

Calendar No. 722

103^D CONGRESS
2^D SESSION

S. 2269

[Report No. 103-411]

A BILL

To protect Native American cultures and to guarantee the free exercise of religion by Native Americans.

OCTOBER 8 (legislative day, SEPTEMBER 12), 1994

Reported with an amendment

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To protect Native American cultures and to guarantee the free exercise of religion by Native Americans.

IN THE SENATE OF THE UNITED STATES

JULY 1 (legislative day, JUNE 7), 1994

Mr. INOUE introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

OCTOBER 8 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. INOUE, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To protect Native American cultures and to guarantee the free exercise of religion by 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 Cultural Protection and Free Exercise
6 of Religion Act of 1994”.

1 (b) TABLE OF CONTENTS.—

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

TITLE I—PROTECTION OF NATIVE AMERICAN SACRED SITES

- Sec. 101. Findings.
 Sec. 102. Federal Lands Access.
 Sec. 103. Land management decisions; planning, identification, and notice.
 Sec. 104. Consultation.
 Sec. 105. Administrative proceeding.
 Sec. 106. Tribal authority over Native American sacred 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—CULTURAL AND RELIGIOUS USE OF EAGLES AND
OTHER ANIMALS AND PLANTS

- Sec. 401. Cultural and 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. Regulations.
 Sec. 605. Protections.
 Sec. 606. Effective date.

2 **SEC. 2. POLICY.**

3 It is the policy of the United States, in furtherance
 4 of the policy established in the joint resolution entitled
 5 “Joint Resolution American Indian Religious Freedom”,
 6 approved August 11, 1978 (42 U.S.C. 1996), to protect
 7 and preserve the inherent right of any Native American

1 to believe, express, exercise and practice his or her tradi-
2 tional culture and religion, including, but not limited to,
3 access to any Native American sacred site, use and posses-
4 sion of sacred objects, and the freedom to worship through
5 ceremonial and traditional rites.

6 **SEC. 3. DEFINITIONS.**

7 For the purposes of this Act:

8 (1) The term “adverse impact” means any ac-
9 tion or any potential action which has the effect or
10 which will have the effect of—

11 (A) altering, disturbing, desecrating or de-
12 stroying a Native American sacred site;

13 (B) inhibiting, infringing upon or interfer-
14 ing with Native American traditional cultural
15 practices; or

16 (C) imposing a burden upon the free exer-
17 cise of a Native American religion.

18 (2) The term “aggrieved party” means any Na-
19 tive American, Indian tribe, Native Hawaiian organi-
20 zation, Native American practitioner or Native
21 American traditional leader as defined by this Act,
22 and to whom the provisions of this Act apply.

23 (3) The term “consultation” means, at a mini-
24 mum, agency-initiated outreach activities which will
25 result in a meaningful process for face-to-face delib-

1 erations and conferral with all Indian tribes, Native
2 Hawaiian organizations and Native American tradi-
3 tional leaders that should be consulted and which is
4 conducted in a realistic manner that is cognizant of
5 the cultural values, socioeconomic factors and ad-
6 ministrative structures, if any, of the Indian tribes
7 or Native Hawaiian organizations with an interest in
8 the land in question.

9 (4) The term “covered Federal activity”
10 means—

11 (A) any new or reauthorized project, pro-
12 gram or activity, or any new phase of existing
13 projects, programs and activities, under the di-
14 rect or indirect jurisdiction of a Federal agency
15 including but not limited to—

16 (i) those carried out by or on behalf
17 of the agency, on Federal or State lands,
18 or involving navigable waters;

19 (ii) those activities on Federal or
20 State lands, or involving navigable waters,
21 requiring a Federal permit, license or ap-
22 proval;

23 (iii) those taking place on Federal or
24 State lands, or involving navigable waters,
25 subject to state regulation pursuant to a

1 delegation or approval by a Federal
2 agency;

3 (iv) those carried out with more than
4 de minimis Federal financial assistance;

5 (v) renewals, reauthorizations, reli-
6 censing, and similar decisions;

7 (vi) regular and cyclical reviews of
8 land management plans by agencies;

9 (vii) programs funded by Federal
10 highway funds;

11 (viii) activities subject to licensing by
12 the Federal Energy Regulatory Commis-
13 sion, or the Nuclear Regulatory Commis-
14 sion;

15 (ix) the siting of hazardous, low-level
16 nuclear or transuranic waste or toxic waste
17 disposal, and disposal facilities, and the
18 disposal of such materials; or

19 (x) those activities that would not be
20 covered Federal activities by virtue of sec-
21 tion 3(4)(B)(i), if an Indian tribe affirma-
22 tively elects to have the provisions of this
23 Act apply to a particular covered Federal
24 activity on Indian lands which are subject
25 to the tribe's jurisdiction;

1 ~~(B)~~ the term “covered Federal activity”
2 does not include—

3 ~~(i)~~ regulations, projects, activities, or
4 programs operated, approved, or sponsored
5 by Indian tribes, including, but not limited
6 to, those projects, activities, or programs
7 which are funded in whole or in part by
8 Federal funds pursuant to contract, com-
9 pact, grant or agreement, or which require
10 Federal permits, licenses or approvals, un-
11 less the Indian tribe invokes section
12 3(4)(A)(x);

13 ~~(ii)~~ ongoing and continuing activities
14 underway prior to enactment of this Act,
15 or activities for which a final commitment
16 has been made prior to enactment of this
17 Act and for which substantial funds have
18 been spent or implementation is substan-
19 tially underway;

20 ~~(iii)~~ routine activities that an agency
21 determines through negotiations with In-
22 dian tribes or Native Hawaiian organiza-
23 tions to be unlikely to affect Native Amer-
24 ican sacred sites or traditional cultural
25 practices, and maintenance activities in-

1 volving structures or projects existing at
 2 the time of enactment of this Act or later
 3 constructed in compliance with this Act
 4 which do not change the size or scale or
 5 the existing use of those projects or struc-
 6 tures;

7 (iv) activity on State land with de
 8 minimis Federal funding and no other
 9 Federal role;

10 (v) any actions on private lands, other
 11 than those enumerated in subsection (A),
 12 even though those actions are subject to
 13 Federal permit, license, or approval, or
 14 State regulation of private lands under a
 15 Federal delegation of authority, or con-
 16 ducted with de minimis Federal funding;
 17 or

18 (vi) direct Federal loans and Federal
 19 loan guarantees to private entities.

20 (5) The term “ Federal agency” means any de-
 21 partment, agency, or instrumentality of the United
 22 States Government.

23 (6) The term “governmental agency” means
 24 any agency, department, or instrumentality of—

25 (A) the United States; or

1 ~~(B)~~ a State, in the case of a covered Fed-
2 eral activity described in paragraph ~~(4)(A)(iii)~~.
3 The term “governmental agency” does not include
4 an agency, department, or instrumentality of an In-
5 dian tribe.

6 ~~(7)~~ The term “Indian” means an individual
7 who is a member of an Indian tribe; an Alaska Na-
8 tive, or an individual who meets the definition in
9 section ~~809(b)~~ of the Indian Health Care Improve-
10 ment Act (~~25 U.S.C. 1679(b)~~), except that an In-
11 dian community need not be served by a local pro-
12 gram of the Indian Health Service in order to qual-
13 ify as an Indian community for purposes of this defi-
14 nition.

15 ~~(8)~~ The term “Indian lands” means all lands
16 within the limits of any Indian reservation notwith-
17 standing the issuance of any patent; public domain
18 Indian allotments; all other lands title to which is ei-
19 ther held in trust by the United States for the bene-
20 fit of any Indian tribe or individual or held by any
21 Indian tribe or individual subject to restriction by
22 the United States against alienation; all dependent
23 Indian communities; and all fee lands owned by an
24 Indian tribe.

1 (9) The term “Indian tribe” means any tribe,
2 band, nation, pueblo, or other organized group or
3 community of Indians, including any Alaska Native
4 village (as defined in, or established pursuant to, the
5 Alaska Native Claims Settlement Act (43 U.S.C.
6 1601 et seq.)), which is recognized as eligible for the
7 special programs and services provided by the Unit-
8 ed States to Indians because of their status as Indi-
9 ans.

10 (10) The term “land” or “lands” means surface
11 and subsurface land within the jurisdiction of the
12 United States or the respective States, including
13 submerged land of any kind or interest therein, and
14 all water and waterways occupying, adjacent to, or
15 running through the land.

16 (11) With respect to the cultural protections
17 provided under this Act, the term “Native Amer-
18 ican” means any Indian or Native Hawaiian.

19 (12) With respect to the cultural protections
20 provided under this Act, the term “Native American
21 practitioner” means any Native American who prac-
22 tices a Native American religion as part of a Native
23 American traditional culture.

24 (13) With respect to the cultural protections
25 provided under this Act, the term “Native American

1 religion” means any traditional religion which is
2 practiced by Native Americans, the origin and inter-
3 pretation of which is deeply embedded or rooted in
4 a Native American traditional culture.

5 (14) With respect to the cultural protections
6 provided under this Act, the term “Native American
7 Sacred Site” means any geophysical or geographical
8 area or feature which is sacred by virtue of its tradi-
9 tional cultural or religious significance or ceremonial
10 use, or by virtue of a ceremonial or cultural require-
11 ment, including a religious requirement, that a natu-
12 ral substance or product for use in Native American
13 traditional ceremonies be gathered from that par-
14 ticular location.

15 (15) The term “Native American traditional
16 culture” means the traditional practices, customs,
17 belief systems, lifeways, ceremonies, and rituals, in-
18 cluding religious practices and beliefs, that are inte-
19 gral to and unique aspects of Native American cul-
20 tural traditions and heritage.

21 (16) With respect to the cultural protections
22 provided under this Act, the term “Native American
23 traditional leader” means any Native American
24 practitioner who is recognized by an Indian tribe or
25 traditional tribal community or Native Hawaiian

1 community as being responsible for performing du-
2 ties relating to the cultural traditions, including reli-
3 gious traditions of the tribe or traditional tribal
4 community or Native Hawaiian community or as
5 having a leadership role in an Indian tribe or tradi-
6 tional tribal community or Native Hawaiian commu-
7 nity based upon its traditional cultural or ceremonial
8 practices, including religious practices.

9 (17) With respect to the cultural protections
10 provided under this Act, the term “Native Hawai-
11 ian” means any individual who is a descendant of
12 the aboriginal Polynesian people who, prior to 1778,
13 occupied and exercised sovereignty and self-deter-
14 mination in the area that now comprises the State
15 of Hawaii, and who is recognized as eligible for the
16 special programs and services provided by the Unit-
17 ed States to Native Hawaiians because of their sta-
18 tus as Native Hawaiians or Native Americans.

19 (18) With respect to the cultural protections
20 provided under this Act, the term “Native Hawaiian
21 organization” means any organization which is com-
22 posed primarily of Native Hawaiians, and serves and
23 represents the traditional cultural interests of Native
24 Hawaiians and whose members—

1 (A) practice a Native American culture, in-
2 cluding a Native American religion, or conduct
3 traditional ceremonial rituals, or

4 (B) utilize, preserve and protect Native
5 American sacred sites.

6 (19) The term “public land” means any land as
7 defined in section 3(10) of this Act which is owned
8 by the United States, or the respective States, or po-
9 litical subdivisions thereof, but shall not include In-
10 dian lands as defined in section 3(8).

11 (20) The term “State” means any State of the
12 United States and any and all political subdivisions
13 thereof, and the District of Columbia.

14 **TITLE I—PROTECTION OF NA-**
15 **TIVE AMERICAN SACRED**
16 **SITES**

17 **SEC. 101. FINDINGS.**

18 The Congress finds that—

19 (1) the traditional cultural practices, including
20 religious practices, of Native Americans are integral
21 and inseparable parts of their cultures, traditions
22 and heritages which greatly enhance the vitality of
23 Native American communities and tribes and the
24 well-being of Native Americans in general;

1 (2) the European concept that religion is an ac-
2 tivity or belief that is separate from all other aspects
3 of daily life, or that religion is separable from cul-
4 ture, is a concept that has no application in the tra-
5 ditional cultures of Native Americans;

6 (3) throughout American history, the mani-
7 festations of Native American traditional cultures, in-
8 cluding the free exercise of Native American reli-
9 gions, has been infringed upon, interfered with, and
10 even prohibited by the Federal Government and the
11 devastating impact of these governmental actions
12 continues to the present day;

13 (4) the United States has a unique, govern-
14 ment-to-government relationship with Indian tribes
15 and a special historic trust relationship, which per-
16 mits the United States to take measures to protect
17 against interference with the continuing cultural co-
18 hesiveness and integrity of Indian tribes and Native
19 American traditional cultures;

20 (5) as part of the historic Federal-Indian trust
21 relationship it is the intent of the United States to
22 pursue enforceable Federal policies which will pro-
23 tect the Native American community and tribal vi-
24 tality and cultural integrity, and which will not in-
25 hibit, interfere with or infringe upon Native Amer-

1 ican traditional cultural practices or impose a bur-
2 den on the free exercise of Native American reli-
3 gions;

4 (6) many Native American traditional cultures,
5 including Native American religions, hold certain
6 lands or natural formations in the United States to
7 be sacred, and in order for those sites to be in a con-
8 dition appropriate for cultural use, including reli-
9 gious or ceremonial use, the physical environment,
10 water, plants and animals associated with those sites
11 must be protected;

12 (7) such Native American sacred sites are an
13 integral and vital part of, and inextricably inter-
14 twined with, many Native American traditional cul-
15 tures, including Native American religions, and the
16 practices associated with such traditional cultures;

17 (8) the traditional use and gathering, harvest-
18 ing, or maintaining of natural substances or natural
19 products for cultural purposes, including religious
20 and ceremonial purposes, are an integral and vital
21 part of, and are inextricably intertwined with, many
22 Native American traditional cultures, including Na-
23 tive American religions;

24 (9) many of these Native American sacred sites
25 are found on lands which were part of the aboriginal

1 territory of Indians or Native Hawaiians, but which
2 now are held by the United States, or are the sub-
3 ject of Federal activities;

4 (10) governmental land use decisions have the
5 potential to have an adverse impact on Native Amer-
6 ican traditional cultural practices, including Native
7 American religions;

8 (11) many Native American traditional cultural
9 practices, including religious and ceremonial prac-
10 tices, require a measure of privacy and isolation; and
11 certain traditional cultural ceremonies and activities
12 cannot be performed if nonparticipants can observe
13 the practices or ceremonies or activities, even from
14 a distance, and in some situations the lack of pri-
15 vacy or isolation inhibits, infringes upon, interferes
16 with, or precludes certain Native American tradi-
17 tional cultural practices, including traditional reli-
18 gious practices;

19 (12) some Indian tribes, such as the Pueblos of
20 New Mexico, as well as some aspects of Native Ha-
21 waiian culture, have traditional cultural and reli-
22 gious tenets which prohibit disclosure of information
23 concerning their sacred sites and their traditional
24 beliefs and practices, mandate secrecy and impose
25 internal sanctions to enforce these prohibitions;

1 making it impossible for them to identify the man-
2 ner in which any particular governmental activity
3 would have an adverse impact on their traditional
4 cultures or impose a burden on the free exercise of
5 their religions;

6 (13) lack of sensitivity to, or understanding of,
7 Native American traditional cultures, including Na-
8 tive American religions has resulted in the absence
9 of a coherent policy for the protection of Native
10 American sacred sites and the failure to consider the
11 impacts of Federal activities upon Native American
12 sacred sites;

13 (14) the Supreme Court of the United States,
14 in the case of *Lyng v. Northwest Indian Cemetery*
15 *Protective Association*, 485 U.S. 439 (1988) ruled
16 that the free exercise clause of the First Amendment
17 does not restrict the Government's management of
18 its lands, even if certain governmental actions would
19 infringe upon or destroy the ability to practice reli-
20 gion, so long as the Government's action does not
21 compel individuals to act in a manner which is con-
22 trary to their religious beliefs;

23 (15) the Supreme Court's holding in the case of
24 *Lyng v. Northwest Indian Cemetery Protective Asso-*
25 *ciation* creates a chilling and discriminatory effect

1 on Native American traditional cultures and on the
2 free exercise of Native American religions;

3 (16) the Congress has enacted numerous laws
4 which regulate and restrict the discretion of Federal
5 agencies for the sake of environmental, historical,
6 economic, and cultural concerns, but has never en-
7 acted a judicially enforceable law comparably re-
8 stricting agency discretion for the sake of the site-
9 protective requirements specifically associated with
10 the protection of Native American traditional cul-
11 tural practices, including the free exercise of Native
12 American religions;

13 (17) the lack of a judicially enforceable Federal
14 law and of a coherent Federal policy to accommo-
15 date the uniqueness of Native American traditional
16 cultures, including Native American religions, results
17 in unique and adverse impacts on Native American
18 traditional cultures, burdens the free exercise of Na-
19 tive American religions, and impairs the vitality of
20 Indian tribes, traditional tribal communities, and
21 Native Hawaiian communities; and

22 (18) the Congress has the authority to enact
23 laws to assure the protection and preservation of
24 Native American traditional cultures, including the
25 free exercise of Native American religions, based

1 upon the special trust relationship, and pursuant to
2 section 8, article I of the United States Constitution
3 and the first, fifth, and fourteenth amendments to
4 the United States Constitution.

5 **SEC. 102. ACCESS TO FEDERAL LANDS.**

6 (a) IN GENERAL.—Native American practitioners
7 shall be permitted access to Federal lands at all times for
8 Native American traditional cultural, or ceremonial or reli-
9 gious purposes, including access to gather, harvest, or
10 maintain natural substances or natural products for Na-
11 tive American traditional cultural purposes.

12 (b) Federal agencies may take reasonable and nar-
13 rowly tailored measures to assure that access and use of
14 lands under this Act do not—

15 (1) have a direct, significant and negative im-
16 pact upon specific national security interests or the
17 implementation of the Endangered Species Act; or

18 (2) present an immediate threat of serious bod-
19 ily harm to any person or immediate and serious
20 harm to the environment.

21 Where other feasible means are available for avoiding ad-
22 verse impacts on Native American sacred sites, Native
23 American traditional cultural practices, and the free exer-
24 cise of Native American religions, those means shall be
25 utilized before access is restricted.

1 (c) Terms of access may be included in a memoran-
2 dum of agreement pursuant to section 104(a)(3)(B).

3 (d) ~~LIMITATIONS AGAINST VEHICLES.~~—Paragraph
4 (a) does not authorize the use of motorized vehicles or
5 other forms of mechanized transport in roadless areas
6 where such use is prohibited by law.

7 (e) ~~TEMPORARY PROTECTIVE MEASURES.~~—Upon the
8 request of an Indian tribe, a Native Hawaiian organization
9 or a Native American traditional leader, the Secretary of
10 the department whose land is involved, or a local land
11 manager where such authority has been delegated, may
12 from time to time temporarily close to the general public
13 use of one or more specific portions of Federal land and
14 may take such other reasonable and temporary measures
15 as necessary in order to protect the privacy of traditional
16 cultural, ceremonial or religious activities in such areas
17 by Native Americans. Any such measures shall be taken
18 so as to affect the smallest practicable area for the mini-
19 mum period necessary for such purposes.

