, and may pay without regard to the provi-
23 sions of chapter 51, and subchapter III of chapter
24 52 of such title relating to classification and General
25 Schedule pay rates, such staff as necessary to fulfill

1 its duties under this section. In addition, the Com-
2 mission may request any Federal department or
3 agency to make available to the Commission person-
4 nel on a nonreimbursable basis, to assist the Com-
5 mission in fulfilling such duties.

6 (8) TERMINATION.—The Commission shall
7 cease to exist upon the expiration of the 60-day pe-
8 riod following the date of submission of its report to
9 the Congress.

10 **TITLE IV—RELIGIOUS USE OF** 11 **EAGLES AND OTHER ANIMALS** 12 **AND PLANTS**

13 **SEC. 401. RELIGIOUS USE OF EAGLES.**

14 (a) IN GENERAL.—Within 1 year after the date of
15 enactment of this Act, the Director of the United States
16 Fish and Wildlife Service (hereafter in this section re-
17 ferred to as the “Director”) shall, in consultation with In-
18 dian tribes and Native American traditional leaders,
19 develop a plan to—

20 (1) ensure the prompt disbursement from Fed-
21 eral repositories of available bald or golden eagles, or
22 their parts, nests, or eggs for the religious use of In-
23 dians upon receipt of an application from a Native
24 American practitioner;

1 (2) provide that sufficient numbers of bald or
2 golden eagles are allocated to Native American prac-
3 titioners to meet the demonstrated need where they
4 are available by reason of accidental deaths, natural
5 deaths, or takings permitted by Federal law; and

6 (3) simplify and shorten the process by which
7 permits are authorized for the taking, possession,
8 and transportation of bald or golden eagles, or their
9 parts, nests, or eggs for the religious use of Indians.

10 (b) CONSULTATION WITH REGIONAL ADVISORY
11 COUNCILS.—In developing the plan required by subsection
12 (a), the Director shall consult with the Regional Advisory
13 Councils established pursuant to subsection (c) to deter-
14 mine whether these goals might best be met by decen-
15 tralizing the system for the disbursement of bald or golden
16 eagles or their parts, nests, or eggs for Native American
17 religious purposes.

18 (c) REGIONAL ADVISORY COUNCILS.—

19 (1) ESTABLISHMENT.—Within 120 days after
20 the date of enactment of this Act, the Regional Di-
21 rectors of the United States Fish and Wildlife
22 Service shall establish Regional Advisory Councils.

23 (2) COMPOSITION.—Each Regional Advisory
24 Council shall consist of 3 Native American tradi-
25 tional leaders appointed by each Regional Director

1 of the United States Fish and Wildlife Service from
2 nominations submitted by Indian tribes and Native
3 American traditional leaders located within the re-
4 gion.

5 (3) DUTIES.—The Regional Directors and the
6 Regional Advisory Councils, in consultation with In-
7 dian tribes and Native American traditional leaders,
8 shall—

9 (A) develop a plan to—

10 (i) ensure that all bald and golden ea-
11 gles and their parts, nests, or eggs which
12 are recovered within the region are
13 promptly transmitted to and collected by
14 the United States Fish and Wildlife Serv-
15 ice and made available for distribution as
16 provided by law and consistent with the
17 plan developed by the Director pursuant to
18 subsection (a); and

19 (ii) expedite the review and approval
20 of permit applications at each regional
21 level;

22 (B) consult with the Director regarding
23 the advisability of decentralizing the distribu-
24 tion system; and

1 (C) monitor the operation of the collection,
2 permit, and, if applicable, the distribution sys-
3 tem at the regional level.

4 (4) COMPENSATION.—Members of the Regional
5 Advisory Councils established under paragraph (1)
6 of this section shall serve without pay, but shall be
7 reimbursed at a rate equal to the daily rate for GS–
8 18 of the General Schedule for each day (including
9 travel time) for which the member is actually en-
10 gaged in council business. Each member shall re-
11 ceive travel expenses, including per diem in lieu of
12 subsistence, in accordance with sections 5702 and
13 5703 of title 5, United States Code.

14 (d) TRIBAL LAW.—If bald or golden eagles or their
15 parts, nests, or eggs are discovered on Indian lands and
16 the Indian tribe on whose land the eagles or their parts,
17 nests, or eggs were discovered has established or estab-
18 lishes, by tribal law or custom, a procedure for—

19 (1) issuance of tribal permits to Native Amer-
20 ican practitioners, and

21 (2) distribution of bald or golden eagles or their
22 parts, nests, or eggs in accordance with tribal reli-
23 gious custom,

1 the Indian tribe may distribute said bald or golden eagles
2 or their parts, nests, or eggs to Native American practi-
3 tioners in accordance with such tribal law or custom.

