

Summary of Consultation Comments: STOP Act Proposed Rule

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1. Consultation Overview

The Department of the Interior’s (“Department” or “DOI”) Bureau of Indian Affairs (“BIA”) and Office of Native Hawaiian Relations (“ONHR”) hosted four virtual consultation sessions on the proposed rule implementing the Safeguard Tribal Objects of Patrimony (“STOP”) Act.

The first two consultations were hosted July 18 and July 19 by the BIA and intended to solicit feedback from Tribal leaders of federally recognized Indian Tribes and Alaska Native villages. The third and fourth consultations were hosted on July 24 and July 25 by ONHR and were intended to solicit feedback from members of the Native Hawaiian Community.

The consultations lasted approximately one hour or less each. The Department responded to comments and questions where time permitted. In each session, the federal team substantively engaged with participants by presenting on the contents of the proposed rule implementing the STOP Act (“Proposed Rule”). Technology ran smoothly for all the sessions. Most comments received during the consultations were verbal, and a few were asked using the Zoom chat function. Most participants seemed in listen-only mode and did not offer substantive thoughts and comments during the consultations. Written comments were received for these consultation sessions until December 24, 2024.

Overall, the Tribal consultations and their written comment period garnered comments from the following federally recognized Indian Tribes:

- Cherokee Nation
- Chickahominy Tribe
- Cowlitz Tribe
- Mille Lacs Band of Ojibwe
- Pueblo of Acoma
- Salamatof Tribe
- Umatilla Tribe.

The United South and Eastern Tribes Sovereignty Protection Fund (“USET SPF”) also submitted written comments on the Proposed Rule on behalf of its membership.¹

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

The Native Hawaiian Community consultations garnered important input and feedback from the Native Hawaiian organization, Hui Iwi Kuamo'o.

In addition, the National Association of Tribal Historic Preservation Officers (“NATHPO”) submitted comments on the Proposed Rule. Other non-federally recognized Tribal comments include comments from the Wanapung Heritage Center, the MOWA Band of Choctaw Indians, the Texas Band of Yaqui Indians, and Silver Spring, MD resident Michael Ravnitzky.

2. Summary of Comments

The Proposed Rule is divided into several sections serving different purposes. The comments summarized below are categorized the same, but with an “other comments” category as follows:

- Subpart A: General Provisions, 25 CFR § 1194.2 - § 1194.4
- Subpart B: Export Certification System, 25 CFR § 1194.101 - § 1194.110
- Subpart C: Detention, Forfeiture, Repatriation, Return, 25 CFR § 1194.201 - § 1194.206
- Subpart D: Appeals, 25 CFR § 1194.301 - § 1194.304
- Subpart E: Voluntary Return, 25 CFR § 1194.401 - § 1194.403
- Subpart F: Interagency Working Group, 25 CFR § 1194.501 - § 1194.503
- Subpart G: Native Working Group, 25 CFR § 1194.601 - § 1194.603
- Other Comments

The Tribal comments and the Native Hawaiian organization comments were primarily technical in nature, responding to certain provisions and suggesting improvements.

Please note, the following summary of comments reflects a fair summary of all the comments received, verbal and written, but is not intended to provide an exhaustive listing of all the comments submitted.

A. Subpart A: General Provisions, 25 CFR § 1194.2 - § 1194.4

These comments responded to general provisions, such as the provision defining terms used in the Proposed Rule and the severability provision of the Proposed Rule.

- The Pueblo of Acoma strongly supports the language at 25 CFR § 1194.1 of the Proposed Rule and suggests the Department “develop comprehensive supplementary guidance materials for Tribes, like flowcharts for how the STOP Act will work, the database, and related information.”
- The Cowlitz Tribe responds to 25 CFR § 1194.2 and requests that the Tribe and its members “have an express exemption for transporting, gifting, or selling its own resources,” noting that Tribal representatives often carry items with them as gifts for other Tribes or organizations.
- The Native Hawaiian organization (“NHO”) Hui Iwi Kuamo’o commented on the conditions for qualifying as an NHO under the Proposed Rule and requested a condition that a majority of an organization’s members be Native Hawaiians be included in the NHO definition at 25 CFR § 1194.2.