20 **SEC. 103. FEDERAL LAND MANAGEMENT, IDENTIFICATION**
21 **OF LANDS, PLANNING AND NOTICE.**

22 (a) ~~IN GENERAL.~~—Each Federal agency shall man-
23 age any lands under its jurisdiction in a manner that com-
24 plies with the provisions of this Act.

25 (b) ~~IDENTIFICATION OF LANDS BY SECRETARY.~~—

1 (1) ~~IN GENERAL.~~—(A) For the purpose of as-
2 suring that a governmental agency properly deter-
3 mines whether a proposed cover Federal activity will
4 have an adverse impact on a Native American sacred
5 site and which affected parties should be provided
6 notice of a proposed activity, the head of each land
7 managing agency, in conjunction with the Secretary
8 of the Interior and tribal governments and Native
9 Hawaiian organizations, shall identify land areas
10 with which a tribe or Native Hawaiians have aborigi-
11 nal, historic, cultural or religious ties.

12 (B) For purposes of this section, within 90 days
13 following the date of enactment of this Act, Native
14 Hawaiian organizations shall notify the Secretary of
15 their desire to receive notice of proposed covered
16 Federal activities.

17 (2) As part of its obligations pursuant to this
18 section, within 90 days following the date of enact-
19 ment of this Act, the Secretary of the Interior shall
20 contact all Indian tribes, and Native Hawaiian orga-
21 nizations to request a broad geographic description
22 of the lands as to which each Indian tribe or Native
23 Hawaiian organization desires notice of covered Fed-
24 eral activity and, upon receipt of responses from In-
25 dian tribes and Native Hawaiian organizations, shall

1 provide such land descriptions to all Federal agen-
2 cies.

3 ~~(3) Within 18 months following the date of en-~~
4 ~~actment of this Act, the Secretary shall establish a~~
5 ~~list of all Indian tribes and Native Hawaiian organi-~~
6 ~~zations who have responded and the lands they have~~
7 ~~identified. Such lists shall not be published but shall~~
8 ~~be made available to agencies for the purpose of~~
9 ~~identifying Indian tribes and Native Hawaiian orga-~~
10 ~~nizations and areas for which notice of covered Fed-~~
11 ~~eral activities shall be provided.~~

12 ~~(4) While the list is being developed, each Fed-~~
13 ~~eral land managing agency shall also research its~~
14 ~~own sources, including agency contacts with Indian~~
15 ~~tribes, Native Hawaiian organizations, or Native~~
16 ~~American traditional leaders and written sources, to~~
17 ~~collect information as to Native American traditional~~
18 ~~cultures and regions potentially affected by activities~~
19 ~~on land which it manages and shall make a good~~
20 ~~faith effort to identify and notify Indian tribes, Na-~~
21 ~~tive Hawaiian organizations, and Native American~~
22 ~~traditional leaders who may have an interest in pro-~~
23 ~~posed covered Federal activities.~~

24 ~~(5) ONGOING IDENTIFICATION.—Nothing in~~
25 ~~this section shall preclude an agency or a tribal gov-~~

1 ernment or a Native Hawaiian organization from
2 continuing to conduct an ongoing identification proc-
3 ess, which may supplement the process required by
4 this subsection.

5 (c) ~~PLANNING PROCESS.~~—Each Federal agency man-
6 aging lands under its jurisdiction including, but not lim-
7 ited to, activities pursuant to the National Forest Manage-
8 ment Act (16 U.S.C. 1600 et seq.), and the Federal Land
9 Policy and Management Act (43 U.S.C. 1701 et seq.);
10 shall as part of its planning process—

11 (1) consult, during the earliest possible part of
12 the planning process, with Indian tribes, Native Ha-
13 waiian organizations and Native American tradi-
14 tional leaders who have notified the agency of their
15 interest in the land in question pursuant to sub-
16 section (b);

17 (2) in addition to the notices required in regard
18 to covered Federal activity required by subsection
19 (d), provide for notice of all covered Federal activity
20 with the potential to have an adverse impact on land
21 areas specified by an Indian tribe or Native Hawai-
22 ian organization, in writing, as land areas that are
23 of direct interest to the Indian tribe or Native Ha-
24 waiians, whether or not the agency believes that

1 such activity will or may have an adverse impact on
2 a Native American sacred site;

3 ~~(3)~~ ensure that its land management plans are
4 consistent with the provisions and policies of this
5 Act; and

6 ~~(4)~~ maintain the confidentiality of specific de-
7 tails of a Native American traditional culture or reli-
8 gion or the significance of a Native American sacred
9 site to that culture or religion in accordance with the
10 procedures specified in sections 107 and 108 of this
11 Act.

12 ~~(d) NOTICE AND DOCUMENTATION—DUTY OF AGEN-~~
13 ~~CIES.—~~

14 ~~(1) NOTICE TO TRIBES OR NATIVE HAWAIIAN~~
15 ~~ORGANIZATIONS.—~~Before a governmental agency
16 proceeds on lands identified pursuant to subsection
17 ~~(b)~~ with any covered Federal activity that may have
18 an adverse impact on a Native American sacred site,
19 the governmental agency shall consult with poten-
20 tially affected Indian tribes, Native Hawaiian orga-
21 nizations and Native American traditional leaders,
22 and after the consultation has occurred and the
23 agency has taken into account the information ob-
24 tained through that process, formally provide a writ-
25 ten notice containing a geographical description of

1 the lands affected by the activity (including informa-
2 tion on metes and bounds of the lands in question,
3 where available), a map illustrating the lands af-
4 fected and a description of the proposed action to
5 each Indian tribe, Native Hawaiian organization, or
6 Native American traditional leader which has been
7 identified pursuant to this section as having an in-
8 terest in the land affected by the proposed covered
9 Federal activity and any other Indian tribe, Native
10 Hawaiian organization or Native American tradi-
11 tional leader known by the agency that may have an
12 interest in the land affected by the proposed covered
13 Federal activity.

14 (2) The governmental agency shall fully docu-
15 ment the efforts made to provide the information to
16 Indian tribes, Native Hawaiian organizations, and
17 Native American traditional leaders as required by
18 this section or any applicable regulations, guidelines,
19 or policies.

20 (e) RESPONSE TO NOTICE.—

21 (1) IN GENERAL.—Within 90 days of receiving
22 the notice provided under subsection (d), or within
23 the time limit of any comment period permitted or
24 required by any Federal law applicable to the cov-
25 ered Federal activity, whichever is later, an Indian

1 tribe, Native Hawaiian organization, or Native
2 American traditional leader invoking the protection
3 of this title may provide notice in writing to the gov-
4 ernmental agency that the proposed covered Federal
5 activity may have an adverse impact on a Native
6 American sacred site.

7 (2) MODIFICATION OF TIME.—Such time period
8 may be extended by the agency at its discretion, in-
9 cluding at the request of a noticed party, or may be
10 extended or shortened by an agreement negotiated
11 pursuant to section 104(a)(3)(B).

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

17 (4) ADDITIONAL INFORMATION.—The Indian
18 tribe or Native Hawaiian organization or its des-
19 ignee acting pursuant to paragraph (1) may also
20 provide the agency with information as to any Na-
21 tive American traditional leaders or practitioners
22 who should be included in the notice and consulta-
23 tion requirements of this section and section 104.

24 (f) RESPONSE PERIOD AND LIMITATION ON ACTIV-
25 ITY FOLLOWING NOTICE.—

1 (1) In order to allow a full investigation of a
2 proposed covered Federal activity no action to ap-
3 prove, commence, or complete an activity that is
4 subject to this section shall be taken by a govern-
5 mental agency for a period of 90 days following the
6 date on which notice is provided under subsection
7 (d) to Indian tribes, Native Hawaiian organizations
8 or Native American traditional leaders unless or
9 until—

10 (A) the period of consultation required
11 under section 104 has been completed;

12 (B) a sacred sites protection agreement
13 pursuant to section 104(a)(3)(B) has been en-
14 tered into by the affected Indian tribe or tribes
15 or Native Hawaiian organization and the gov-
16 ernmental agency; or

17 (C) all parties entitled to such notice con-
18 sent to a shorter time period.

19 (2) During the notice and consultation periods
20 under section 103 and section 104, the governmental
21 agencies responsible for the covered Federal activity
22 may continue to engage in planning, studies, or
23 other preparatory matters provided that such activi-
24 ties do not constitute a commitment to proceed with
25 the proposed activity or project.

1 (3) During the 90-day period following formal
2 notice to Indian tribes, Native Hawaiian organiza-
3 tions and Native American traditional leaders, the
4 governmental agency shall have the continuing duty
5 to seek to consult with Indian tribes, Native Hawai-
6 ian organizations and Native American traditional
7 leaders potentially affected by the proposed covered
8 Federal activity.

9 **SEC. 104. CONSULTATION.**

10 (a) IN GENERAL.—

11 (1) EFFECT OF NOTICE.—In order to allow a
12 full investigation of the consequences of a proposed
13 covered Federal activity, if an Indian tribe, Native
14 Hawaiian organization or Native American tradi-
15 tional leader responds in writing within 90 days of
16 receiving notice as provided in section 103(e), or
17 within the time limit of any comment period per-
18 mitted or required by any Federal law which is ap-
19 plicable to the covered Federal activity, whichever is
20 later, the governmental agency shall immediately
21 discontinue such activity until the agency performs
22 the duties described in paragraphs (3) and (4).

23 (2) AFTER ACTION DISCOVERY.—If after a cov-
24 ered Federal activity is underway—

1 (A) the governmental agency becomes
2 aware that the activity may have an adverse im-
3 pact on a Native American sacred site, the
4 agency engaged in the activity shall immediately
5 discontinue such activity until the agency per-
6 forms the duties set forth in paragraphs (3)
7 and (4); or

8 (B) an Indian tribe or Native Hawaiian or-
9 ganization that did not receive notice and did
10 not know of the covered Federal activity, be-
11 comes aware that the activity may have an ad-
12 verse impact on a Native American sacred site
13 and notifies the governmental agency, the agen-
14 cy engaged in the activity shall immediately dis-
15 continue such activity until the agency performs
16 the duties set forth in paragraphs (3) and (4).

17 (3)(A) CONSULTATION.—The governmental
18 agency shall consult with any interested party with
19 a direct interest in the Native American traditional
20 culture or religion in question concerning the nature
21 of the adverse impact, and consult about alternatives
22 which can be identified that would minimize or pre-
23 vent the adverse impact, including any alternatives
24 identified by an Indian tribe, Native Hawaiian orga-

1 nization or Native American traditional leader that
2 has filed a written objection under this subsection.

3 ~~(B) NEGOTIATED AGREEMENTS.—~~

4 (i) Upon the request of an Indian tribe or
5 tribes or Native Hawaiian organization, each
6 Federal agency or agencies involved in covered
7 Federal activities shall enter into negotiations
8 to identify appropriate land management proce-
9 dures for addressing that tribe's or that Native
10 Hawaiian organization's interest in the protec-
11 tion and preservation of its sacred sites and to
12 avoid any adverse impact on such sites as may
13 be located on public lands within the jurisdic-
14 tion of such agencies. Consistent with the public
15 mission of such agencies and the responsibility
16 of the United States to support Indian tribes
17 and tribal members and Native Hawaiians in
18 the preservation of their sacred sites, each Fed-
19 eral agency is authorized to enter into sacred
20 sites protection agreements with Indian tribes
21 or Native Hawaiian organizations for the pur-
22 pose of memorializing the land management
23 procedures that result from consultations and
24 negotiations. Such agreements may supersede
25 the planning provisions of section 103(c), the

1 notice provisions of section 103(d), the con-
2 sultation provisions of section 103(d)(1) and
3 section 104, and the access provisions of section
4 102 of this Act as they relate to Indian tribes
5 or Native Hawaiian organizations that are par-
6 ties to such an agreement if the agreement spe-
7 cifically and explicitly includes a provision over-
8 riding those sections of the Act, or any parts
9 thereof. The agreements may also include provi-
10 sion for the delegation by Federal agency offi-
11 cials of land management responsibilities to the
12 Indian tribe(s) or Native Hawaiian
13 organization(s) for designated public lands de-
14 scribed in the agreement.

15 (ii) In the case of Indian tribes, where
16 such a delegation of management functions is
17 included in such agreements, the Federal agen-
18 cy and the tribe may also agree to use the pro-
19 cedures and regulations employed under the In-
20 dian Self-Determination Act, Public Law 93-
21 638. The agreement may also address the appli-
22 cation of all or part of title I of this Act to In-
23 dian lands within the tribe's jurisdiction.

24 (4) RESPONSE TO COMMENTS.—If there is no
25 resolution of the claims asserted by an aggrieved

1 party pursuant to subsection (3), the governmental
2 agency shall prepare and make available to an In-
3 dian tribe, a Native Hawaiian organization or a Na-
4 tive American traditional leader who has been in-
5 volved in the consultation process, a document re-
6 sponding to the comments received. The document
7 shall—

8 (i) set forth the adverse impact which has
9 been asserted by the aggrieved party,

10 (ii) assess whether the interest of the gov-
11 ernment in proceeding with the action is com-
12 pelling; and

13 (iii) assess whether, based on an analysis
14 of the alternatives to the proposed action, in-
15 cluding any alternatives offered by an Indian
16 tribe, Native Hawaiian organization or Native
17 American traditional leader that the proposed
18 activity is the least restrictive means of further-
19 ing that compelling interest.

20 Where an agency determines to commence a covered
21 Federal activity, notwithstanding notice from an ag-
22 grieved party pursuant to section 104(a), it shall
23 issue a written opinion providing the basis for its de-
24 cision. The issuance of this decision shall constitute
25 final agency action for purposes of judicial review

1 pursuant to section 501, unless the agency estab-
2 lishes additional administrative review procedures
3 under section 105.

4 (5) ADDITIONAL INFORMATION.—In any case
5 where the governmental agency is also required to
6 prepare a document analyzing the impact of a cov-
7 ered Federal activity or a decision pursuant to the
8 National Environmental Policy Act (43 U.S.C. 4321
9 et seq.), the National Historic Preservation Act (16
10 U.S.C. 470 et seq.) or any other applicable law, such
11 agency may incorporate the analysis required by this
12 section into the contents of the document.

13 (b) CASES WHERE SECRECY IS REQUIRED.—

14 (1) IN GENERAL.—In the case of those Indian
15 tribes or Native Hawaiians whose traditional cul-
16 tural or religious tenets prohibit disclosure of infor-
17 mation concerning their Native American sacred
18 sites or cultural or religious beliefs or practices, and
19 mandate secrecy and internal sanctions to enforce
20 those prohibitions, and where the tribal government
21 of the affected Indian tribe or a Native Hawaiian or-
22 ganization so certifies and invokes this subsection—

23 (A) the tribal government or Native Ha-
24 waiian organization shall not be required to re-
25 veal the location of the Native American sacred

1 site or in what manner the covered Federal ac-
2 tivity would have an adverse impact on the site
3 or any information concerning their cultural or
4 religious beliefs or practices;

5 (B) the tribal government or Native Ha-
6 waiian organization shall not be required to ex-
7 plain in what manner any proposed alternative
8 is or is not less intrusive upon the Native
9 American cultural or religious practice or sa-
10 cred sites which may be adversely impacted
11 than the original proposed covered Federal ac-
12 tivity; and

13 (C) in engaging in consultation and pre-
14 paring any document required by this Act, the
15 governmental agency shall not be required to
16 include an analysis of adverse impacts upon the
17 sacred site or the use thereof or the Indian
18 tribe's or Native Hawaiian organization's cul-
19 tural or religious beliefs and practices.

20 (2) AFTER CONSULTATION.—If after consulta-
21 tion—

22 (A) the governmental agency agrees to
23 pursue a less intrusive alternative proposed by
24 the Indian tribe or Native Hawaiian organiza-
25 tion or some other alternative to which the In-

1 dian tribe or Native Hawaiian organization
2 agrees; or

3 (B) if no reasonable alternative acceptable
4 to the tribe or Native Hawaiian organization is
5 identified, the governmental agency shall be
6 deemed to have met its obligation under sec-
7 tions 104 and 105 to consider and pursue the
8 least intrusive alternative under this Act in re-
9 gard to the objection raised to the covered Fed-
10 eral activity by the Indian tribe or Native Ha-
11 waiian organization invoking this subsection.

12 (C) RESPONSE TO COMMENTS.—If there is
13 no resolution of the claims asserted by a tribe
14 or Native Hawaiian organization pursuant to
15 this subsection, the governmental agency shall
16 prepare and make available to the tribe or Na-
17 tive Hawaiian organization a document re-
18 sponding to the comments received. The docu-
19 ment shall—

20 (i) set forth the adverse impact which
21 is asserted by the Indian tribe or Native
22 Hawaiian organization;

23 (ii) assess whether the interest of the
24 government in proceeding with the activity
25 is compelling;

- 1 (iii) assess whether based on an anal-
2 ysis of the alternatives the activity is a rea-
3 sonable means of furthering that compel-
4 ling interest; and
- 5 (iv) assess whether the alternatives
6 identified in 104(b)(2) are reasonable.

7 Where an agency determines to commence a covered
8 Federal activity, notwithstanding notice from an ag-
9 grieved party pursuant to 104 (a) and (b) it shall
10 issue a written opinion providing the basis for its de-
11 cision. The issuance of this decision shall constitute
12 final agency action for purposes of judicial review
13 pursuant to section 501, unless the agency estab-
14 lishes additional administrative review procedures
15 under section 105.

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

21 (d) ~~DISCLOSURE REQUIRED.~~—Within 30 days of re-
22 ceipt of any written objection under subsection (a) or (b),
23 the governmental agency proposing the covered Federal
24 activity which gave rise to that notice shall make available
25 to the aggrieved party, all plats, maps, plans, specifica-

1 tions, socioeconomic, environmental, scientific, archae-
2 ological or historical studies, and comments and informa-
3 tion in that agency's possession directly relating to said
4 activity. The agency may withhold—

5 (1) attorney work product prepared in anticipa-
6 tion of litigation; and

7 (2) information the release of which would jeop-
8 ardize the litigating position of the United States on
9 behalf of another tribe.

10 ~~(e) SPECIAL RULE FOR PUEBLOS.—In the case of a~~
11 ~~proposed covered Federal activity affecting the manage-~~
12 ~~ment, use, or preservation of public land, or any other ac-~~
13 ~~tivity or violation under this Act involving potential ad-~~
14 ~~verse impacts on any of the Indian pueblos of New Mexico~~
15 ~~or any of their sacred sites, the only party who may file~~
16 ~~an objection or participate in consultation under this sec-~~
17 ~~tion, or file an action under section 105 or 501, shall be~~
18 ~~the governor of the affected pueblo or the governor's des-~~
19 ~~ignee.~~

20 ~~(f) EMERGENCY PROVISION.—The process required~~
21 ~~by sections 103 and 104 shall not apply if the govern-~~
22 ~~mental agency determines that adherence to the process~~
23 ~~will—~~

1 (1) have a direct, significant and negative im-
2 pact upon specific national security interests or the
3 implementation of the Endangered Species Act; or

4 (2) present an immediate threat of serious bod-
5 ily harm to any person or immediate and serious
6 harm to the environment.