4 (e) SCOPE OF SUBSECTION (d).—Subsection (d) ap-
5 plies only to eagles which have died by reason of accidental
6 deaths or natural deaths and does not authorize the taking
7 of live eagles which, subject to standards established in
8 section 501(b), shall continue to be governed by regula-
9 tions promulgated by the United States Fish and Wildlife
10 Service. An Indian tribe under subsection (d) shall provide
11 an annual report by March 31 of each year to the United
12 States Fish and Wildlife Service summarizing the number
13 and type of bald and golden eagles and their parts, nests,
14 and eggs that have been discovered and distributed during
15 the previous calendar year.

16 **SEC. 402. OTHER ANIMALS AND PLANTS.**

17 (a) PLAN.—Within 1 year after the date of enact-
18 ment of this Act, the Director of the United States Fish
19 and Wildlife Service shall, in consultation with Indian
20 tribes and Native American traditional leaders, develop a
21 plan to implement the recommendations of the President's
22 1979 American Indian Religious Freedom Task Force Re-
23 port regarding the disposition of surplus plant and animal
24 products by Federal agencies.

1 (b) ASSESSMENT.—In developing this plan, the Di-
2 rector shall—

3 (1) assess the availability of surplus animals,
4 plants or parts from Federal agencies;

5 (2) determine whether there is a need for such
6 parts for religious purposes by Native American
7 practitioners; and

8 (3) evaluate the feasibility of developing a joint
9 uniform set of regulations to govern the disposition
10 of surplus animals, plants or parts which have been
11 confiscated or gathered under the jurisdiction and
12 control of Federal agencies.

13 **TITLE V—JURISDICTION AND** 14 **REMEDIES**

15 **SEC. 501. JURISDICTION AND REMEDIES.**

16 (a) IN GENERAL.—Any appropriate United States
17 district court shall have original jurisdiction over a civil
18 action for equitable or other relief, including damages,
19 brought by an aggrieved party against the United States
20 or a State to enforce the provisions of this Act.

21 (b) BURDEN OF PROOF.—

22 (1) IN GENERAL.—Except as provided in titles
23 I through III, if an aggrieved party meets the bur-
24 den of proving that a governmental action restricts
25 or would restrict the practitioner's free exercise of

1 religion, the governmental authority shall refrain
2 from such action unless it can demonstrate that ap-
3 plication of the restriction to the practitioner is es-
4 sential to further a compelling governmental interest
5 and the application is the least restrictive means of
6 furthering that compelling governmental interest.

7 (2) SPECIAL RULE FOR NATIVE AMERICAN
8 PRACTITIONERS.—The burden of proof for a Native
9 American practitioner is a showing of any evidence
10 that a restriction upon the practitioner’s free exer-
11 cise of religion exists as a result of Federal or State
12 action. Native American practitioners may elect to
13 provide testimony about their beliefs in camera or in
14 some other protective procedure.

15 (c) ATTORNEY’S FEES.—An aggrieved party who is
16 a prevailing party in any administrative or judicial pro-
17 ceeding brought pursuant to this Act shall be entitled to
18 attorney’s fees, expert witness fees, and costs under the
19 provisions of section 504 of title 5, United States Code,
20 and section 2412 of title 28, United States Code.

21 **TITLE VI—MISCELLANEOUS**

22 **SEC. 601. SAVINGS CLAUSE.**

23 Nothing in this Act shall be construed as abrogating,
24 diminishing, or otherwise affecting—

25 (1) the inherent rights of any Indian tribe;

1 (2) the rights, express or implicit, of any Indian
2 tribe which exist under treaties, Executive Orders
3 and laws of the United States; and

4 (3) the inherent right of Native Americans to
5 practice their religions.

6 **SEC. 602. SEVERABILITY.**

7 If any title or section of this Act, or any provision
8 or portion thereof, is declared to be unconstitutional, in-
9 valid, or inoperative in whole or in part, by a court of com-
10 petent jurisdiction, such title, section, provision or portion
11 thereof shall, to the extent it is not unconstitutional, in-
12 valid, or inoperative, be enforced and effectuated, and no
13 such determination shall be deemed to invalidate or make
14 ineffectual the remaining provisions of the title, section,
15 or provision.

16 **SEC. 603. AUTHORIZATION OF APPROPRIATIONS.**

17 There are hereby authorized to be appropriated such
18 sums as may be necessary to carry out the provisions of
19 this Act.

20 **SEC. 604. EFFECTIVE DATE.**

21 This Act takes effect on the date of its enactment.
22 Application and enforcement of this Act does not depend
23 upon the promulgation of regulations by any governmental
24 agency.



S 1021 IS—2

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