- The Pueblo of Acoma and the NHO Hui Iwi Kuamo’o support designating the Office of the Assistant Secretary-Indian Affairs (“AS-IA”) as the “Office” responsible for the STOP Act program, as reflected at 25 CFR § 1194.2 of the Proposed Rule.
- The Pueblo of Acoma suggested the definition for “Tribal land” at 25 CFR § 1194.2 include “all Tribal trust land outside the exterior boundaries of any Indian reservation[,]” noting that “Trust lands outside of the exterior boundaries of a reservation may still contain cultural items or archaeological resources and such items and resources must be protected under the regulations.”
- NHO Hui Iwi Kuamo’o supports the proposed approach to change definitions under the Native American Graves Protection and Repatriation Act (“NAGPRA”) and the Archaeological Resources Protection Act (“ARPA”) relating to repatriation and the rationale to return physical custody of cultural heritage to the Indian Tribe or NHO, as reflected at 25 CFR § 1194.2 of the Proposed Rule.
- NHO Hui Iwi Kuamo’o expressed support for the severability provision at 25 CFR § 1194.4.
- USET SPF expressed general support for Subpart A, and particularly 25 CFR § 1194.2, but requested that the Department implement the “use of artist documentation or receipts and provide Tribal Nations a template for such documentation and receipts” and clarify that Tribal Nations may export their Ancestors’ and relatives’ remains under the parameters of the STOP Act.
- USET SPF also urges the Department to clarify its definition for “Native American” at 25 CFR § 1194.2 extend to the “people and ancestors of all federally recognized Tribal nations today.”
- NATHPO provided a different definition of “Office” under 25 CFR § 1194.2, as follows: “Office means the office of the Assistant Secretary, Indian Affairs, as delegated as responsible for exercising the duties of the Secretary under the Act.”

B. Subpart B: Export Certification System, 25 CFR § 1194.101 - § 1194.110

The following comments respond to the Proposed Rule’s provisions relating to the export certification process.

- The Cowlitz Tribe is concerned there are no clear guidelines for how package contents are examined to differentiate between allowable contents and Native American human remains and/or archaeological materials. "It's the Tribe's position that package contents must be inspected through a non-invasive, culturally appropriate manner. Meaning, the Tribe would object to the use of x-rays or physically opening packages, as this could impact the integrity of the cultural item."
- The Cowlitz Tribe requests that the Department “contact each Tribe for input on who to contact within the Tribe to make a determination and set the standard” for culturally appropriate standards under 25 CFR § 1194.103(b)(2)(i).
- The Cowlitz Tribe believes Tribes and their members should not have to apply for a permit from the Department under 25 CFR § 1194.103 to move their own archaeological resources. “The Tribe requests that there be built-in exemptions or an alternative means to accomplish a permit, such as self-certification that the Tribe may process internally.”
- The Cherokee Nation believes the 9-day timeline at 25 CFR § 1194.103 “is extremely short and creates challenges, especially during high-volume periods.” The Tribe suggests

allocations of additional resources to Tribes and federal agencies to ensure compliance with the STOP Act.

- The Cherokee Nation suggests enhancing the requirements at 25 CFR § 1194.103(b)(2)(vi-ix) by including further archaeological details, such as the geographic location where the item was removed, its acquisition history, and its archaeological era.
- The Cherokee Nation believes photographic evidence should be included only upon request by the reviewing Tribe, and that photographs should be destroyed once their use is no longer required.
- The Pueblo of Acoma and USET SPF believe photographic documentation should be mandatory under the export certification application process outlined at 25 CFR § 1194.103. The Pueblo suggests that Tribal applicants and Native Hawaiian applicants could be exempted from this requirement based upon cultural sensitivities. USET SPF suggests Tribes should be able to request that photos be immediately removed should their upload be culturally inappropriate.
- The Pueblo of Acoma and USET SPF request a word other than “consultation” be used to describe the dialogue between experts and Tribes under 25 CFR § 1194.103(b)(2)(v) of the Proposed Rule since “consultation” typically refers to government-to-government dialogue between the United States and Indian Tribes.
- USET SPF believes Tribes should be able to contact the Department and it will “take action” where bad actors harass or attempt “to extract wrongful information from them under the guise of STOP Act consultation.”
- The Pueblo of Acoma requested clarifying in the notification and review timeline provisions at 25 CFR § 1194.104 that Tribes be given access to all available materials upon the initial submission and not only after the application is deemed complete. The Pueblo also believes that the timeline under 25 CFR § 1194.104(f) is vague and unclear and that applicants deserve a clear timeline of when determinations will be made under this subsection.
- NHO Hui Iwi Kuamo’o provides general support for the entire Subpart B and provides strong support for 25 CFR §§ 1194.103(b)(2)(v) and (b)(2)(vii).
- NHO Hui Iwi Kuamo’o recommends extending the time periods at 25 CFR § 1194.104(b) to 30 days and at 25 CFR § 1194.104(e) to 15 days.
- NHO Hui Iwi Kuamo’o believes the timeframe at 25 CFR § 1194.105(b) is too ambitious and should be extended to 4 days.
- NHO Hui Iwi Kuamo’o asks what procedure the Secretary will use to revoke certificates under 25 CFR § 1194.106.
- The Pueblo of Acoma provided several suggestions on how the Department should manage and access the Export Certification Database under 25 CFR § 1194.107 of the Proposed Rule. The Cowlitz Tribe suggests that “human remains and archaeological data be included in the database [at 25 CFR § 1194.107] and that further consultation be conducted on how this information is specifically protected.” The Cherokee Nation believes the database should be strictly limited to authorized individuals on a need-to-know basis to prevent the misuse or appropriation of cultural information.
- USET SPF urges “the Department to ensure the database [at 25 CFR § 1194.107] has the ability to flag items at Tribal Nation’s request or to otherwise sort items by region, and without the need for a Tribal Nation to submit a full export certification application to do so.”
- USET SPF believes the Freedom of Information Act (“FOIA”) exemption is too narrow and can be interpreted to just apply to the database under 25 CFR § 1194.107. USET SPF