7 **SEC. 105. ADMINISTRATIVE PROCEDURES.**

8 (a) IN GENERAL.—A governmental agency, shall, by
9 regulation, establish an administrative procedure to imple-
10 ment the requirements of this title.

11 (b) EXHAUSTION REQUIREMENT.—An aggrieved
12 party must use a procedure established under paragraph
13 (a) before filing an action in a Federal district court pur-
14 suant to section 501 of this Act.

15 (c) BURDEN ON AGENCY.—

16 (1) In the case of any administrative proceeding
17 in which an aggrieved Indian tribe or Native Hawai-
18 ian organization objects to the covered Federal activ-
19 ity or an action by a State on the grounds that it
20 is or will have an adverse impact on a Native Amer-
21 ican sacred site, the governmental agency shall have
22 the burden of proving by a preponderance of the evi-
23 dence that a covered Federal activity does not or will
24 not have an adverse impact on a Native American
25 sacred site.

1 (2) The governmental agency's determination
2 that a covered Federal activity does not pose or will
3 not have an adverse impact on a Native American
4 sacred site, shall constitute a final agency action for
5 purposes of judicial review under section 501 of this
6 Act.

7 (3)(A) If a governmental agency determines
8 that a covered Federal activity does pose or will have
9 an adverse impact on a Native American sacred site,
10 the governmental agency shall have the burden of
11 proving by a preponderance of the evidence that the
12 covered Federal activity—

13 (i) is in furtherance of a compelling gov-
14 ernmental interest;

15 (ii) is a reasonable means of furthering
16 that compelling governmental interest; and

17 (iii) in circumstances set forth in section
18 104(b)(1), the alternatives identified under sec-
19 tion 104(b)(2) are not reasonable.

20 (B) The agency determination under this para-
21 graph shall constitute final agency action for pur-
22 poses of judicial review under section 501 of this
23 Act.

24 (d) FAILURE OF AGENCY TO MEET BURDEN.—

1 (1) The governmental agency shall retain its
2 burden of proof at all stages of any proceeding or
3 decisionmaking process pursuant to this title.

4 (2) If a governmental agency does not meet its
5 burden of proof under this section, it shall not pro-
6 ceed with the proposed covered Federal activity.

7 (3) For purposes of this section the phrase
8 “burden of proof” means the burden of production
9 and the burden of persuasion.

10 (e) For purposes of this section—

11 (1) a finding of an adverse impact does not re-
12 quire that an aggrieved party be coerced to act con-
13 trary to religious beliefs or traditional cultural prac-
14 tices, and may include consideration of disturbing
15 the integrity of a sacred site;

16 (2) land management activities, undertakings
17 and actions which have the potential to have an ad-
18 verse impact on a Native American sacred site, or
19 which make a Native American traditional cultural
20 practice or exercise of a Native American religion
21 more difficult shall be deemed to constitute an ad-
22 verse impact; and

23 (3) government ownership of land, by itself,
24 does not establish a compelling government interest.

1 (f) SPECIAL RULE FOR NATIVE AMERICAN PRACTI-
2 TIONERS.—For purposes of any administrative proceeding
3 conducted under this section, Native American practition-
4 ers may elect to provide testimony about their beliefs in
5 camera or in some other protective procedure.

6 **SEC. 106. NATIVE AMERICAN SACRED SITES ON INDIAN**
7 **LANDS.**

8 (a) JURISDICTION OF TRIBES.—Indian tribes may
9 regulate and protect Native American sacred sites located
10 on Indian lands within their jurisdiction. Nothing in this
11 Act shall be construed to alter, increase or decrease the
12 existence or scope of tribal jurisdiction or the application
13 of tribal law regarding protection of or access to Native
14 American sacred sites on Indian lands. Nothing in this
15 Act shall be construed to grant authority to one Indian
16 tribe to regulate Native American sacred sites which are
17 within the jurisdiction of another Indian tribe.

18 (b) TRIBAL OPTION.—None of the provisions of title
19 I of this Act shall apply on Indian lands unless the tribe
20 with jurisdiction over those lands affirmatively elects to
21 have those provisions apply to all or any part of the lands
22 affected or potentially affected. Where an Indian tribe
23 elects to have the provisions of title I apply to all or any
24 part of its lands, the Indian tribe shall notify the Secretary
25 of the Interior regarding the lands to be subject to the

1 provisions of title I and the Secretary shall publish the
2 information in the Federal Register.

3 ~~(c) DUTY TO NOTIFY.—This section does not relieve~~
4 a governmental agency of any duty pursuant to section
5 103 to notify an Indian tribe of a covered Federal activity
6 on Indian lands which may result in changes in the char-
7 acter or use of a Native American sacred site.

8 ~~(d) NATIONAL SECURITY.—The provisions of this~~
9 section shall not apply if the President determines that
10 national security concerns are directly affected by a cov-
11 ered Federal activity.

12 ~~(e) DISPUTES BETWEEN TWO OR MORE TRIBES.—~~

13 ~~(1) When a governmental agency proposes a~~
14 covered Federal activity on Indian lands of one In-
15 dian tribe which may result in changes in the char-
16 acter or use of a Native American sacred site of an-
17 other Indian tribe, and the Indian tribe whose sa-
18 cred site is affected and the Indian tribe on whose
19 land the site is located agree and so request, the
20 Secretary of the Interior shall convene a committee
21 of tribal representatives for the purpose of entering
22 into negotiations concerning the nature of any ad-
23 verse impact on the character or use of a Native
24 American sacred site and alternatives that would
25 minimize or prevent such an adverse impact.

1 (2) The committee shall consist of tribal rep-
2 representatives of the affected Indian tribe or tribes
3 and tribal representatives of the Indian tribe upon
4 whose lands the sacred site is located, and commit-
5 tee members shall be selected by the respective In-
6 dian tribes.

7 (3) The committee shall be convened for the du-
8 ration of the consultation and negotiation period and
9 shall meet at the call of the Secretary upon the re-
10 quest of the affected Indian tribe or tribes and the
11 Indian tribe upon whose lands the sacred site is
12 located.

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

14 (a) **IN GENERAL.**—Nothing in this title shall be con-
15 strued to deprive any person or entity of any other rights
16 which might be provided under the laws, regulations,
17 guidelines, or policies of the Federal, State, and tribal gov-
18 ernments, including but not limited to the National His-
19 toric Preservation Act (16 U.S.C. 470 et seq.), to receive
20 notice of, comment upon, or otherwise participate in the
21 decisionmaking process regarding a covered Federal
22 activity.

23 (b) **EXISTING PROCEDURES.**—To the maximum ex-
24 tent possible, the procedures required by this Act shall be
25 incorporated into existing procedures applicable to the

1 management of Federal lands and decisionmaking pro-
2 cesses of Federal agencies engaged in covered Federal
3 activities.

4 **SEC. 108. CONFIDENTIALITY.**

5 (a) IN GENERAL.—Notwithstanding any other provi-
6 sion of law, whenever information has been obtained as
7 a result of or in connection with a proceeding pursuant
8 to sections 105 or 501 or consultation pursuant to sections
9 103 and 104, all references pertaining to specific details
10 of a Native American traditional cultural practice or reli-
11 gion, or the significance of a Native American sacred site,
12 or the location of that sacred site, shall not be released
13 by a governmental agency or court to any party or the
14 general public pursuant to the Freedom of Information
15 Act (5 U.S.C. 552) or any other applicable law.

16 (b) SUPPLEMENTATION OF RECORD.—The govern-
17 mental agency or court shall supplement the record de-
18 scribed in subsection (a) to include the general results and
19 conclusions of the administrative proceeding pursuant to
20 section 105 or judicial review process pursuant to section
21 501 to the extent necessary to provide other interested
22 parties with sufficient information to understand the na-
23 ture of, and basis for, a decision by the governmental
24 agency or court.

1 (c) ~~EXCEPTION.~~—This section shall not apply where
2 all parties to a proceeding (excluding the United States
3 Government) waive its application, and in the case of a
4 Native Hawaiian sacred site, where the information is
5 sought by a Native Hawaiian organization for the purpose
6 of protecting such site.

7 (d) ~~OTHER LAW.~~—Indian tribes or Native Hawaiian
8 organizations seeking to maintain the confidentiality of in-
9 formation relating to Native American sacred sites may
10 also seek redress through existing laws requiring that cer-
11 tain information be withheld from the public, including,
12 but not limited to the National Historic Preservation Act
13 (16 U.S.C. 470w-3) and the Archaeological Resources
14 Protection Act (16 U.S.C. 470hh).

15 **SEC. 109. CRIMINAL SANCTIONS.**

16 (a) ~~DAMAGING SACRED SITES.~~—

17 (1) ~~INITIAL VIOLATION.~~—Any person who in-
18 tentiously damages, defaces, desecrates or destroys
19 a Native American sacred site located on land as de-
20 fined in section 3(10) of this Act with knowledge
21 that it is a sacred site, except as part of an approved
22 covered Federal activity authorized by a govern-
23 mental agency with the authority to approve such
24 activity, shall, upon conviction, be fined not more

1 than \$10,000, or imprisoned not more than 1 year,
2 or both.

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

7 (b) ~~RELEASE OF INFORMATION.~~—

8 (1) ~~INITIAL VIOLATION.~~—Any person who in-
9 tentiously releases any information knowing that it
10 is required to be held confidential pursuant to this
11 title shall, upon conviction, be fined not more than
12 \$10,000, or imprisoned not more than 1 year, or
13 both.

14 (2) ~~SUBSEQUENT VIOLATIONS.~~—In the case of
15 a second or subsequent violation, be fined not more
16 than \$100,000, or imprisoned not more than 5
17 years, or both.

18 **TITLE II—TRADITIONAL USE OF** 19 **PEYOTE**

20 **SEC. 201. FINDINGS.**

21 The Congress finds that—

22 (1) some Indian people, such as members of the
23 Native American Church, have used the peyote cae-
24 tus in religious ceremonies for sacramental and heal-
25 ing purposes for many generations, and such uses

1 have been significant in perpetuating Indian tribes
2 and cultures by promoting and strengthening the
3 unique cultural cohesiveness of Indian tribes;

4 (2) since 1965, this religious ceremonial use of
5 peyote by Indians in bona fide religious ceremonies
6 of the Native American Church has been protected
7 by Federal regulation, which exempts such use from
8 Federal laws governing controlled substances, and
9 the Drug Enforcement Administration has mani-
10 fested its continuing support of this Federal regu-
11 latory system;

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

17 (4) while 28 States have enacted laws which
18 protect the ceremonial use of peyote by Indians, 22
19 others have not; as a result of the diverse State
20 laws, Indians from different tribes located in dif-
21 ferent States, as well as from different tribes within
22 the same State, are treated differently regarding the
23 religious use of peyote. Legislation is therefore need-
24 ed to assure comprehensive, equal and uniform pro-
25 tection of the religious use of peyote by Indians

1 throughout the United States, without regard to
2 State or reservation or residence, or tribal affiliation;

3 (5) the traditional ceremonial use by Indians of
4 the peyote cactus is integral to a way of life, and the
5 use of peyote plays a significant role in combating
6 the scourge of alcohol and drug abuse among some
7 Indian people;

8 (6) the United States has a unique, govern-
9 ment-to-government relationship with Indian tribes
10 and special historic Federal-Indian trust relation-
11 ship, which permits the United States to take meas-
12 ures to protect against interference with the continu-
13 ing cultural cohesiveness and integrity of Indian
14 tribes and cultures; and as part of this relationship
15 it is the intent of the Federal Government to pursue
16 enforceable Federal policies which will protect Indian
17 community and tribal vitality and cultural integrity,
18 and which will not inhibit or interfere with the free
19 exercise of Native American religions;

20 (7) general prohibitions against the abusive use
21 of peyote, without an exception for the bona fide re-
22 ligious use of peyote by Indians, lead to discrimina-
23 tion against Indians by reason of their religious be-
24 liefs and practices;

1 (8) the Supreme Court of the United States, in
2 the case of *Employment Division v. Smith*, 494 U.S.
3 872 (1990), held that the first amendment does not
4 protect Indian practitioners who use peyote in In-
5 dian religious ceremonies, and raised uncertainty as
6 to whether this religious practice would be protected
7 under the compelling State interest standard; and

8 (9) the lack of adequate and clear protection for
9 the religious use of peyote by Indians may serve to
10 stigmatize and marginalize Indian tribes and cul-
11 tures and increase the risk that they will be exposed
12 to discriminatory treatment.

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

14 (a) **IN GENERAL.**—Notwithstanding any other provi-
15 sion of law, the use, possession, or transportation of pe-
16 yote by an Indian for bona fide traditional ceremonial pur-
17 poses in connection with the practice of a Native American
18 religion is lawful and shall not be prohibited by the Fed-
19 eral Government or any State. No Indian shall be penal-
20 ized or discriminated against on the basis of such use, pos-
21 session or transportation, including, but not limited to, de-
22 nial of otherwise applicable benefits under public assist-
23 ance programs.

24 (b) **REGULATION AUTHORIZED.**—This section does
25 not prohibit—

1 (1) such reasonable regulation and registration
2 by the Drug Enforcement Administration of those
3 persons who import, cultivate, harvest or distribute
4 peyote, as may be consistent with the purpose of this
5 title;

6 (2) military commanders restricting the use or
7 ingestion of peyote by active duty personnel within
8 a reasonable period, but not to exceed 48 hours,
9 prior to the performance of official duties in cir-
10 cumstances where safety or military readiness may
11 be adversely affected by such use or ingestion;

12 (3) regulations by the Secretary of Transpor-
13 tation restricting the use or ingestion of peyote by
14 transportation workers in safety sensitive positions,
15 as defined by the Secretary within a reasonable pe-
16 riod, but not to exceed 48 hours, prior to the per-
17 formance of official duties, in circumstances where
18 public safety may be adversely affected by such use
19 or ingestion; or

20 (4) regulations by law enforcement administra-
21 tors restricting the use or ingestion of peyote by
22 sworn law enforcement personnel within a reason-
23 able period, but not to exceed 48 hours, prior to the
24 performance of official duties in circumstances where

1 public safety may be adversely affected by such use
2 or ingestion.

3 ~~(c) TEXAS LAW.~~—This section does not prohibit ap-
4 plication of the provisions of section 481.111(a) of
5 Vernon’s Texas Health and Safety Code Annotated, in ef-
6 fect on the date of enactment of this Act, insofar as those
7 provisions pertain to the cultivation, harvest, or distribu-
8 tion of peyote.

9 ~~(d)~~ This section shall not be construed as requiring
10 prison authorities to permit, nor shall it be construed to
11 prohibit prison authorities from permitting access to pe-
12 yote by Indians while incarcerated within Federal or State
13 prison facilities.

14 ~~(e)~~ For purposes of this title, the term “Indian”
15 means a member of an Indian tribe as defined in section
16 3(9).

17 **~~TITLE III—PRISONERS’ RIGHTS~~**

18 **~~SEC. 301. RIGHTS.~~**

19 ~~(a) IN GENERAL.~~—

20 ~~(1) ACCESS.~~—Notwithstanding any other provi-
21 sion of law, Native American prisoners who practice
22 a Native American culture or religion shall have, on
23 a regular basis comparable to that access afforded
24 prisoners who practice Judeo-Christian religions or
25 any other religions, access to—

1 (A) Native American traditional leaders
2 who shall be afforded the same status, rights
3 and privileges as religious leaders of Judeo-
4 Christian religions or any other religions;

5 (B) subject to paragraph (6), items and
6 materials utilized in cultural or religious cere-
7 monies; and

8 (C) Native American cultural or religious
9 facilities.

10 (2) MATERIALS.—Prison authorities shall treat
11 items and materials utilized in cultural or religious
12 ceremonies, including traditional foods for cultural
13 or religious diets, identified by a Native American
14 traditional leader, in the same manner as the reli-
15 gious items and materials utilized in ceremonies of
16 the Judeo-Christian religions or any other religions.

17 (3) HAIR.—

18 (A) RIGHT OF PRISONER.—Except in those
19 circumstances where subparagraph (B) applies,
20 Native American prisoners who desire to wear
21 their hair according to the customs of a Native
22 American culture or religion may do so provided
23 that the prisoner demonstrates that—

24 (i) the practice is rooted in Native
25 American cultural or religious beliefs; and

1 (ii) these beliefs are sincerely held by
2 the Native American prisoner.

3 (B) DENIAL OF REQUEST.—If a Native
4 American prisoner satisfies the criteria in para-
5 graph (3)(A), the prison authorities may deny
6 such request only where they can satisfy the
7 criteria of section 3 of the Religious Freedom
8 Restoration Act (Public Law 103–141).

9 (4) DEFINITION OF “CULTURAL OR RELIGIOUS
10 FACILITIES”.—The term “cultural or religious facili-
11 ties” includes sweat lodges, tepees, and access to
12 other secure, out-of-doors locations within prison
13 grounds if such facilities are identified by a Native
14 American traditional leader to facilitate a cultural or
15 religious ceremony.

16 (5) DISCRIMINATION PROHIBITED.—No Native
17 American prisoner shall be penalized or discrimi-
18 nated against on the basis of Native American cul-
19 tural or religious practices, and all prison and parole
20 benefits or privileges extended to prisoners for en-
21 gaging in cultural or religious activities shall be af-
22 forded to Native American prisoners who participate
23 in Native American cultural or religious practices.

24 (6) SCOPE OF TITLE.—This Title shall not be
25 construed as (i) requiring prison authorities to per-

1 mit nor shall it be construed to prohibit prison au-
2 thorities from permitting access to peyote or Native
3 American sacred sites; or (ii) altering applicable re-
4 quirements for exhaustion of administrative rem-
5 edies.

6 ~~(b) ATTORNEY GENERAL INVESTIGATION.—~~

7 ~~(1) IN GENERAL.—~~The Attorney General shall
8 investigate, in consultation with Native American
9 traditional leaders and ex-offenders with corrections
10 experience as may be recommended by Indian tribes
11 and Native Hawaiian organizations, and Federal
12 and State prison administrators, the conditions of
13 Native American prisoners in the Federal and State
14 prison systems with respect to their ability to engage
15 in traditional cultural ceremonies and practices, in-
16 cluding the free exercise of Native American reli-
17 gions.

