

(f) Outreach and engagement**(1) In general**

The Secretary shall carry out outreach and engagement activities to provide Indian tribes, Native American language communities, and the public information about—

- (A) opportunities to provide input on the development and design of each survey under subsection (a), including information on the consultations required under subsection (c);
- (B) the goals and purpose of the surveys conducted under subsection (a); and
- (C) the benefits and importance of participation in surveys under subsection (a).

(2) Grants, contracts, and cooperative agreements authorized

The Secretary may carry out the outreach and engagement activities required under paragraph (1)—

- (A) directly;
- (B) in partnership with the Bureau of the Census; or
- (C) through grants to, or contracts or cooperative agreements with—
 - (i) Indian tribes;
 - (ii) tribal organizations; and
 - (iii) nonprofit organizations that work with Indian tribes, Native American language programs, and Native American language communities.

(g) Limitation

Nothing in this section requires an Indian tribe, Native American language community, or Native American language speaker—

- (1) to participate in a survey under subsection (a); or
- (2) to provide specific or culturally sensitive information in completing such a survey.

(h) Availability of survey materials and findings**(1) In general**

Not later than 1 year after January 5, 2023, and prior to conducting each survey under subsection (a), the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committees on Education and Labor and Natural Resources of the House of Representatives, and make publicly available, a description of—

- (A) the feedback received under subsection (c) on the design of the survey;
- (B) the form and content of the survey;
- (C) the plan for deploying the survey to ensure a robust response; and
- (D) how the Secretary will ensure any survey enumeration efforts are culturally informed and appropriate.

(2) Results

Not later than 90 days after the date on which analysis of each survey under subsection (a) is completed, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committees on Education and Labor and Natural Resources of the House of Representatives, and make publicly available, the results of the survey.

(i) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$1,500,000 for each fiscal year—

- (1) preceding a fiscal year during which a survey under subsection (a) is conducted; and
- (2) during which a survey under that subsection is conducted.

(Pub. L. 101-477, title I, §108, as added Pub. L. 117-337, §2(b), Jan. 5, 2023, 136 Stat. 6153.)

Statutory Notes and Related Subsidiaries**CHANGE OF NAME**

Committee on Education and Labor of House of Representatives changed to Committee on Education and the Workforce of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

CHAPTER 32—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION

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§ 3001. Definitions

For purposes of this chapter, the term—

(1) “burial site” means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) “cultural affiliation” means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) “cultural items” means human remains and—

(A) “associated funerary objects” which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.¹

(B) “unassociated funerary objects” which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time

¹ So in original. The period probably should be a comma.

of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) “sacred objects” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “cultural patrimony” which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “Federal agency” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “Federal lands” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) “Hui Malama I Na Kupuna O Hawai'i Nei” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “Indian tribe” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) “museum” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “Native American” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) “Native Hawaiian” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exer-

cised sovereignty in the area that now constitutes the State of Hawaii.

(11) “Native Hawaiian organization” means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) “Office of Hawaiian Affairs” means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) “right of possession” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 3005(c) of this title, result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to 28 U.S.C. 1491 in which event the “right of possession” shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) “Secretary” means the Secretary of the Interior.

(15) “tribal land” means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;²

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

(Pub. L. 101-601, §2, Nov. 16, 1990, 104 Stat. 3048; Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 101-601, Nov. 16, 1990, 104 Stat. 3048, known as the Native American Graves Protection and Repatriation Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Alaska Native Claims Settlement Act of 1971, referred to in par. (5), probably means the Alaska Native Claims Settlement Act. See note below.

² So in original. Probably should be followed by “and”.

The Alaska Native Claims Settlement Act, referred to in par. (7), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Hawaiian Homes Commission Act, 1920, referred to in par. (15)(C), is act July 9, 1921, ch. 42, 42 Stat. 108, which was classified generally to sections 691 to 718 of Title 48, Territories and Insular Possessions, and was omitted from the Code.

Section 4 of Public Law 86-3, referred to in par. (15)(C), is section 4 of Pub. L. 86-3, which is set out as a note preceding section 491 of Title 48.

AMENDMENTS

1992—Par. (13). Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

SHORT TITLE

Pub. L. 101-601, § 1, Nov. 16, 1990, 104 Stat. 3048, provided that: “This Act [enacting this chapter and section 1170 of Title 18, Crimes and Criminal Procedure] may be cited as the ‘Native American Graves Protection and Repatriation Act.’”

§ 3002. Ownership

(a) Native American human remains and objects

The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organi-

zation specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) Unclaimed Native American human remains and objects

Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 3006 of this title, Native American groups, representatives of museums and the scientific community.

(c) Intentional excavation and removal of Native American human remains and objects

The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 470cc of title 16 which shall be consistent with this chapter;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) Inadvertent discovery of Native American remains and objects

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.