suggests the Department “uncouple the FOIA exemption from the database regulatory provisions and . . . describe the exemption as applicable more broadly.”

- NHO Hui Iwi Kuamo’o supports NHOs being able to issue an authorization under 25 CFR § 1194.109 but reiterates that the regulations should require NHO’s membership to be composed of a Native Hawaiian majority.
- USET SPF suggests the Department require export certifications to include language “stating they do not affirmatively establish an item's legality to protect against criminals' use of export certifications to defend against federal prosecutions.”

C. Subpart C: Detention, Forfeiture, Repatriation, Return, 25 CFR § 1194.201 - § 1194.206

These comments respond to provisions in the Proposed Rule related to detention of items, forfeiture, repatriation, and return.

- The Pueblo of Acoma and USET SPF believe the Proposed Rule, at 25 CFR § 1194.201, expands the safe harbor provision too far by including abandonment, suggesting that its inclusion provides bad actors a final parachute to escape liability. The Pueblo suggests an affirmative action from the exporter be required, which it feels is consistent with the “voluntary return” language used in the STOP Act.
- The Cowlitz Tribe suggests the Department defer to the specific Tribe associated with the item(s) described at 25 CFR § 1194.201(d) to ensure “exemptions” are culturally appropriate.
- The Pueblo of Acoma requests that the Department consult with the appropriate Tribes on proper handling and storage protocols for cultural items. The Pueblo detailed an incident with Customs and Border Patrol (“CBP”) where cultural items transported from San Francisco to Phoenix and then to Albuquerque were unnecessarily disturbed and viewed in a manner that violates cultural laws and customs.
- The Pueblo of Acoma requests that the Department expand its options of places items may be returned to at 25 CFR § 1194.206, noting that sometimes cultural items are required to be reburied at their original burial location, which now may be on state or federal lands.
- NHO Hui Iwi Kuamo’o strongly supports the proposed procedures at 25 CFR § 1194.201.
- NHO Hui Iwi Kuamo’o provides general support for 25 CFR §§ 1194.203 and 204.
- The Cowlitz Tribe expressed concern for how penalties are calculated and assessed at 25 CFR § 1194.205 since it views human remains and archaeological resources as “priceless.”
- NHO Hui Iwi Kuamo’o and NATHPO suggest increasing the penalty amounts under 25 CFR § 1194.205 to \$2,500 and \$10,000, respectively.
- USET SPF suggests, with respect to the penalties outlined at 25 CFR § 1194.205, “that the Department clarify that this second layer of penalty should be stacked on the first and paired with criminal prosecution.”
- The Cherokee Nation is concerned about the repatriation of abandoned items under 25 CFR § 1194.206, stating, “[w]e want to stress the importance of consultation with all potentially affiliated Tribes when repatriating abandoned items.”
- NHO Hui Iwi Kuamo’o provides general support for 25 CFR § 1194.206.
- USET SPF suggests “that the Department make clear within the regulations that CBP and the AS-IA Office must meet the duty of care otherwise required for items covered by NAGPRA, as set forth in 43 CFR § 10.1(d), or set other standards in consultation with Tribal Nations.”
- NATHPO suggests 25 CFR § 1194.206 be “absolutely clear that the Office, as a federal agency with possession or control of Native American human remains or cultural items, is

required to comply with the summary, inventory, consultation, and notification requirements of [NAGPRA]."

D. Subpart D: Appeals, 25 CFR § 1194.301 - § 1194.304

The following comments respond to the appeals process outlined in the Proposed Rule.