18 ~~(2) REPORT.—~~Not later than 36 months after
19 the date of enactment of this Act, the Attorney Gen-
20 eral shall submit to the Congress a report contain-
21 ing—

22 ~~(A)~~ an assessment of the recognition, pro-
23 tection, and enforcement of the rights of Native
24 American prisoners to practice their cultures or
25 religions under this Act in Federal and State

1 prisons where Native Americans are incarcer-
2 ated; and

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

5 **TITLE IV—CULTURAL AND RELI-**
6 **GIUS USE OF EAGLES AND**
7 **OTHER ANIMALS AND PLANTS**

8 **SEC. 401. CULTURAL AND RELIGIOUS USE OF EAGLES.**

9 (a) **IN GENERAL.**—Within 1 year after the date of
10 enactment of this Act, the Director of the United States
11 Fish and Wildlife Service (hereafter in this section re-
12 ferred to as the “Director”) shall, in consultation with the
13 Indian tribes and Native American traditional leaders, de-
14 velop a plan to—

15 (1) ensure the prompt disbursement from Fed-
16 eral repositories of available bald or golden eagles, or
17 their parts, nests, or eggs for the traditional cultural
18 or religious use of Indians upon receipt of an appli-
19 cation from an Indian practitioner;

20 (2) provide that sufficient numbers of bald or
21 golden eagles are allocated to Indian practitioners to
22 meet the demonstrated need where they are available
23 by reason of accidental deaths, natural deaths, or
24 takings permitted by Federal law;

1 (3) simplify and shorten the process by which
2 permits are authorized for the taking, possession,
3 and transportation of bald or golden eagles, or their
4 parts, nests, or eggs for the traditional cultural or
5 religious use of Indians;

6 (4) establish a mechanism for tribal disburse-
7 ment of dead eagles discovered within the exterior
8 boundaries of their own reservation of Native Amer-
9 ican traditional cultural or religious practitioners;
10 and

11 (5) establish a mechanism for tribal contacts
12 with regional and national offices of the United
13 States Fish and Wildlife Service on fish and wildlife
14 resource issues.

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

16 Within two years after the enactment of this Act, the
17 Secretaries of Interior, Agriculture, Commerce and Treas-
18 ury, and the Administrator of the General Services Admin-
19 istration shall, in consultation with Indian tribes, Native
20 Hawaiian organizations and Native American traditional
21 leaders, establish a joint uniform set of administrative pro-
22 cedures to govern the disposition of surplus wildlife and
23 plants or parts thereof which have been confiscated, gath-
24 ered or are otherwise under the jurisdiction and control
25 of their respective agencies. To the fullest extent allowed

1 under existing statutory authority, the uniform procedures
2 shall be designed to increase the availability of natural
3 products to Native American traditional cultural and reli-
4 gious practitioners.

5 **TITLE V—JURISDICTION AND**
6 **REMEDIES**

7 **SEC. 501. JURISDICTION AND REMEDIES.**

8 (a) IN GENERAL.—

9 (1) An aggrieved party shall have the right to
10 file suit against the United States or a State in the
11 appropriate district court to enforce the provisions of
12 this Act.

13 (2) Any appropriate United States district
14 court shall have original jurisdiction over a civil ac-
15 tion for—

16 (A) equitable relief; or

17 (B) damages arising from any violations of
18 this Act.

19 (3) Nothing herein shall be construed to deprive
20 Indian tribes of jurisdiction they would otherwise
21 have under section 106 of this Act or any other Fed-
22 eral law.

23 (b) FACTUAL FINDINGS.—

24 (1) If an action is filed in a United States dis-
25 trict court after exhaustion of administrative rem-

1 edies under section 105, the court shall not defer to
2 agency factual findings except where such findings
3 are based on a formal hearing on the record.

4 (2) The court shall review de novo agency legal
5 determinations concerning the extent to any adverse
6 impact, whether the Government's interest is com-
7 pelling and whether a particular alternative is the
8 least restrictive.

9 (c) For purposes of an action alleging a violation of
10 the rights protected under title I of this Act and consistent
11 with section 106 of this Act—

12 (1) BURDEN ON AGGRIEVED PARTY.—Except as
13 provided in subsection 501(d), the aggrieved party
14 shall have the burden of establishing that the cov-
15 ered Federal activity or an action by a State having
16 an impact upon the management, use or preserva-
17 tion of public land, is or will have an adverse impact
18 on a Native American sacred site.

19 (2) BURDEN ON AGENCY.—If the aggrieved
20 party meets its burden of proof under paragraph
21 (1), the agency may proceed with the action only if
22 it is determined by clear and convincing evidence
23 that the covered Federal activity—

24 (A) is in furtherance of a compelling gov-
25 ernment interest; and

1 ~~(B)~~ is the least restrictive means of fur-
2 thering that compelling interest.

3 ~~(3)~~ For purposes of decisions pursuant to title

4 I—

5 (A) a finding of adverse impact does not
6 require that an aggrieved party be coerced to
7 act contrary to religious beliefs or traditional
8 cultural practices, and may include consider-
9 ation of disturbing the integrity of a sacred
10 site;

11 (B) land management activities, undertak-
12 ings and actions which have the potential to
13 have an adverse impact on a Native American
14 sacred site, or which make a Native American
15 traditional cultural practice or the exercise of a
16 Native American religion more difficult shall be
17 deemed to constitute an adverse impact; and

18 (C) government ownership of land, by it-
19 self, does not establish a compelling government
20 interest.

21 ~~(d) CASES WHERE SECRECY IS REQUIRED.~~—In the
22 case of any proceeding in which an aggrieved Indian tribe
23 or Native Hawaiian organization relies on section 104(b),
24 if an Indian tribe or Native Hawaiian organization objects
25 to the covered Federal activity or an action by a State

1 on the grounds that it is or will have an adverse impact on a
2 Native American sacred site, the governmental agency
3 shall have the burden of proving by a preponderance of
4 the evidence that the covered Federal activity—

5 (1) is in furtherance of a compelling govern-
6 ment interest;

7 (2) is a reasonable means of furthering that
8 compelling interest; and

9 (3) the alternatives identified under section
10 104(b)(2) are not reasonable.

11 (e) FAILURE OF AGENCY TO MEET BURDEN.—

12 (1) The governmental agency shall retain its
13 burden of proof at all stages of any proceeding or
14 decisionmaking process pursuant to title I of this
15 Act.

16 (2) If a governmental agency does not meet its
17 burden of proof under this section, it shall not pro-
18 ceed with the proposed activity.

19 (3) For purposes of this section the phrase
20 “burden of proof” means the burden of production
21 and the burden of persuasion.

22 (f) SPECIAL RULE FOR NATIVE AMERICAN PRACTI-
23 TIONERS.—Native American practitioners may elect to
24 provide testimony about their beliefs in camera or in some
25 other protective procedure.

1 (g) SOVEREIGN IMMUNITY.—Neither the sovereign
 2 immunity of the United States nor of any State, including
 3 immunity derived from the eleventh amendment to the
 4 United States Constitution, shall be a bar or defense to
 5 any civil action brought pursuant to this section to enforce
 6 the provisions of this Act, including any grant of attor-
 7 ney’s fees pursuant to subsection (h) of this section, and
 8 such immunities are hereby waived.

9 (h) ATTORNEY’S FEES.—An aggrieved party who is
 10 a prevailing party in any administrative or judicial pro-
 11 ceeding brought pursuant to this Act shall be entitled to
 12 attorney’s fees, expert witness fees, and costs under the
 13 provisions of section 504 of title 5, United States Code,
 14 and section 2412 of title 28, United States Code.

15 **TITLE VI—MISCELLANEOUS**

16 **SEC. 601. SAVINGS CLAUSE.**

17 (a) Nothing in this Act shall be construed as abrogat-
 18 ing, diminishing, or otherwise affecting—

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

20 (2) the rights, express or implicit, of any Indian
 21 tribe which exist under treaties, Executive orders
 22 and laws of the United States;

23 (3) the inherent right of Native Americans to
 24 maintain their cultural integrity and religions;

1 (4) the trust responsibility of the United States
2 or any legal obligation or remedy resulting there-
3 from;

4 (5) the right and ability of any Indian tribe
5 upon whose Indian lands a Native American sacred
6 site is located to determine, exclusively pursuant to
7 its own tribal law, whether any other Indian tribe or
8 Native American practitioner shall have a property
9 right in that site or have the authority to limit or
10 prohibit covered Federal activities affecting that site;

11 (6) any traditional cultural or free exercise of
12 religion claim of any person that does not fall within
13 the scope of this Act;

14 (7) the right of Native Americans to obtain pro-
15 tection for the practice of their traditional cultures
16 or religions under any other Federal, State, or tribal
17 law or constitution; or the authority and responsibil-
18 ity of any governmental agency to provide protection
19 for Native American sacred sites and the practice of
20 Native American traditional cultures and religions
21 under other laws or constitutions, such as the Na-
22 tional Historic Preservation Act; and

23 (8) the authority of Federal land and program
24 managers to provide for notice to and consultation
25 with other religious and cultural groups not encom-

1 passed by this Act for the purpose of protection of
2 cultural, religious, environmental and historical sites
3 and resources under other authority.

4 (b) This Act is supplemental to the Religious Free-
5 dom Restoration Act of 1993, and is not intended to be
6 limited by that Act, or to limit in any way, rights available
7 under that Act, including the application of that Act to
8 activities which may have an adverse impact upon a Native
9 American sacred site, whether or not said activities are
10 explicitly covered by this Act.

11 **SEC. 602. SEVERABILITY.**

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

21 **SEC. 603. AUTHORIZATION OF APPROPRIATIONS.**

22 There are hereby authorized to be appropriated such
23 sums as may be necessary to carry out the provisions of
24 this Act, including such sums as may be necessary for ex-

1 penses of Native Americans for consultations with the At-
2 torney General provided in section 301(b)(1).

3 **SEC. 604. REGULATIONS.**

4 (a) The head of each land managing agency, in con-
5 sultation with Indian tribes and Native Hawaiian organi-
6 zations, shall promulgate regulations relating 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, and Native
11 American traditional leaders as required by sections
12 103 and 104 of this Act.

13 (b) The head of each land managing agency shall con-
14 sult with the Secretary of the Interior to assure maximum
15 possible consistency in regulations promulgated pursuant
16 to this Act.

17 (c) The regulations shall be sufficiently flexible to en-
18 able consultation to address the unique needs of Indian
19 tribes, Native Hawaiian organizations, Native American
20 traditional leaders and Native American practitioners. No-
21 tices and procedures provided for in sections 103 and 104
22 shall not await completion of regulations.

23 **SEC. 605. PROTECTIONS.**

24 (a) The protections of this Act shall be afforded only
25 to bona fide persons who are defined in subsections (7),

1 ~~(11), (12), (16), and (17)~~ of section 3 of this Act, and
2 to members of Indian tribes as defined in section 3(9) of
3 this Act.

4 (b) For purposes of determining the bona fide nature
5 of any of the persons defined in section 3, or the bona
6 fide nature of any Native American traditional cultural
7 practice or Native American religion, the Secretary is au-
8 thorized to consult with Indian tribes, Native Hawaiian
9 organizations, Native American practitioners and Native
10 American traditional leaders.

11 **SEC. 606. EFFECTIVE DATE.**

12 (a) This Act takes effect on the date of its enactment.
13 Application and enforcement of this Act does not depend
14 upon the promulgation of regulations by any governmental
15 agency. However, with respect to notice and review provi-
16 sions under sections 103 and 104, agencies shall have a
17 period of six months from enactment to establish applica-
18 ble procedures.

19 (b) Except as provided in section 104(a)(2) and sec-
20 tion 3(4)(B)(ii), this Act does not require any Federal
21 agency to reconsider any final action or decision that it
22 made prior to enactment of this Act or that it made in
23 compliance with the provisions of this Act, although this
24 shall not bar application of the Act to new phases of exist-
25 ing projects.

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

2 (a) *SHORT TITLE.*—*This Act may be cited as the “Na-*
 3 *tive American Cultural Protection and Free Exercise of Re-*
 4 *ligion Act of 1994”.*

5 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 6 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Policy.

Sec. 3. Definitions.

TITLE I—PROTECTION OF NATIVE AMERICAN SACRED SITES

Sec. 101. Findings.

Sec. 102. Access to Federal lands.

Sec. 103. Federal land management, identification of lands, planning and notice.

Sec. 104. Consultation.

Sec. 105. Administrative procedures.

Sec. 106. Native American sacred sites on Indian lands.

Sec. 107. Applicability of other laws.

Sec. 108. Confidentiality.

Sec. 109. Criminal sanctions.

TITLE II—PRISONERS' RIGHTS

Sec. 201. Rights.

*TITLE III—RELIGIOUS USE OF EAGLES AND OTHER ANIMALS AND
 PLANTS*

Sec. 301. Religious use of eagles.

Sec. 302. Other animals and plants.

TITLE IV—JURISDICTION AND REMEDIES

Sec. 401. Jurisdiction and remedies.

TITLE V—MISCELLANEOUS

Sec. 501. Statutory construction.

Sec. 502. Severability.

Sec. 503. Authorization of appropriations.

Sec. 504. Regulations.

Sec. 505. Protections.

Sec. 506. Applicability of Federal Advisory Committee Act.

Sec. 507. 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 and*
6 *preserve the cultural patrimony of Native Americans and*
7 *the inherent right of any Native American to believe, ex-*
8 *press, exercise and practice his or her traditional culture*
9 *and religion, including, but not limited to, access to Native*
10 *American sacred sites, use and possession of sacred objects,*
11 *and the freedom to worship through traditional ceremonies*
12 *and traditional rites.*

13 **SEC. 3. DEFINITIONS.**

14 *For the purposes of this Act:*

15 (1) *ADVERSE IMPACT.*—*The term “adverse im-*
16 *pect” means any action or any potential action*
17 *which has the effect or which will have the effect of—*

18 (A) *substantially altering or disturbing a*
19 *Native American sacred site;*

20 (B) *desecrating or destroying a Native*
21 *American sacred site;*

22 (C) *inhibiting, infringing upon, or interfer-*
23 *ing with Native American traditional cultural*
24 *ceremonies or rituals conducted at a Native*
25 *American sacred site; or*

1 (D) imposing a substantial burden upon the
2 free exercise of a Native American religion.

3 (2) *AGGRIEVED PARTY.*—The term “aggrieved
4 party” means any Indian tribe, Native American
5 practitioner, Native American traditional leader, or
6 Native Hawaiian organization, as defined by this
7 Act, to whom the provisions of this Act apply, who al-
8 leges a potential adverse impact on a Native Amer-
9 ican sacred site or the traditional cultural and reli-
10 gious practices associated with a Native American sa-
11 cred site or alleges a violation of rights protected by
12 this Act.

13 (3) *CONSULTATION.*—The term “consultation”
14 means, at a minimum, agency-initiated outreach ac-
15 tivities which will result in a meaningful process for
16 face-to-face deliberations and conferral with all In-
17 dian tribes, Native Hawaiian organizations, and Na-
18 tive American traditional leaders that should be con-
19 sulted with respect to the provisions of this Act and
20 which is conducted in a realistic manner that is cog-
21 nizant of the cultural values, socioeconomic factors,
22 and administrative structures, if any, of the Indian
23 tribes or Native Hawaiian organizations with an in-
24 terest in the land in question.

1 (4) *COVERED FEDERAL ACTIVITY.*—The term
2 “covered Federal activity” means—

3 (A) any new or reauthorized project, pro-
4 gram, or activity, or any new phase of existing
5 projects, programs and activities, under the di-
6 rect or indirect jurisdiction of a Federal agency,
7 including but not limited to—

8 (i) those carried out by or on behalf of
9 the agency, on Federal or State lands;

10 (ii) those activities on Federal or State
11 lands, requiring a Federal permit, license or
12 approval;

13 (iii) those taking place on Federal or
14 State lands, subject to State regulation pur-
15 suant to a delegation or approval by a Fed-
16 eral agency;

17 (iv) those carried out with more than
18 *de minimis* Federal financial assistance;

19 (v) renewals, reauthorizations, relicens-
20 ing, and similar decisions involving activi-
21 ties enumerated in this subsection;

22 (vi) regular and cyclical reviews of
23 land management plans by agencies involv-
24 ing activities covered by this section;

1 (vii) programs and projects funded by
2 Federal highway funds;

3 (viii) activities subject to licensing by
4 the Federal Energy Regulatory Commission,
5 or the Nuclear Regulatory Commission;

6 (ix) the siting of hazardous, low-level
7 nuclear or transuranic waste or toxic waste
8 disposal, and disposal facilities, and the
9 disposal of such materials; or

10 (x) in the absence of a tribal law which
11 provides for the free exercise of religion,
12 those activities that would not be covered
13 Federal activities by virtue of section
14 3(4)(B)(i);

15 (B) The term “covered Federal activity”
16 does not include—

17 (i) in any case in which a tribal law
18 which provides for the free exercise of reli-
19 gion is in effect, regulations, projects, ac-
20 tivities, or programs operated, approved, or
21 sponsored by Indian tribes, including, but
22 not limited to, those projects, activities, or
23 programs which are funded in whole or in
24 part by Federal funds pursuant to a con-
25 tract, compact, grant or agreement, or

1 *which require Federal permits, licenses or*
2 *approvals;*

3 (ii) *ongoing and continuing activities*
4 *underway prior to the date of enactment of*
5 *this Act, or activities for which a final com-*
6 *mitment has been made prior to the date of*
7 *enactment of this Act and with respect to*
8 *which substantial funds have been spent or*
9 *implementation is substantially underway;*

10 (iii) *routine activities that an agency*
11 *determines, through negotiations with In-*
12 *Indian tribes or Native Hawaiian organiza-*
13 *tions, to be unlikely to affect Native Amer-*
14 *ican sacred sites or traditional cultural*
15 *practices associated with such sites, and*
16 *maintenance activities involving structures*
17 *or projects, existing at the time of the enact-*
18 *ment of this Act or later constructed in*
19 *compliance with this Act, which do not*
20 *change the size or scale or the existing use*
21 *of those projects or structures;*

22 (iv) *activity on State or Indian land*
23 *with de minimis Federal funding and no*
24 *other Federal role;*

1 (v) *any actions on private or Indian*
2 *lands, other than those enumerated in*
3 *clauses (vii), (viii), and (ix) of this sub-*
4 *paragraph; or*

5 (vi) *direct Federal loans and Federal*
6 *loan guarantees to private entities or Fed-*
7 *eral loan guarantees to an Indian tribe.*

8 (5) *FEDERAL AGENCY.—The term “Federal agen-*
9 *cy” means any department, agency, or instrumental-*
10 *ity of the United States Government.*

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

14 (A) *the United States; or*

15 (B) *a State, in the case of a covered Federal*
16 *activity described in paragraph (4)(A)(iii).*

17 *Such term does not include an agency, department, or*
18 *instrumentality of an Indian tribe.*

19 (7) *INDIAN.—The term “Indian” means an indi-*
20 *vidual who is a member of an Indian tribe, an Alas-*
21 *ka Native, or an individual who meets the require-*
22 *ments for eligibility under section 809(b) of the In-*
23 *dian Health Care Improvement Act (25 U.S.C.*
24 *1679(b)), except that an Indian community shall not*
25 *be required to be served by a local program of the In-*

1 *dian Health Service in order to qualify as an Indian*
2 *community for purposes of this definition.*

3 (8) *INDIAN LANDS.*—*The term “Indian lands”*
4 *means—*

5 (A) *all lands within the limits of any In-*
6 *dian reservation notwithstanding the issuance of*
7 *any patent;*

8 (B) *public domain Indian allotments;*

9 (C) *other lands with respect to which title*
10 *is either—*

11 (i) *held in trust by the United States*
12 *for the benefit of any Indian tribe or indi-*
13 *vidual; or*

14 (ii) *held by any Indian tribe or indi-*
15 *vidual subject to restriction by the United*
16 *States against alienation;*

17 (D) *all dependent Indian communities; and*

18 (E) *all fee lands owned by an Indian tribe.*

19 (9) *INDIAN TRIBE.*—*The term “Indian tribe”*
20 *means any tribe, band, nation, pueblo, or other orga-*
21 *nized group or community of Indians, including any*
22 *Alaska Native village (as defined in, or established*
23 *pursuant to, the Alaska Native Claims Settlement Act*
24 *(43 U.S.C. 1601 et seq.)), which is recognized as eligi-*
25 *ble for the special programs and services provided by*

1 *the United States to Indians because of their status*
2 *as Indians.*

3 (10) *LAND.*—*The terms “land” or “lands” mean*
4 *surface and subsurface land within the jurisdiction of*
5 *the United States or the respective States, including*
6 *submerged land of any kind or interest therein, and*
7 *all water and waterways occupying, adjacent to, or*
8 *running through the land.*

9 (11) *NATIVE AMERICAN.*—*With respect to the cul-*
10 *tural protections provided under this Act, the term*
11 *“Native American” means any Indian or Native Ha-*
12 *waiian.*

13 (12) *NATIVE AMERICAN PRACTITIONER.*—*With*
14 *respect to the cultural protections provided under this*
15 *Act, the term “Native American practitioner” means*
16 *any Native American who practices a Native Amer-*
17 *ican religion as part of a Native American tradi-*
18 *tional culture.*

19 (13) *NATIVE AMERICAN RELIGION.*—*With respect*
20 *to the cultural protections provided under this Act,*
21 *the term “Native American religion” means any tra-*
22 *ditional religion which is practiced by Native Ameri-*
23 *cans, the origin and interpretation of which is deeply*
24 *embedded or rooted in a Native American traditional*
25 *culture.*

1 (14) *NATIVE AMERICAN SACRED SITE.*—*With re-*
2 *spect to the cultural protections provided under this*
3 *Act, the term “Native American Sacred Site” means*
4 *any natural or manmade feature or geographical area*
5 *which is sacred by virtue of—*

6 (A) *the traditional religious or cultural*
7 *practices associated with the feature or geo-*
8 *graphical area; and*

9 (B) *its significance to a Native American*
10 *religion or traditional cultural or ceremonial*
11 *practice, including a requirement that a natural*
12 *substance or product for use in Native American*
13 *traditional ceremonies be gathered from that*
14 *particular location.*

15 (15) *NATIVE AMERICAN TRADITIONAL CUL-*
16 *TURE.*—*The term “Native American traditional cul-*
17 *ture” means the traditional cultural patrimony asso-*
18 *ciated with the traditional cultural practices, cus-*
19 *toms, belief systems, lifeways, ceremonies, and rituals,*
20 *including religious practices and beliefs, that are in-*
21 *tegral to and unique aspects of Native American cul-*
22 *tural traditions and heritage.*

23 (16) *NATIVE AMERICAN TRADITIONAL LEADER.*—
24 *With respect to the cultural protections provided*
25 *under this Act, the term “Native American tradi-*

1 *tional leader” means any Native American practi-*
2 *tioner who is recognized by an Indian tribe or tradi-*
3 *tional tribal community or Native Hawaiian commu-*
4 *nity—*

5 *(A) as being responsible for performing du-*
6 *ties relating to the cultural traditions, including*
7 *religious traditions of the tribe or traditional*
8 *tribal community or Native Hawaiian commu-*
9 *nity; or*

10 *(B) as having a leadership role in an In-*
11 *dian tribe or traditional tribal community or*
12 *Native Hawaiian community based upon the*
13 *traditional cultural or ceremonial practices of*
14 *the community.*

15 *(17) NATIVE HAWAIIAN.—With respect to the cul-*
16 *tural protections provided under this Act, the term*
17 *“Native Hawaiian” means any individual who—*

18 *(A) is a descendant of the aboriginal Poly-*
19 *nesian people who occupied and exercised sov-*
20 *ereignty and self-determination in the area that*
21 *now comprises the State of Hawaii; and*

22 *(B) is recognized as eligible for the special*
23 *programs and services provided by the United*
24 *States to Native Hawaiians because of their sta-*
25 *tus as Native Hawaiians or Native Americans.*

1 (18) *NATIVE HAWAIIAN ORGANIZATION.*—With
2 respect to the cultural protections provided under this
3 Act, the term “Native Hawaiian organization” means
4 any organization which is composed of Native Ha-
5 waiians, and serves and represents the traditional
6 cultural interests of Native Hawaiians and whose
7 members—

8 (A) practice a Native American culture, in-
9 cluding a Native American religion, or conduct
10 traditional ceremonial rituals;

11 (B) utilize, preserve, and protect Native
12 American sacred sites; and

13 (C) include kumu (source, foundation) who
14 are Native Hawaiian, fluent in the Hawaiian
15 language, and are trained in traditional cultural
16 beliefs and practices.

17 (19) *PUBLIC LAND.*—The term “public land”
18 means any land, as defined in paragraph (10), which
19 is owned by the United States, or the respective
20 States, or political subdivisions thereof. Such term
21 does not include Indian lands as defined in para-
22 graph (8).

23 (20) *STATE.*—The term “State” means any
24 State of the United States, any political subdivision
25 thereof, and the District of Columbia.

1 **TITLE I—PROTECTION OF NA-**
2 **TIVE AMERICAN SACRED**
3 **SITES**

4 **SEC. 101. FINDINGS.**

5 *The Congress finds the following:*

6 (1) *The Congress has the authority to enact laws*
7 *to assure the protection and preservation of Native*
8 *American traditional cultures, including the free exer-*
9 *cise of Native American religions, based upon treaties*
10 *with the Indian nations, the United States special*
11 *trust relationship, and pursuant to section 8, article*
12 *I, of the Constitution and the 1st, 5th, and 14th*
13 *amendments to the Constitution.*

14 (2) *Clause 3 of section 8 of article I of the Con-*
15 *stitution vests the Congress with authority to “regu-*
16 *late commerce with foreign nations, and among the*
17 *several States, and with the Indian tribes”. As ana-*
18 *lyzed by the renowned scholar Felix S. Cohen in the*
19 *Handbook for Federal Indian Law, that clause “com-*
20 *prehends transactions with individual tribal Indians*
21 *as well as with tribes, . . .” (Ch. 3. sec. A, page 208)*
22 *just as “Commerce with foreign nations, without*
23 *doubt, means commerce between citizens of the United*
24 *States and citizens or subjects of foreign governments*
25 *as individuals.” Cohen’s analysis concludes: “And so*

1 *commerce with the Indian tribes, means commerce*
2 *with the individuals composing those tribes.” (Ch. 3.*
3 *sec. B, note 11, page 213).*

4 (3) *In Missouri v. Holland, 252 U.S. 416 (1920),*
5 *the Supreme Court found that the treaty-making*
6 *power of the United States provides the Congress with*
7 *the authority to enact statutes which endorse and*
8 *carry out the purposes of negotiated treaties and*
9 *agreements.*

10 (4) *The Congress has the authority to enact a*
11 *law which is consistent with—*

12 (A) *the policy established in the Act com-*
13 *monly known as the “Taos Blue Lake Act” (Pub-*
14 *lic Law 91-550); the American Indian Religious*
15 *Freedom Act (42 U.S.C. 1996); the Act com-*
16 *monly known as the “Zuni Heaven Act” (Public*
17 *Law 98-401); the National Museum of the Amer-*
18 *ican Indian Act (20 U.S.C. 80q et seq.); the Na-*
19 *tive American Graves Protection and Repatri-*
20 *ation Act (Public Law 101-601); the National*
21 *Historic Preservation Act (16 U.S.C. 470 et*
22 *seq.); and the Religious Freedom Restoration Act*
23 *of 1993 (42 U.S.C. 2000bb et seq.);*

24 (B) *rulings of Federal courts (including*
25 *Washington v. Fishing Vessel Association, 443*

1 *U.S. 658 (1979), Lac Courte Oreilles v. Voigt,*
2 *700 F.2d 341 (7th Cir.) 1983, cert. denied, 464*
3 *U.S. 805 (1983), United States v. Michigan, 653*
4 *F.2d 277 (6th Cir.) 1981)); and*

5 (C) *Executive orders (including Executive*
6 *Order No. 11670, which was issued on May 20,*
7 *1972, and which provides for the return of cer-*
8 *tain lands to the Yakima Indian Reservation).*

9 (5) *From the earliest times of contact with the*
10 *native peoples of the United States, European settlers*
11 *ascribed their concepts of “religion” and “religious*
12 *beliefs” to the traditional cultural and religious be-*
13 *liefs and practices of the native peoples and, notwith-*
14 *standing the subsequently adopted prohibitions of the*
15 *1st amendment to the Constitution, the Federal Gov-*
16 *ernment sought to suppress and did suppress the free*
17 *exercise by native peoples of their traditional ways.*

18 (6) *The policy of the United States toward, and*
19 *treatment of, the traditional cultural practices of na-*
20 *tive peoples is unique in the history of the United*
21 *States. The following activities of the Federal Govern-*
22 *ment are part of such history:*

23 (A) *The Federal Government appropriated*
24 *funds that were allocated to religious groups so*

1 that they might “civilize” and “christianize” the
2 native peoples.

3 (B) The Federal Government authorized its
4 military forces and courts to prevent the exercise
5 of traditional cultural practices by the native
6 peoples, by means of incarceration, starvation,
7 and even murder of those who engaged in tradi-
8 tional ceremonial practices and rituals, includ-
9 ing such manifestations of traditional cultural
10 beliefs as the Ghost Dance, and specifically out-
11 lawed the Sun Dance “and all other similar
12 dances and so-called religious ceremonies,” as
13 well as the use by spiritual leaders of “any of the
14 arts of a conjurer to prevent the Indians from
15 abandoning their heathenish rites and customs”
16 (as stated in section 584 of the regulations of the
17 Indian Office, Code of Indian Offenses, U.S.
18 Dept. of the Interior, Code of 1894; reissued in
19 1904) and more recently issued prohibitions on
20 the manifestation of Indian cultural practices
21 (Commissioner Circular No. 1665, Indian Danc-
22 ing, Office of Indian Affairs, U.S. Dept. of the
23 Interior, April 26, 1921; Supplement to Commis-
24 sioner Circular No. 1665, February 14, 1923;

1 *Letter Supplement to Commissioner Circular No.*
2 *1665, February 24, 1923).*

3 *(C) Federal and federally funded denomina-*
4 *tional schools were established and Native chil-*
5 *dren were removed from their families and co-*
6 *erced to attend government and denominational*
7 *schools in the ongoing effort to “civilize” the na-*
8 *tive peoples.*

9 *(D) Federal laws (including regulations)*
10 *prohibited native peoples not only from practic-*
11 *ing their traditional cultures, but also from*
12 *speaking their native languages, or wearing their*
13 *hair in a manner consistent with traditional*
14 *cultural beliefs, and Native students were sub-*
15 *jected to corporal punishment in the government*
16 *and denominational schools, and expelled from*
17 *the public schools, for failing to conform with*
18 *such laws.*

19 *(E) The Federal Government instituted a*
20 *policy of forced removal of the native peoples*
21 *from their traditional homelands, and did not*
22 *allow Indians “to roam away from their reserva-*
23 *tions” or “to trespass upon the public domain,”*
24 *precluding the access of native peoples to most of*

1 *those sites which were central to the exercise of*
2 *their cultures, and therefore sacred to them.*

3 *(F) The Federal Government required and*
4 *encouraged the disestablishment of most of the*
5 *traditional tribal theocratic governments, and*
6 *instead instituted secular tribal governance sys-*
7 *tems. The laws such governance systems were en-*
8 *couraged to adopt either do not or cannot ad-*
9 *dress matters of traditional cultural practices or*
10 *religious exercise.*

11 *(G) The strong policies and practices of the*
12 *Federal Government that discouraged and pro-*
13 *hibited the manifestation of traditional cultural*
14 *practices and religious exercise by Native Ameri-*
15 *cans forced many Native American cultural and*
16 *religious leaders and practitioners to conduct*
17 *their worship activities in secret, and added a*
18 *now century-old layer of secrecy requirements to*
19 *ancient tenets and practices requiring that cer-*
20 *tain ceremonies and activities not be publicly re-*
21 *vealed.*

22 *(H) As of the date of enactment of this Act,*
23 *some of the sites that continue to be central to*
24 *the traditional cultural practices of native peo-*
25 *ples because they are essential and integral to*

1 *their belief systems and lifeways are located on*
2 *the public and Federal lands that once con-*
3 *stituted the traditional homelands of the native*
4 *peoples and many of these sites have been or are*
5 *in danger of being damaged, destroyed, or dese-*
6 *crated.*

7 *(I) Efforts by governmental agencies to ac-*
8 *commodate the access of native peoples to the cul-*
9 *turally significant sites described in subpara-*
10 *graph (H), and to protect the sites, are not guid-*
11 *ed by any clearly defined Federal standards that*
12 *would enable the Federal Government to address*
13 *affirmatively a long and pervasive pattern of*
14 *discrimination against Native Americans in the*
15 *free exercise of their culture and religion in the*
16 *context of the contemporary management respon-*
17 *sibilities for public lands of the Federal Govern-*
18 *ment.*

19 *(7) The traditional cultural and religious prac-*
20 *tices of Native Americans are integral and insepa-*
21 *rable parts of their lifeways, traditions, and cultural*
22 *heritages, upon which the vitality of Native American*
23 *communities depends.*

24 *(8) The United States has a responsibility to*
25 *remedy a historical and pervasive pattern of dis-*

1 *crimination against the manifestation of the tradi-*
2 *tional cultural practices of native peoples.*

3 *(9) As part of the historical Federal-Indian trust*
4 *and treaty relationship, it is the intent of the United*
5 *States to pursue enforceable Federal policies that—*

6 *(A) will protect the vitality and cultural in-*
7 *tegrity of Native American communities; and*

8 *(B) will not—*

9 *(i) inhibit, interfere with, or infringe*
10 *upon, Native American traditional cultural*
11 *practices associated with Native American*
12 *sacred sites; or*

13 *(ii) impose a substantial burden on the*
14 *free exercise of Native American religions.*

15 *(10) Native American traditional cultures and*
16 *religions existed long before the establishment of the*
17 *United States. There is not just one Native American*
18 *traditional culture or just one Native American reli-*
19 *gion, but rather these cultures and religions are di-*
20 *verse and vary significantly among groups of Native*
21 *Americans.*

22 *(11) Native American sacred sites located on*
23 *public lands are few in number, and the assurance of*
24 *a right of access to those sites by Native Americans*
25 *and the protection of Native American sacred sites*

1 *and the cultural and religious practices associated*
2 *with such sites will not burden other uses of public*
3 *lands.*

4 (12) *The United States has a unique, govern-*
5 *ment-to-government relationship with Indian tribes*
6 *and a special historic trust relationship which per-*
7 *mits the United States to take measures to protect*
8 *against interference with the continuing cultural co-*
9 *hesiveness and integrity of Indian tribes and Native*
10 *American traditional cultures.*

11 (13) *Many Native American traditional cultures,*
12 *including Native American religions, hold certain*
13 *lands or natural formations in the United States to*
14 *be sacred, and in order for those sites to be in a con-*
15 *dition appropriate for cultural use, including reli-*
16 *gious or ceremonial use, the physical environment,*
17 *water, plants, and animals associated with those sites*
18 *must be protected.*

19 (14) *Such Native American sacred sites are an*
20 *integral and vital part of, and inextricably inter-*
21 *twined with, many Native American traditional cul-*
22 *tures, including Native American religions, and the*
23 *practices associated with such traditional cultures.*

24 (15) *The traditional use and gathering, harvest-*
25 *ing, or maintaining of natural substances, natural*

1 *products, and wildlife for cultural purposes, including*
2 *religious and ceremonial purposes, are an integral*
3 *and vital part of, and are inextricably intertwined*
4 *with, many Native American traditional cultures, in-*
5 *cluding Native American religions.*

6 (16) *Governmental land use decisions have the*
7 *potential to have an adverse impact on Native Amer-*
8 *ican traditional cultural practices, including Native*
9 *American religions, associated with Native American*
10 *sacred sites.*

11 (17) *Many Native American traditional cultural*
12 *practices, including religious and ceremonial prac-*
13 *tices, require a measure of privacy and isolation; and*
14 *certain traditional cultural ceremonies and activities*
15 *cannot be performed if nonparticipants can observe*
16 *the practices or ceremonies or activities, even from a*
17 *distance. In some situations the lack of privacy or*
18 *isolation inhibits, infringes upon, interferes with, or*
19 *precludes certain Native American traditional cul-*
20 *tural practices, including traditional religious prac-*
21 *tices, associated with Native American sacred sites.*

22 (18) *Because some Indian tribes, such as the*
23 *Pueblos of New Mexico, and some Native Hawaiian*
24 *cultures have traditional cultural and religious tenets*
25 *which prohibit the disclosure of information concern-*

1 *ing their sacred sites and their traditional beliefs and*
2 *practices mandate secrecy, and impose internal sanc-*
3 *tions to enforce such prohibitions, it is impossible for*
4 *such tribes and Native Hawaiians to identify the*
5 *manner in which any particular governmental activ-*
6 *ity would have an adverse impact on their traditional*
7 *cultures or impose a burden on the free exercise of*
8 *their religions.*

9 *(19) The lack of sensitivity to, or understanding*
10 *of, Native American traditional cultures, including*
11 *Native American religions, has resulted in the absence*
12 *of a coherent policy of the Federal Government for the*
13 *protection of Native American sacred sites and the*
14 *failure to consider the impacts of Federal activities*
15 *upon Native American sacred sites.*

16 *(20) The Supreme Court, in *Lyng v. Northwest**
17 *Indian Cemetery Protective Association (485 U.S.*
18 *439 (1988)), ruled that the free exercise clause of the*
19 *1st amendment does not restrict the management by*
20 *the Federal Government of Federal lands, even if cer-*
21 *tain governmental actions would infringe upon or de-*
22 *stroy the ability to practice religion, if the action by*
23 *the Federal Government does not compel individuals*
24 *to act in a manner which is contrary to their reli-*
25 *gious beliefs.*

1 (21) *The holding of the Supreme Court described*
2 *in paragraph (20) creates a chilling and discrimina-*
3 *tory effect on Native American traditional cultures*
4 *and on the free exercise of Native American religions.*

5 (22) *The Congress has enacted numerous laws*
6 *which regulate and restrict the discretion of Federal*
7 *agencies for the sake of environmental, historical, eco-*
8 *nomic, and cultural concerns, but has not enacted a*
9 *judicially enforceable law comparably restricting the*
10 *discretion of Federal agencies for the general protec-*
11 *tion of Native American sacred sites and the Native*
12 *American traditional cultural and religious practices*
13 *associated with Native American sacred sites.*

14 (23) *The lack of a judicially enforceable Federal*
15 *law and of a coherent Federal policy to accommodate*
16 *Native American traditional cultural and religious*
17 *practices associated with Native American sacred*
18 *sites has resulted in unique and adverse impacts on*
19 *Native American traditional cultures, that burden the*
20 *free exercise of Native American religions and impair*
21 *the vitality of Indian tribes, traditional tribal com-*
22 *munities, and Native Hawaiian communities.*

23 **SEC. 102. ACCESS TO FEDERAL LANDS.**

24 (a) *IN GENERAL.*—*Native American practitioners*
25 *shall be permitted access to public lands for Native Amer-*

1 *ican traditional cultural, ceremonial, or religious purposes*
2 *or practices associated with a Native American sacred site,*
3 *including access to gather, harvest, or maintain natural*
4 *substances or natural products for Native American tradi-*
5 *tional cultural purposes.*

6 *(b) MEASURES.—*

7 *(1) IN GENERAL.—Federal agencies may take*
8 *reasonable and narrowly tailored measures to ensure*
9 *that access to and the use of lands pursuant to this*
10 *Act do not—*

11 *(A) have a direct, significant, and negative*
12 *impact upon specific national security interests*
13 *or the implementation of the Endangered Species*
14 *Act of 1973;*

15 *(B) significantly impair ecosystems or wild-*
16 *life or habitats; or*

17 *(C) present an immediate threat of serious*
18 *bodily harm to any person or immediate and se-*
19 *rious harm to the environment.*

20 *(2) FEASIBLE MEANS.—In any case in which*
21 *feasible means are available for avoiding the impacts*
22 *described in paragraph (1), the Federal agency shall*
23 *ensure that such means are utilized before restricting*
24 *access to the lands.*

1 (c) *CONSULTATION.*—*In any case in which consulta-*
2 *tion is practicable, the appropriate official of a Federal*
3 *agency shall, in carrying out any measure described in sub-*
4 *section (b), consult with the following persons, as follows:*

5 (1) *The appropriate official shall consult with*
6 *those persons who seek access to public lands for the*
7 *purposes enumerated in subsection (a) and enter into*
8 *memoranda of agreement to provide for the terms of*
9 *access to public lands. Terms of access may be in-*
10 *cluded in a memorandum of agreement pursuant to*
11 *section 104(a)(3)(B).*

12 (2) *The appropriate official shall consult with*
13 *any lessee or other legitimate occupant of public lands*
14 *who may be affected by the terms of access sought*
15 *pursuant to subsection (a). Nothing in this section*
16 *shall require a lessee or legitimate occupant of public*
17 *lands to vacate such lands if the terms of access*
18 *agreed to pursuant to this section do not require such*
19 *action.*

20 (d) *LIMITATIONS AGAINST VEHICLES.*—*Subsection (a)*
21 *does not authorize the use of motorized vehicles or other*
22 *forms of mechanized transport in roadless areas where such*
23 *use is prohibited by law.*

24 (e) *TEMPORARY PROTECTIVE MEASURES.*—*Upon the*
25 *request of an Indian tribe, a Native Hawaiian organiza-*

1 *tion, or a Native American traditional leader, the Secretary*
 2 *of the department with jurisdiction over the land involved,*
 3 *or a local land manager who has been delegated authority*
 4 *to carry out this subsection, may from time to time tempo-*
 5 *rarily close to the general public use of one or more specific*
 6 *portions of public lands and may take such other reasonable*
 7 *and temporary measures as are necessary to protect the pri-*
 8 *vacy of traditional cultural, ceremonial or religious activi-*
 9 *ties by Native Americans associated with a Native Amer-*
 10 *ican sacred site located in such areas. Any measures taken*
 11 *pursuant to the preceding sentence shall be taken in such*
 12 *manner as to affect the smallest practicable area for the*
 13 *minimum period necessary for such purposes.*

14 **SEC. 103. FEDERAL LAND MANAGEMENT, IDENTIFICATION**
 15 **OF LANDS, PLANNING AND NOTICE.**

16 (a) *IN GENERAL.*—*Each Federal agency shall manage*
 17 *any lands under the jurisdiction of the Federal agency in*
 18 *a manner that complies with this Act.*

19 (b) *IDENTIFICATION OF LANDS BY SECRETARY.*—

20 (1) *IN GENERAL.*—(A) *For the purpose of ensur-*
 21 *ing that a governmental agency properly determines*
 22 *whether a proposed covered Federal activity will have*
 23 *an adverse impact on a Native American sacred site*
 24 *and which affected parties should be provided notice*
 25 *of a proposed activity, the head of each land manag-*

1 *ing agency, in conjunction with the Secretary of the*
2 *Interior, tribal governments, and Native Hawaiian*
3 *organizations, shall identify land areas with respect*
4 *to which a tribe or Native Hawaiians have aborigi-*
5 *nal, historic, cultural or religious ties.*

6 *(B) For purposes of this section, not later than*
7 *90 days after the date of enactment of this Act, Native*
8 *Hawaiian organizations shall notify the Secretary of*
9 *the desire of such organizations to receive notice of*
10 *proposed covered Federal activities.*

11 *(2) NOTIFICATION.—(A) As part of the obliga-*
12 *tions of the Federal Government under this section,*
13 *not later than 90 days after the date of enactment of*
14 *this Act, the Secretary of the Interior shall notify, in*
15 *writing, all Indian tribes and Native Hawaiian orga-*
16 *nizations to request a broad geographic description of*
17 *the lands of each such Indian tribe or Native Hawai-*
18 *ian organization with respect to which the Indian*
19 *tribe or Native Hawaiian organization desires notice*
20 *of covered Federal activities. Upon receipt of written*
21 *responses to such notification from Indian tribes and*
22 *Native Hawaiian organizations, the Secretary shall*
23 *provide such land descriptions to all Federal agencies.*

24 *(B) In responding to the Secretary, Indian tribes*
25 *and Native Hawaiian organizations may also provide*

1 *the Secretary with notice that the location of their sa-*
2 *cred sites or the practices associated with such sites*
3 *are subject to the secrecy provisions of this Act.*

4 (3) *LIST.—Not later than 18 months after the*
5 *date of enactment of this Act, the Secretary shall es-*
6 *tablish a list of all Indian tribes and Native Hawai-*
7 *ian organizations who have responded to the notice*
8 *provided pursuant to paragraph (2) and the lands*
9 *such tribes and organizations have identified. Such*
10 *list shall not be published, but shall be made available*
11 *to Federal agencies for the purpose of identifying In-*
12 *dian tribes and Native Hawaiian organizations and*
13 *areas for which notice of covered Federal activities*
14 *shall be provided.*

15 (4) *DUTIES OF FEDERAL LAND MANAGING AGEN-*
16 *CY.—While the list described in paragraph (3) is*
17 *being developed, each Federal land managing agency*
18 *shall—*

19 (A) *also research—*

20 (i) *the sources of such land managing*
21 *agency, including agency contacts, with In-*
22 *dian tribes, Native Hawaiian organiza-*
23 *tions, or Native American traditional lead-*
24 *ers; and*

25 (ii) *written sources,*

1 to collect information concerning Native Amer-
2 ican sacred sites potentially affected by activities
3 on land managed by such land management
4 agency; and

5 (B) make a good faith effort to identify and
6 notify Indian tribes, Native Hawaiian organiza-
7 tions, and Native American traditional leaders
8 who may have an interest in proposed covered
9 Federal activities.

10 (5) ONGOING IDENTIFICATION.—Nothing in this
11 section shall preclude a Federal agency, tribal govern-
12 ment, or a Native Hawaiian organization from con-
13 tinuing to conduct an ongoing identification process,
14 which may supplement the process required by this
15 subsection.

16 (c) PLANNING PROCESS.—Each Federal agency man-
17 aging lands under the jurisdiction of the Federal agency
18 including, but not limited to, activities conducted pursuant
19 to the National Forest Management Act of 1976, the Forest
20 and Rangeland Renewable Resources Act of 1974 (16 U.S.C.
21 1600 et seq.), and the Federal Land Policy and Manage-
22 ment Act of 1976 (43 U.S.C. 1701 et seq.), shall as part
23 of the planning process of such Federal agency—

24 (1) consult, during the earliest possible part of
25 the planning process, with Indian tribes, Native Ha-

1 *waiian organizations, and Native American tradi-*
2 *tional leaders who have notified the agency of their*
3 *interest in the land in question pursuant to sub-*
4 *section (b);*

5 *(2) in addition to the notices required in regard*
6 *to covered Federal activity required by subsection (d),*
7 *provide for written notice of all covered Federal ac-*
8 *tivities with the potential to have an adverse impact*
9 *on Native American sacred sites located on land areas*
10 *specified by an Indian tribe or Native Hawaiian or-*
11 *ganization, as land areas that are of direct interest*
12 *to the Indian tribe or Native Hawaiians, whether or*
13 *not the Federal agency believes that such activity will,*
14 *or may have, an adverse impact on a Native Amer-*
15 *ican sacred site;*

16 *(3) ensure that the land management plans of*
17 *the Federal Government are consistent with the provi-*
18 *sions and policies of this Act; and*

19 *(4) maintain the confidentiality of specific de-*
20 *tails of a Native American traditional culture or reli-*
21 *gion or the significance of a Native American sacred*
22 *site to that culture or religion in accordance with the*
23 *procedures specified in sections 107 and 108.*

24 *(d) NOTICE AND DOCUMENTATION; DUTY OF AGEN-*

25 *CIES.—*

1 (1) NOTICE TO TRIBES OR NATIVE HAWAIIAN OR-
2 GANIZATIONS.—Before a governmental agency pro-
3 ceeds on lands identified pursuant to subsection (b)
4 with any covered Federal activity that may have an
5 adverse impact on a Native American sacred site or
6 the traditional cultural or religious practices associ-
7 ated with a Native American sacred site, the govern-
8 mental agency shall consult with potentially affected
9 Indian tribes, Native Hawaiian organizations, and
10 Native American traditional leaders. After such con-
11 sultation has occurred and the governmental agency
12 has taken into account the information obtained
13 through such process, the governmental agency shall
14 formally provide a written notice containing a geo-
15 graphical description of the lands affected by the ac-
16 tivity (including information on metes and bounds of
17 the lands in question, if available), a map illustrating
18 the lands affected and a description of the proposed
19 action to each affected Indian tribe, Native Hawaiian
20 organization, or Native American traditional leader
21 which has been identified pursuant to this section as
22 having an interest in the land affected by the pro-
23 posed covered Federal activity and any other Indian
24 tribe, Native Hawaiian organization, or Native
25 American traditional leader known by the govern-

1 *mental agency that may have an interest in the land*
2 *affected by the proposed covered Federal activity.*

3 (2) *DOCUMENTATION OF EFFORTS.*—*The govern-*
4 *mental agency shall fully document the efforts that*
5 *the governmental agency made to provide the infor-*
6 *mation to Indian tribes, Native Hawaiian organiza-*
7 *tions, and Native American traditional leaders, as re-*
8 *quired by this section or any applicable regulations,*
9 *guidelines, or policies.*

10 (e) *RESPONSE TO NOTICE.*—

11 (1) *IN GENERAL.*—*Not later than 90 days after*
12 *receiving the notice provided under subsection (d), or*
13 *by the date specified in the time limit of any com-*
14 *ment period permitted or required by any Federal*
15 *law applicable to the covered Federal activity, which-*
16 *ever is later, an Indian tribe, Native Hawaiian orga-*
17 *nization, or Native American traditional leader in-*
18 *voking the protection of this title may provide notice*
19 *in writing to the governmental agency that the pro-*
20 *posed covered Federal activity may have an adverse*
21 *impact on a Native American sacred site or the tradi-*
22 *tional cultural or religious practices associated with*
23 *a Native American sacred site.*

24 (2) *MODIFICATION OF TIME.*—*The period speci-*
25 *fied in paragraph (1) may be extended by the govern-*

1 *mental agency at its discretion, including at the re-*
2 *quest of a noticed party, or may be extended or short-*
3 *ened by an agreement negotiated pursuant to section*
4 *104(a)(3)(B).*

5 (3) *NO DUTY TO RESPOND.*—*Paragraph (1) does*
6 *not impose a duty upon any Indian tribe, Native Ha-*
7 *waiian organization, or Native American traditional*
8 *leader to respond to any notice under this section.*

9 (4) *ADDITIONAL INFORMATION.*—*The Indian*
10 *tribe or its designee, or Native Hawaiian organiza-*
11 *tion or its designee, acting pursuant to paragraph (1)*
12 *may also provide the governmental agency with infor-*
13 *mation concerning any Native American traditional*
14 *leaders or practitioners who should be included in the*
15 *notice and consultation requirements of this section*
16 *and section 104.*

17 (f) *RESPONSE PERIOD AND LIMITATION ON ACTIVITY*
18 *FOLLOWING NOTICE.*—*(1) In order to allow a full inves-*
19 *tigation of a proposed covered Federal activity, no action*
20 *to approve, commence, or complete an activity that is sub-*
21 *ject to this section shall be taken by a governmental agency*
22 *for a period of 90 days following the date on which notice*
23 *is provided under subsection (d) to Indian tribes, Native*
24 *Hawaiian organizations, or Native American traditional*
25 *leaders, unless:*

1 (A) *The period of consultation required under*
2 *section 104 has tolled.*

3 (B) *A sacred site's protection agreement has been*
4 *entered into by the affected Indian tribe or tribes or*
5 *Native Hawaiian organization and the governmental*
6 *agency pursuant to section 104(a)(3)(B).*

7 (C) *All parties entitled to such notice consent to*
8 *a time period other than the 90-day period.*

9 (2) *During the notice and consultation periods under*
10 *sections 103 and 104, and consistent with the provisions*
11 *of paragraph (1), the governmental agencies responsible for*
12 *the covered Federal activity may continue to engage in*
13 *planning, studies, or other preparatory matters on the con-*
14 *dition that such activities do not constitute a commitment*
15 *to proceed with the proposed activity or project.*

16 (3) *During the 90-day period following formal notice*
17 *to Indian tribes, Native Hawaiian organizations, and Na-*
18 *tive American traditional leaders, the governmental agency*
19 *shall have the continuing duty to seek to consult with In-*
20 *dian tribes, Native Hawaiian organizations, and Native*
21 *American traditional leaders potentially affected by the*
22 *proposed covered Federal activity.*

23 **SEC. 104. CONSULTATION.**

24 (a) *IN GENERAL.* —

1 (1) *EFFECT OF NOTICE.*—In order to allow a full
2 investigation of the consequences of a proposed covered
3 Federal activity, if an Indian tribe, Native Hawaiian
4 organization, or Native American traditional leader
5 responds in writing within 90 days after receiving
6 notice, as provided in section 103(e), or by the date
7 specified in the time limit of any comment period
8 permitted or required by any Federal law which is
9 applicable to the covered Federal activity, whichever
10 is later, and the Secretary of the department with ju-
11 risdiction over the land involved or a local land man-
12 ager (if such authority has been delegated), makes a
13 threshold determination that there may exist a valid
14 claim that a proposed covered Federal activity will
15 have an adverse impact on a Native American sacred
16 site or the traditional cultural or religious practices
17 associated with a Native American sacred site, the
18 Secretary or the local land manager shall direct that
19 the activity be immediately discontinued until such
20 time as the governmental agency has performed the
21 duties described in paragraphs (3) and (4).

22 (2) *AFTER ACTION DISCOVERY.*—If after a cov-
23 ered Federal activity is underway, and—

24 (A) the governmental agency becomes aware
25 that the activity may have an adverse impact on

1 *a Native American sacred site, the agency en-*
2 *gaged in the activity shall immediately dis-*
3 *continue such activity until such time as the*
4 *governmental agency has performed the duties*
5 *described in subsections (d) and (f) of section*
6 *103; or*

7 *(B) an Indian tribe or Native Hawaiian*
8 *organization that did not receive notice and did*
9 *not know of the covered Federal activity, becomes*
10 *aware that the activity may have an adverse im-*
11 *impact on a Native American sacred site and noti-*
12 *fies the governmental agency, and the Secretary*
13 *of the department with jurisdiction over the land*
14 *involved or a local land manager (if such au-*
15 *thority has been delegated), makes a threshold de-*
16 *termination that there may exist a valid claim*
17 *that a proposed covered Federal activity will*
18 *have an adverse impact on a Native American*
19 *sacred site or the traditional cultural or religious*
20 *practices associated with a Native American sa-*
21 *cred site, the head of the Federal agency or the*
22 *local land manager shall direct that the activity*
23 *be immediately discontinued until such time the*
24 *governmental agency has performed the duties*
25 *described in paragraphs (3) and (4).*

1 (3) *CONSULTATION AND NEGOTIATED AGREE-*
2 *MENTS.—*

3 (A) *CONSULTATION.—The governmental*
4 *agency shall consult with any potentially ag-*
5 *grieved party with a direct interest in the Native*
6 *American sacred site in question concerning the*
7 *nature of the adverse impact, and consult about*
8 *alternatives which can be identified that would*
9 *minimize or prevent the adverse impact, includ-*
10 *ing any alternatives identified by an Indian*
11 *tribe, Native Hawaiian organization, or Native*
12 *American traditional leader that has filed a*
13 *written objection under this subsection.*

14 (B) *NEGOTIATED AGREEMENTS.—(i) Upon*
15 *the request of an Indian tribe or tribes or Native*
16 *Hawaiian organization, each Federal agency in-*
17 *involved in any covered Federal activity shall enter*
18 *into negotiations to identify appropriate land*
19 *management procedures for addressing the inter-*
20 *est of such tribe or Native Hawaiian organiza-*
21 *tion in the protection and preservation of its sa-*
22 *cred sites and to avoid any adverse impact on*
23 *such sites or practices associated with such sites*
24 *as may be located on public lands within the ju-*
25 *risdiction of such Federal agencies. In a manner*

1 *consistent with the public mission of such Fed-*
2 *eral agencies and the responsibility of the United*
3 *States to support Indian tribes and tribal mem-*
4 *bers and Native Hawaiians in the preservation*
5 *of their sacred sites, each Federal agency is au-*
6 *thorized to enter into sacred sites protection*
7 *agreements with Indian tribes or Native Hawai-*
8 *ian organizations for the purpose of adopting the*
9 *land management procedures that result from*
10 *consultations and negotiations. Such agreements*
11 *may supersede the planning provisions of section*
12 *103(c), the notice provisions of section 103(d),*
13 *the consultation provisions of section 103(d)(1),*
14 *and section 104, and the access provisions of sec-*
15 *tion 102 as such provisions relate to Indian*
16 *tribes or Native Hawaiian organizations that*
17 *are parties to such an agreement if the agree-*
18 *ment specifically and explicitly includes a provi-*
19 *sion overriding those sections of this Act, or any*
20 *portions thereof. An agreement entered into*
21 *under this subparagraph may also include a*
22 *provision for the delegation by officials of the*
23 *Federal agency of land management responsibil-*
24 *ities to each Indian tribe or Native Hawaiian*
25 *organization that is the subject of the agreement*

1 for designated public lands described in the
2 agreement.

3 (ii) In the case of any Indian tribe, if such
4 a delegation of management functions is in-
5 cluded in an agreement under clause (i), the
6 Federal agency and the tribe may also agree to
7 use the procedures and regulations employed
8 under the Indian Self-Determination and Edu-
9 cation Assistance Act (Public Law 93-638).

10 (4) *RESPONSE TO COMMENTS.*—If there is no
11 resolution of the claims asserted by an aggrieved
12 party pursuant to paragraph (3), the governmental
13 agency shall prepare and make available to an In-
14 dian tribe, a Native Hawaiian organization, or a Na-
15 tive American traditional leader who has been in-
16 volved in the consultation process, a document re-
17 sponding to the comments received by the govern-
18 mental agency. The document shall—

19 (A) analyze the adverse impact which has
20 been identified by the aggrieved party;

21 (B) assess whether the interest of the govern-
22 ment in proceeding with the action is compel-
23 ling; and

24 (C) assess whether, based on an analysis of
25 the alternatives to the proposed action, including

1 *any alternatives offered by an Indian tribe, Na-*
2 *tive Hawaiian organization, or Native American*
3 *traditional leader, the proposed activity is the*
4 *least restrictive means of furthering that compel-*
5 *ling interest.*

6 *If a governmental agency determines to commence a*
7 *covered Federal activity, notwithstanding notice from*
8 *an aggrieved party pursuant to this subsection, the*
9 *governmental agency shall issue a written opinion*
10 *providing the basis for its decision. The issuance of*
11 *such decision shall constitute final agency action for*
12 *purposes of judicial review pursuant to section 401*
13 *and administrative review procedures under section*
14 *105.*

15 (5) *ADDITIONAL INFORMATION.—In any case in*
16 *which the governmental agency is also required to*
17 *prepare a document analyzing the impact of a cov-*
18 *ered Federal activity or a decision pursuant to the*
19 *National Environmental Policy Act of 1969 (43*
20 *U.S.C. 4321 et seq.), the National Historic Preserva-*
21 *tion Act (16 U.S.C. 470 et seq.) or any other applica-*
22 *ble law, such agency may incorporate the analysis re-*
23 *quired by this section into the contents of the docu-*
24 *ment.*

25 (b) *CASES IN WHICH SECRECY IS REQUIRED.—*

1 (1) *IN GENERAL.*—*In the case of those Indian*
2 *tribes or Native Hawaiians whose traditional cultural*
3 *or religious tenets prohibit disclosure of information*
4 *concerning their Native American sacred sites or cul-*
5 *tural or religious beliefs or practices, and mandate se-*
6 *crecy and internal sanctions to enforce those prohibi-*
7 *tions, if the tribal government of the affected Indian*
8 *tribe or a Native Hawaiian organization so certifies*
9 *and invokes this subsection—*

10 (A) *the tribal government or Native Hawai-*
11 *ian organization shall not be required to reveal*
12 *the location of the Native American sacred site*
13 *or in what manner the covered Federal activity*
14 *would have an adverse impact on the site or any*
15 *information concerning their cultural or reli-*
16 *gious beliefs or practices;*

17 (B) *the tribal government or Native Hawai-*
18 *ian organization shall not be required to explain*
19 *in what manner any proposed alternative is or*
20 *is not less intrusive upon the Native American*
21 *cultural or religious practice associated with a*
22 *sacred site or upon sacred sites which may be*
23 *adversely impacted than the original proposed*
24 *covered Federal activity; and*

1 (C) in engaging in consultation and pre-
2 paring any document required by this Act, the
3 governmental agency shall not be required to in-
4 clude an analysis of adverse impacts upon the
5 sacred site or the use thereof or the cultural or
6 religious beliefs and practices of the Indian tribe
7 or Native Hawaiian organization associated
8 with a sacred site.

9 (2) CONSULTATION.—When a certification made
10 pursuant to paragraph (1) is received by a govern-
11 mental agency, the agency shall engage in consulta-
12 tion with the affected Indian tribe or Native Hawai-
13 ian organization that made the certification. During
14 such consultation, the governmental agency shall con-
15 sider any alternatives proposed by the Indian tribe or
16 Native Hawaiian organization and shall provide the
17 Indian tribe or Native Hawaiian organization with
18 the opportunity to review any other alternatives that
19 the governmental agency may propose.

20 (3) RESPONSE TO COMMENTS.—If there is no
21 resolution of the claims asserted by an Indian tribe
22 or Native Hawaiian organization pursuant to this
23 subsection, the governmental agency shall prepare and
24 make available to the Indian tribe or Native Hawai-
25 ian organization a document responding to the com-

1 *ments received by the governmental agency. The docu-*
2 *ment shall—*

3 *(A) assess whether the interest of the govern-*
4 *ment in proceeding with the activity is compel-*
5 *ling;*

6 *(B) assess whether, on the basis of an anal-*
7 *ysis of the alternatives, the activity is a reason-*
8 *able means of furthering that compelling interest;*
9 *and*

10 *(C) set forth the reasons why the alter-*
11 *natives identified in subsection (b)(2) are not*
12 *reasonable.*

13 *In any case in which a governmental agency deter-*
14 *mines to commence a covered Federal activity, not-*
15 *withstanding notice from an aggrieved party pursu-*
16 *ant to subsections (a) and (b), the governmental agen-*
17 *cy shall issue a written opinion providing the basis*
18 *for its decision. The issuance of such decision shall*
19 *constitute final agency action for purposes of judicial*
20 *review pursuant to section 401 and administrative re-*
21 *view procedures under section 105.*

22 *(c) RULE OF CONSTRUCTION.—In any case in which*
23 *the provisions of subsection (b) have been invoked pursuant*
24 *to such subsection, the requirements of such subsection shall*
25 *control in all circumstances.*

1 (d) *DISCLOSURE REQUIRED.*—Not later than 30 days
2 after receiving any written objection under subsection (a)
3 or (b), the governmental agency proposing the covered Fed-
4 eral activity which gave rise to a notice of objection shall
5 make available to the aggrieved party, all plats, maps,
6 plans, specifications, socioeconomic, environmental, sci-
7 entific, archaeological or historical studies, and comments
8 and information in the possession of such agency directly
9 relating to such activity, except that such agency may with-
10 hold—

11 (1) attorney work product prepared in anticipa-
12 tion of litigation;

13 (2) proprietary or confidential business informa-
14 tion;

15 (3) information which is subject to statutory re-
16 quirements of confidentiality; and

17 (4) information the release of which would jeop-
18 ardize the litigating position of the United States on
19 behalf of another Indian tribe.

20 (e) *SPECIAL RULE FOR PUEBLOS.*—In the case of a
21 proposed covered Federal activity affecting the manage-
22 ment, use, or preservation of public land, or any other ac-
23 tivity or violation under this Act involving potential ad-
24 verse impacts on any of the Indian pueblos of New Mexico
25 or any of their sacred sites, the only party who may file

1 *an objection or participate in consultation under this sec-*
 2 *tion, or file an action under section 105 or 401, shall be*
 3 *the governor of the affected pueblo or the governor's designee.*

4 (f) *EMERGENCY PROVISION.*—*The process required by*
 5 *section 103 and this section shall not apply if the govern-*
 6 *mental agency determines that adherence to the process*
 7 *will—*

8 (1) *have a direct, significant and negative im-*
 9 *pact upon specific national security interests or the*
 10 *implementation of the Endangered Species Act of*
 11 *1973;*

12 (2) *present an immediate threat of serious bodily*
 13 *harm to any person or immediate and serious harm*
 14 *to the environment; or*

15 (3) *interfere with urgent law enforcement activi-*
 16 *ties.*

17 **SEC. 105. ADMINISTRATIVE PROCEDURES.**

18 (a) *IN GENERAL.*—*A governmental agency, shall, by*
 19 *regulation, establish an administrative procedure to imple-*
 20 *ment the requirements of this title.*

21 (b) *EXHAUSTION REQUIREMENT.*—*An aggrieved party*
 22 *shall use a procedure established under subsection (a) before*
 23 *filing an action in a Federal district court pursuant to sec-*
 24 *tion 401.*

25 (c) *BURDEN.*—

1 (1) *BURDEN ON AGGRIEVED PARTY.*—*Except as*
2 *provided in subsection (d), the aggrieved party shall*
3 *have the burden of establishing that the covered Fed-*
4 *eral activity having an impact upon the manage-*
5 *ment, use or preservation of public land, is or will*
6 *have an adverse impact on a Native American sacred*
7 *site.*

8 (2) *BURDEN ON AGENCY.*—*If the aggrieved party*
9 *meets its burden of proof under paragraph (1), the*
10 *agency may proceed with the action only if the agen-*
11 *cy has determined by a preponderance of the evidence*
12 *that the covered Federal activity—*

13 (A) *is in furtherance of a compelling gov-*
14 *ernmental interest; and*

15 (B) *is the least restrictive means of further-*
16 *ing that compelling interest.*

17 (3) *FINAL AGENCY ACTION.*—*An agency deter-*
18 *mination under this subsection shall constitute final*
19 *agency action for purposes of judicial review under*
20 *section 401.*

21 (d) *SECRECY.*—

22 (1) *CASES WHERE SECRECY IS REQUIRED.*—*In*
23 *the case of any proceeding in which an aggrieved In-*
24 *Indian tribe or Native Hawaiian organization invokes*
25 *section 104(b), if the Indian tribe or Native Hawai-*

1 *ian organization objects to the covered Federal activ-*
2 *ity on the grounds that the activity is or will have*
3 *an adverse impact on a Native American sacred site,*
4 *the governmental agency shall have the burden of*
5 *proof to prove by a preponderance of the evidence that*
6 *the covered Federal activity—*

7 *(A) is in furtherance of a compelling gov-*
8 *ernmental interest;*

9 *(B) is a reasonable means of furthering that*
10 *compelling governmental interest; and*

11 *(C) the alternatives identified under section*
12 *104(b)(2) are not reasonable.*

13 *(2) FINAL AGENCY ACTION.—The agency deter-*
14 *mination under this paragraph shall constitute final*
15 *agency action for purposes of judicial review under*
16 *section 401.*

17 *(e) FAILURE OF AGENCY TO MEET BURDEN.—*

18 *(1) IN GENERAL.—The governmental agency*
19 *shall retain its burden of proof at all stages of any*
20 *proceeding or decisionmaking process pursuant to this*
21 *title.*

22 *(2) FAILURE TO MEET BURDEN OF PROOF.—If a*
23 *governmental agency does not meet its burden of proof*
24 *under this section, the governmental agency shall not*

1 *proceed with the proposed covered Federal activity*
2 *that is the subject of the proceeding or process.*

3 (3) *BURDEN OF PROOF DEFINED.*—*For purposes*
4 *of this section the term “burden of proof” means the*
5 *burden of production and the burden of persuasion.*

6 (f) *ADVERSE IMPACT.*—*For purposes of this section—*

7 (1) *a finding of an adverse impact may—*

8 (A) *be made even if no person has been co-*
9 *erced to act contrary to his or her religious be-*
10 *liefs; and*

11 (B) *be based on a disturbance to the integ-*
12 *egrity of a sacred site;*

13 (2) *land management activities, undertakings,*
14 *and actions which have the potential to have an ad-*
15 *verse impact on a Native American sacred site, or*
16 *which make a Native American traditional cultural*
17 *practice or exercise of a Native American religion as-*
18 *sociated with a sacred site more difficult, shall be*
19 *deemed to constitute an adverse impact; and*

20 (3) *government ownership of land, by itself, does*
21 *not establish a compelling government interest.*

22 (g) *SPECIAL RULE FOR NATIVE AMERICAN PRACTI-*
23 *TIONERS.*—*For purposes of any administrative proceeding*
24 *conducted under this section, Native American practitioners*

1 *may elect to provide testimony concerning their beliefs in*
2 *camera or in some other protective procedure.*

3 **SEC. 106. NATIVE AMERICAN SACRED SITES ON INDIAN**
4 **LANDS.**

5 (a) *JURISDICTION OF TRIBES.*—*Indian tribes may*
6 *regulate and protect Native American sacred sites located*
7 *on Indian lands within their jurisdiction. Nothing in this*
8 *Act shall be construed to alter, increase, or decrease the ex-*
9 *istence or scope of tribal jurisdiction or the application of*
10 *tribal law regarding the free exercise of religion or the pro-*
11 *tection of or access to Native American sacred sites on In-*
12 *dian lands. Nothing in this Act shall be construed to grant*
13 *authority to one Indian tribe to regulate Native American*
14 *sacred sites which are within the jurisdiction of another In-*
15 *dian tribe. Nothing in this Act shall be construed to grant*
16 *authority to a tribal government to regulate sacred sites on*
17 *lands not within their jurisdiction.*

18 (b) *DUTY TO NOTIFY.*—*This section does not relieve*
19 *a governmental agency of any duty under section 103 to*
20 *notify an Indian tribe of a covered Federal activity on In-*
21 *dian lands which may have an adverse impact on a Native*
22 *American sacred site.*

23 (c) *NATIONAL SECURITY.*—*The provisions of this sec-*
24 *tion shall not apply if the Federal agency that proposes to*
25 *carry out a covered Federal activity determines that na-*

1 *tional security concerns are directly affected by the covered*
2 *Federal activity.*

3 *(d) DISPUTES BETWEEN TWO OR MORE TRIBES.—*

4 *(1) IN GENERAL.—When a governmental agency*
5 *proposes a covered Federal activity on Indian lands*
6 *of one Indian tribe which may have an adverse im-*
7 *pact on a Native American sacred site of another In-*
8 *dian tribe, and the Indian tribe whose sacred site is*
9 *affected and the Indian tribe on whose land the site*
10 *is located agree and so request, the Secretary of the*
11 *Interior shall convene a committee of tribal represent-*
12 *atives for the purpose of entering into negotiations*
13 *concerning—*

14 *(A) the nature of any adverse impact on the*
15 *Native American sacred site;*

16 *(B) alternatives that would minimize or*
17 *prevent such an adverse impact; and*

18 *(C) any free exercise of religion claim that*
19 *does not fall within the scope of this Act.*

20 *(2) MEMBERS OF COMMITTEE.—The committee*
21 *shall consist of tribal representatives of each affected*
22 *Indian tribe and tribal representatives of the Indian*
23 *tribe upon whose lands the sacred site is located.*
24 *Committee members shall be selected by the respective*
25 *Indian tribes.*

1 (3) *MEETINGS.*—*The committee shall—*

2 (A) *be convened for the duration of the con-*
3 *sultation and negotiation period; and*

4 (B) *meet at the call of the Secretary upon*
5 *the request of the affected Indian tribe or tribes*
6 *and the Indian tribe upon whose lands the sa-*
7 *cred site is located.*

8 **SEC. 107. APPLICABILITY OF OTHER LAWS.**

9 (a) *IN GENERAL.*—*Nothing in this title shall be con-*
10 *strued to deprive any person or entity of any other rights*
11 *which might be provided under the laws, regulations, guide-*
12 *lines, or policies of the Federal, State, and tribal govern-*
13 *ments, including but not limited to the National Historic*
14 *Preservation Act (16 U.S.C. 470 et seq.), to receive notice*
15 *of, comment on, or otherwise participate in the decision-*
16 *making process regarding a covered Federal activity.*

17 (b) *EXISTING PROCEDURES.*—*To the maximum extent*
18 *possible, the procedures required by this Act shall be incor-*
19 *porated into existing procedures applicable to the manage-*
20 *ment of Federal lands and decision making processes of*
21 *Federal agencies engaged in covered Federal activities.*

22 **SEC. 108. CONFIDENTIALITY.**

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

1 *section 105 or 401 or consultation pursuant to sections 103*
2 *and 104, no reference pertaining to a specific detail of a*
3 *Native American traditional cultural practice or religion,*
4 *or the significance of a Native American sacred site, or the*
5 *location of that sacred site, shall be released by a govern-*
6 *mental agency or court to any party or the general public*
7 *pursuant to section 5 of title 5, United States Code, com-*
8 *monly known as the “Freedom of Information Act”, or any*
9 *other applicable law.*

10 (b) *SUPPLEMENTATION OF RECORD.*—*The govern-*
11 *mental agency in the case of an administrative proceeding*
12 *conducted pursuant to section 105, or court, in the case of*
13 *a judicial review process conducted pursuant to section 401,*
14 *shall supplement the record described in subsection (a) to*
15 *include the general results and conclusions to the extent nec-*
16 *essary to provide other interested parties with sufficient in-*
17 *formation to understand the nature of, and basis for, a deci-*
18 *sion by the governmental agency or court.*

19 (c) *EXCEPTION.*—*This section shall not apply—*

20 (1) *in any case in which all parties to a proceed-*
21 *ing (excluding the United States Government) waive*
22 *the application of this section; and*

23 (2) *in the case of a Native Hawaiian sacred site,*
24 *if the information that is otherwise subject to this sec-*

1 *tion is sought by a Native Hawaiian organization for*
2 *the purpose of protecting such site.*

3 *(d) OTHER LAWS.—Indian tribes or Native Hawaiian*
4 *organizations seeking to maintain the confidentiality of in-*
5 *formation relating to Native American sacred sites may*
6 *also seek redress through existing laws (in effect at the time*
7 *the tribe or organization seeks such redress) requiring that*
8 *certain information be withheld from the public, including,*
9 *but not limited to, the National Historic Preservation Act*
10 *(16 U.S.C. 470 et seq.) and the Archaeological Resources*
11 *Protection Act of 1979 (16 U.S.C. 470aa et seq.).*

12 **SEC. 109. CRIMINAL SANCTIONS.**

13 *(a) DAMAGING SACRED SITES.—*

14 *(1) INITIAL VIOLATION.—Any person who inten-*
15 *tionally damages, defaces, desecrates, or destroys a*
16 *Native American sacred site located on land, as de-*
17 *finied in section 3(10), with knowledge that such site*
18 *is a sacred site, except as part of an approved Federal*
19 *activity authorized by a governmental agency with*
20 *the authority to approve such activity after consulta-*
21 *tion with affected parties pursuant to sections 103*
22 *and 104, shall, upon conviction, be fined not more*
23 *than \$100,000, or imprisoned not more than 1 year,*
24 *or both.*

1 (2) *SUBSEQUENT VIOLATIONS.*—*In the case of a*
2 *second or subsequent violation, a person described in*
3 *paragraph (1) shall, upon conviction, be fined not*
4 *more than \$250,000, or imprisoned not more than 5*
5 *years, or both.*

6 (b) *RELEASE OF INFORMATION.*—

7 (1) *INITIAL VIOLATION.*—*Any person who inten-*
8 *tionally releases any information and who knows that*
9 *such information is required to be held confidential*
10 *pursuant to this title shall, upon conviction, be fined*
11 *not more than \$100,000, or imprisoned not more than*
12 *1 year, or both.*

13 (2) *SUBSEQUENT VIOLATIONS.*—*In the case of a*
14 *second or subsequent violation, a person described in*
15 *paragraph (1) shall, upon conviction, be fined not*
16 *more than \$250,000, or imprisoned not more than 5*
17 *years, or both.*

18 (c) *ORGANIZATIONS.*—*In the case of a violation of sub-*
19 *section (a) or (b) by an organization, the organization shall,*
20 *upon conviction, be fined not more than \$200,000 for the*
21 *first violation and not more than \$500,000 for each subse-*
22 *quent violation.*

23 **TITLE II—PRISONERS' RIGHTS**

24 **SEC. 201. RIGHTS.**

25 (a) *IN GENERAL.*—

1 (1) *ACCESS.*—Notwithstanding any other provi-
2 sion of law, Native American prisoners who practice
3 a Native American religion shall have, on a regular
4 basis comparable to that access afforded prisoners who
5 practice other religions, access to—

6 (A) Native American traditional leaders
7 who shall be afforded the same status, rights and
8 privileges as religious leaders of other religions;

9 (B) subject to paragraph (6), items and ma-
10 terials utilized in religious ceremonies; and

11 (C) Native American religious facilities.

12 (2) *MATERIALS.*—Prison authorities shall treat
13 items and materials utilized in religious ceremonies,
14 including traditional foods for religious diets, identi-
15 fied by a Native American traditional leader, in the
16 same manner as the religious items and materials
17 utilized in ceremonies of other religions.

18 (3) *HAIR.*—

19 (A) *RIGHT OF PRISONER.*—Except in those
20 circumstances where subparagraph (B) applies,
21 Native American prisoners who desire to wear
22 their hair according to the customs of a Native
23 American religion may do so provided that the
24 prisoner demonstrates that—

1 (i) *the practice is rooted in Native*
2 *American religious beliefs; and*

3 (ii) *these beliefs are sincerely held by*
4 *the Native American prisoner.*

5 (B) *DENIAL OF REQUEST.—If a Native*
6 *American prisoner satisfies the criteria in sub-*
7 *paragraph (A), the prison authorities may deny*
8 *such request only where they can satisfy the cri-*
9 *teria of section 3 of the Religious Freedom Res-*
10 *toration Act of 1993 (Public Law 103–141).*

11 (4) *DEFINITION OF “RELIGIOUS FACILITIES”.—*
12 *The term “religious facilities” includes sweat lodges,*
13 *tepees, and access to other secure, out-of-doors loca-*
14 *tions within prison grounds if such facilities are*
15 *identified by a Native American traditional leader to*
16 *facilitate a religious ceremony.*

17 (5) *DISCRIMINATION PROHIBITED.—No Native*
18 *American prisoner shall be penalized or discrimi-*
19 *nated against on the basis of Native American reli-*
20 *gious practices, and all prison and parole benefits or*
21 *privileges extended to prisoners for engaging in reli-*
22 *gious activities shall be afforded to Native American*
23 *prisoners who participate in Native American reli-*
24 *gious practices.*

1 (6) *SCOPE OF TITLE.*—*This title shall not be*
2 *construed as—*

3 (A)(i) *requiring prison authorities to per-*
4 *mit; or*

5 (ii) *prohibiting prison authorities from per-*
6 *mitting,*

7 *access to peyote or Native American sacred sites;*

8 *or*

9 (B) *altering applicable requirements for ex-*
10 *haustion of administrative remedies.*

11 (b) *ATTORNEY GENERAL INVESTIGATION.*—

12 (1) *IN GENERAL.*—*The Attorney General shall*
13 *investigate, in consultation with Native American*
14 *traditional leaders and ex-offenders with corrections*
15 *experience as may be recommended by Indian tribes*
16 *and Native Hawaiian organizations, and Federal*
17 *and State prison administrators, the conditions of*
18 *Native American prisoners in the Federal and State*
19 *prison systems with respect to the ability of Native*
20 *American prisoners to engage in religious ceremonies*
21 *and practices.*

22 (2) *REPORT.*—*Not later than 3 years after the*
23 *date of enactment of this Act, the Attorney General*
24 *shall submit to the Congress a report containing—*

1 (A) *an assessment of the recognition, protec-*
2 *tion, and enforcement of the rights of Native*
3 *American prisoners to practice their religions*
4 *under this Act in Federal and State prisons*
5 *where Native Americans are incarcerated; and*

6 (B) *specific recommendations for the pro-*
7 *mulgation of regulations to implement this Act.*

8 ***TITLE III—RELIGIOUS USE OF***
9 ***EAGLES AND OTHER ANIMALS***
10 ***AND PLANTS***

11 ***SEC. 301. RELIGIOUS USE OF EAGLES.***

12 *Not later than 1 year after the date of enactment of*
13 *this Act, the Director of the United States Fish and Wildlife*
14 *Service (hereafter in this section referred to as the “Direc-*
15 *tor”)* shall, in consultation with Indian tribes and Native
16 *American traditional leaders, develop a plan to—*

17 (1) *ensure the prompt disbursement from Federal*
18 *repositories of available bald or golden eagles, or their*
19 *parts, nests, or eggs for the traditional religious use*
20 *of Indians upon receipt of an application from an In-*
21 *Indian practitioner;*

22 (2) *provide that sufficient numbers of bald or*
23 *golden eagles are allocated to Indian practitioners to*
24 *meet the demonstrated need where they are available*

1 *by reason of accidental deaths, natural deaths, or*
2 *takings permitted by Federal law;*

3 (3) *simplify and shorten the process by which*
4 *permits are authorized for the taking, possession, and*
5 *transportation of bald or golden eagles, or their parts,*
6 *nests, or eggs for the traditional religious use of Indi-*
7 *ans;*

8 (4) *establish a mechanism for tribal disburse-*
9 *ment of dead eagles discovered within the exterior*
10 *boundaries of their own reservation to Native Amer-*
11 *ican traditional practitioners; and*

12 (5) *establish a mechanism for tribal contacts*
13 *with regional and national offices of the United*
14 *States Fish and Wildlife Service on fish and wildlife*
15 *resource issues.*

16 **SEC. 302. OTHER ANIMALS AND PLANTS.**

17 *Not later than 2 years after the date of enactment of*
18 *this Act, the Secretary of the Interior, the Secretary of Agri-*
19 *culture, the Secretary of Commerce, the Secretary of the*
20 *Treasury, and the Administrator of General Services shall,*
21 *in consultation with Indian tribes, Native Hawaiian orga-*
22 *nizations, and Native American traditional leaders, estab-*
23 *lish a joint uniform set of administrative procedures to gov-*
24 *ern the disposition of surplus wildlife and plants or parts*
25 *thereof which have been confiscated, gathered or are other-*

1 *wise under the jurisdiction and control of their respective*
 2 *agencies. To the fullest extent allowed under then existing*
 3 *statutory authority, the uniform procedures shall be de-*
 4 *signed to increase the availability of natural products to*
 5 *Native American practitioners.*

6 ***TITLE IV—JURISDICTION AND***
 7 ***REMEDIES***

8 ***SEC. 401. JURISDICTION AND REMEDIES.***

9 *(a) IN GENERAL.—*

10 *(1) RIGHT TO ACTION.—An aggrieved party*
 11 *shall have the right to file suit against the United*
 12 *States or a State in the appropriate district court to*
 13 *enforce the provisions of this Act.*

14 *(2) JURISDICTION.—Any appropriate United*
 15 *States district court shall have original jurisdiction*
 16 *over a civil action for—*

17 *(A) equitable relief; or*

18 *(B) damages necessary to remediate harm*
 19 *to a Native American sacred site.*

20 *(3) STATUTORY CONSTRUCTION.—Nothing in this*
 21 *subsection shall be construed to deprive Indian tribes*
 22 *of jurisdiction that the tribes would otherwise have*
 23 *under section 106 or any other Federal law.*

24 *(b) FACTUAL FINDINGS AND LEGAL DETERMINA-*
 25 *TIONS.—*

1 (1) *IN GENERAL.*—*If an action is filed in a*
2 *United States district court after exhaustion of ad-*
3 *ministrative remedies under section 105, the court*
4 *shall not defer to factual findings of a governmental*
5 *agency except in any case in which such findings are*
6 *based on a formal hearing on the record.*

7 (2) *REVIEW.*—*The court shall review de novo*
8 *legal determinations of a governmental agency con-*
9 *cerning—*

10 (A) *an adverse impact;*

11 (B) *whether the government's interest is*
12 *compelling; and*

13 (C) *whether a particular alternative is the*
14 *least restrictive.*

15 (c) *BURDEN OF PROOF AND ADVERSE IMPACT.*—*For*
16 *purposes of an action alleging a violation of the rights pro-*
17 *tected under title I, and consistent with section 106, the*
18 *following provisions shall apply:*

19 (1) *BURDEN ON AGGRIEVED PARTY.*—*Except as*
20 *provided in subsection (d), the aggrieved party shall*
21 *have the burden of establishing that the covered Fed-*
22 *eral activity or an action by a State having an im-*
23 *pact upon the management, use or preservation of*
24 *public land, is or will have an adverse impact on a*
25 *Native American sacred site.*

1 (2) *BURDEN ON AGENCY.*—*If the aggrieved party*
2 *meets its burden of proof under paragraph (1), the*
3 *governmental agency may proceed with the activity*
4 *or action described in such paragraph only if the*
5 *court determines by a preponderance of the evidence*
6 *that the covered Federal activity—*

7 (A) *is in furtherance of a compelling gov-*
8 *ernment interest; and*

9 (B) *is the least restrictive means of further-*
10 *ing that compelling interest.*

11 (3) *ADVERSE IMPACT.*—*For purposes of decisions*
12 *made pursuant to title I—*

13 (A) *a finding of an adverse impact may be*
14 *made even though no person has been coerced to*
15 *act contrary to his or her religious beliefs, and*
16 *may be based on a disturbance to the integrity*
17 *of a sacred site;*

18 (B) *land management activities, undertak-*
19 *ings, and actions which have the potential to*
20 *have an adverse impact on a Native American*
21 *sacred site, or which make a Native American*
22 *traditional cultural practice or exercise of a Na-*
23 *tive American religion associated with a sacred*
24 *site more difficult shall be deemed to constitute*
25 *an adverse impact; and*

1 (C) government ownership of land, by itself,
2 does not establish a compelling government inter-
3 est.

4 (d) *CASES IN WHICH SECRECY IS REQUIRED.*—In the
5 case of any proceeding in which an aggrieved Indian tribe
6 or Native Hawaiian organization invokes section 104(b),
7 if an Indian tribe or Native Hawaiian organization objects
8 to the covered Federal activity or an action by a State on
9 the grounds that the activity or action is or will have an
10 adverse impact on a Native American sacred site, the gov-
11 ernmental agency shall have the burden of proving by a
12 preponderance of the evidence that the covered Federal ac-
13 tivity—

14 (1) is in furtherance of a compelling government
15 interest;

16 (2) is a reasonable means of furthering that com-
17 pelling interest; and

18 (3) the alternatives identified under section
19 104(b)(2) are not reasonable.

20 (e) *FAILURE OF AGENCY TO MEET BURDEN.*—

21 (1) *BURDEN OF PROOF.*—The governmental
22 agency shall retain its burden of proof at all stages
23 of any proceeding or decisionmaking process pursuant
24 to title I of this Act.

1 (2) *FAILURE TO MEET BURDEN OF PROOF.*—If a
2 governmental agency does not meet its burden of proof
3 under this section, the governmental agency shall not
4 proceed with the proposed activity.

5 (3) *BURDEN OF PROOF DEFINED.*—For purposes
6 of this section, the term “burden of proof” means the
7 burden of production and the burden of persuasion.

8 (f) *SPECIAL RULE FOR NATIVE AMERICAN PRACTI-*
9 *TIONERS.*—Native American practitioners may elect to pro-
10 vide testimony about their beliefs in camera or in some
11 other protective procedure.

12 (g) *SOVEREIGN IMMUNITY.*—Neither the sovereign im-
13 munity of the United States nor of any State, including
14 immunity derived from the 11th amendment to the Con-
15 stitution, shall be a bar or defense to any civil action
16 brought pursuant to this section to enforce the provisions
17 of this Act, including any grant of attorneys’ fees pursuant
18 to subsection (h). Such immunities are hereby waived.

19 (h) *ATTORNEY’S FEES.*—An aggrieved party who is a
20 prevailing party in any administrative or judicial proceed-
21 ing brought pursuant to this Act shall be entitled to attor-
22 ney’s fees, expert witness fees, and costs under the provisions
23 of section 504 of title 5, United States Code, and section
24 2412 of title 28, United States Code.

TITLE V—MISCELLANEOUS**SEC. 501. STATUTORY CONSTRUCTION.**

(a) *IN GENERAL.*—Nothing in this Act shall be construed as abrogating, diminishing, or otherwise affecting—

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

(2) *the rights, express or implicit, of any Indian tribe which exist under treaties, Executive orders, and other laws of the United States;*

(3) *the inherent right of Native Americans to maintain their cultural integrity and religions;*

(4) *the trust responsibility of the United States or any legal obligation or remedy resulting therefrom;*

(5) *the right and ability of any Indian tribe upon whose Indian lands a Native American sacred site is located to determine, exclusively pursuant to the tribal law of such Indian tribe, whether any other Indian tribe or Native American practitioner shall have a property right in that site or have the authority to limit or prohibit covered Federal activities affecting that site;*

(6) *any traditional cultural or free exercise of religious claim of any person that does not fall within the scope of this Act;*

(7) *the right of Native Americans to obtain protection for the practice of their traditional cultures or*

1 *religions under any other Federal, State, or tribal law*
2 *(including any constitution); or the authority and re-*
3 *sponsibility of any governmental agency to provide*
4 *protection for Native American sacred sites and the*
5 *practice of Native American traditional cultures and*
6 *religions under other laws (including any constitu-*
7 *tions), such as the National Historic Preservation Act*
8 *(16 U.S.C. 470 et seq.); and*

9 *(8) the authority of Federal land and program*
10 *managers to provide for notice to and consultation*
11 *with other religious and cultural groups that are not*
12 *covered under this Act for the purpose of protection*
13 *of cultural, religious, environmental, and historical*
14 *sites and resources under other authority.*

15 *(b) EFFECT OF RELIGIOUS FREEDOM RESTORATION*
16 *ACT OF 1993.—This Act is supplemental to the Religious*
17 *Freedom Restoration Act of 1993 (Public Law 103–141),*
18 *and is not intended to be limited by that Act, or to limit*
19 *in any way, rights available under that Act, including the*
20 *application of that Act to activities which may have an*
21 *adverse impact upon a Native American sacred site, wheth-*
22 *er or not such activities are explicitly covered by this Act.*

23 **SEC. 502. SEVERABILITY.**

24 *If any title or section of this Act, or any provision,*
25 *or portion thereof, is declared to be unconstitutional, in-*

1 *valid, or inoperative in whole or in part, by a court of com-*
2 *petent jurisdiction, such title, section, provision, or portion*
3 *thereof shall, to the extent it is not unconstitutional, in-*
4 *valid, or inoperative, be enforced and effectuated, and no*
5 *such determination shall be deemed to invalidate or make*
6 *ineffectual the remaining provisions of the title, section, or*
7 *provision.*

8 **SEC. 503. AUTHORIZATION OF APPROPRIATIONS.**

9 *There are authorized to be appropriated such sums as*
10 *may be necessary to carry out the provisions of this Act,*
11 *including such sums as may be necessary for expenses of*
12 *Native Americans for consultations with the Attorney Gen-*
13 *eral provided in section 201(b)(1).*

14 **SEC. 504. REGULATIONS.**

15 *(a) IN GENERAL.—The head of each land managing*
16 *agency, in consultation with Indian tribes and Native Ha-*
17 *waiian organizations, shall promulgate regulations relating*
18 *to the following:*

19 *(1) Federal planning processes pertaining to the*
20 *management, use or preservation of land.*

21 *(2) Notice to and consultation with Indian*
22 *tribes, Native Hawaiian organizations, and Native*
23 *American traditional leaders as required by sections*
24 *103 and 104.*

1 (b) *CONSISTENCY.*—The head of each land managing
2 agency shall consult with the Secretary of the Interior to
3 assure maximum possible consistency in regulations pro-
4 mulgated pursuant to this Act.

5 (c) *REQUIREMENT FOR REGULATIONS.*—The regula-
6 tions promulgated under this Act shall be sufficiently flexi-
7 ble to enable consultation to address the unique needs of
8 Indian tribes, Native Hawaiian organizations, Native
9 American traditional leaders, and Native American practi-
10 tioners. The notices and procedures provided for in sections
11 103 and 104 shall be provided within the applicable time
12 periods, even in the absence of any completed regulations.

13 **SEC. 505. PROTECTIONS.**

14 (a) *IN GENERAL.*—The protections of this Act shall be
15 afforded only to bona fide persons who are described in
16 paragraphs (7), (11), (12), (16), and (17) of section 3, and
17 to members of Indian tribes, as defined in section 3(9).

18 (b) *CONSULTATION.*—For purposes of determining the
19 bona fide nature of any of the persons described in section
20 3, or the bona fide nature of any Native American tradi-
21 tional cultural practice or Native American religion, the
22 Secretary is authorized to consult with Indian tribes, Na-
23 tive Hawaiian organizations, Native American practition-
24 ers, and Native American traditional leaders.

1 **SEC. 506. APPLICABILITY OF FEDERAL ADVISORY COMMIT-**
2 **TEE ACT.**

3 *All activities under this Act shall be exempt from the*
4 *Federal Advisory Committee Act (5 U.S.C. App.).*

5 **SEC. 507. EFFECTIVE DATE.**

6 *(a) IN GENERAL.—This Act shall take effect on the*
7 *date of enactment. The application and enforcement of this*
8 *Act shall not depend upon the promulgation of regulations*
9 *by any governmental agency, except that, with respect to*
10 *notice and review provisions under sections 103 and 104,*
11 *the deadline for the establishment of applicable procedures*
12 *by a Federal agency shall be the date that is 180 days after*
13 *the date of enactment of this Act.*

14 *(b) FINAL ACTIONS.—*

15 *(1) IN GENERAL.—Except as provided in section*
16 *104(a)(2) and section 3(4)(B)(ii) and subject to para-*
17 *graph (2), this Act does not require any Federal agen-*
18 *cy to reconsider any final action or decision that the*
19 *Federal agency made—*

20 *(A) prior to the date of enactment of this*
21 *Act; or*

22 *(B) in compliance with the provisions of*
23 *this Act.*

24 *(2) NEW PHASES.—This section shall not bar*
25 *application of this Act to new phases of existing*
26 *projects.*

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