- The Pueblo of Acoma believes the appeals provision requires clarification regarding Tribal rights to challenge certification approvals without temporal limitations, maintaining continuing rights to recover cultural items, and establishing clear processes for Tribal intervention in proceedings.
- USET SPF "call[s] on the Department to clarify that a Tribal Nation also has appeal rights and, further, that the 45-day appeal window does not apply to a Tribal Nation's rights with regard to recovering its sacred items." Further, USET SPF notes that the Proposed Rule "does not make clear that a Tribal Nation can appeal a decision by the Department to issue an export certification or to release an item back to an exporter."

E. Subpart E: Voluntary Return, 25 CFR § 1194.401 - § 1194.403

The following comments respond to the Proposed Rule's handling of voluntary returns and related items.

- The Pueblo of Acoma suggests that the "voluntary return" provisions be interpreted more broadly to acknowledge that some returns may occur outside the formal system, and therefore, the regulations should provide tax documentation guidance for direct voluntary returns to Tribes.
- The Cherokee Nation is concerned about the ethical implications of providing tax benefits under 25 CFR § 1194.403(d) to facilitate the return of cultural items.
- NHO Hui Iwi Kuamo'o generally supports the voluntary return approach in the Proposed Rule and particularly supports 25 CFR § 1194.403 of the Proposed Rule.

F. Subpart F: Interagency Working Group, 25 CFR § 1194.501 - § 1194.503

The following comments respond to the Interagency Working Group ("IWG") established by the STOP Act and how the Proposed Rule implements the IWG.

- The Pueblo of Acoma believes the IWG should coordinate closely with the Native Working Group described at Subpart G of the Proposed Rule and that a representative of the IWG be included in the Native Working Group's activities or that the two working groups conduct joint meetings.
- NHO Hui Iwi Kuamo'o provided general support for the interagency agreement language and section and its intent at 25 CFR §§ 1194.501-503 of the Proposed Rule.
- NHO Hui Iwi Kuamo'o generally supports Subpart F of the Proposed Rule and particularly supports 25 CFR § 1194.502 of the Proposed Rule.

G. Subpart G: Native Working Group, 25 CFR § 1194.601 - § 1194.603

The following comments respond to the Native Working Group (“NWG”) established by the STOP Act and how the Proposed Rule implements the NWG.

- The Pueblo of Acoma believes the NWG should coordinate closely with the Interagency Working Group described at Subpart F of the Proposed Rule and that a representative of the NWG be included in the Interagency Working Group’s activities or that the two working groups conduct joint meetings.
- The Cherokee Nation is concerned with the qualifications for membership in the NWG under 25 CFR § 1194.602(a). The Tribe believes “[t]he phrase ‘relevant expertise’ is too broad and should be clarified to require specific qualifications, such as expertise in archaeology per [Secretary of Interior] standards, cultural knowledge, or demonstrated experience in heritage preservation.”
- NHO Hui Iwi Kuamo’o supports the Proposed Rule at 25 CFR § 1194.601 and requests language be included that provides the requisite funding to carry out the work.
- NHO Hui Iwi Kuamo’o requests that the Proposed Rule, at 25 CFR § 1194.602(a), require that the NWG be composed of representatives from Indian Tribes and NHOs with relevant expertise in international repatriation, stating that the NWG members need to know how it works outside of the U.S. because that’s the focus of the Proposed Rule.
- NHO Hui Iwi Kuamo’o suggests that the Proposed Rule, at 25 CFR § 1194.602(d), include a NWG membership nomination process for Indian Tribes and NHOs.
- NHO Hui Iwi Kuamo’o supports the agreements entered into under 25 CFR § 1194.603 of the Proposed Rule to better facilitate international repatriation, the prioritization of identifying provenance of items by museums, and renewed efforts by the Department of State to review governance records at international institutions for cultural objects and human remains.
- NATHPO suggests “that the Native Working Group be charged with reviewing civil penalties assessed and making formal requests if it believes additional penalty amounts are warranted.”
- NATHPO suggests the following section be added to the regulations: "The Native Working Group may make formal requests to initiate certain agency actions, including that: 1) the Department of Justice initiate judicial proceedings domestically or abroad to aid in the repatriation of cultural items and archaeological resources; and 2) the Department of State initiate dialogue through diplomatic channels to aid in that repatriation."

H. Other Comments

The following comments were general in nature or related to an issue outside of the categories above.

- The Pueblo of Acoma, the Chickahominy Tribe, and the USET SPF expressed general appreciation for DOI’s efforts and urged swift implementation to provide urgent protection to sacred items and cultural resources.
- The Salamatof Tribe requests that clan leaders, spokespersons, and clan mothers be included in the process for identifying sacred and cultural items.
- The Pueblo of Acoma requested additional funding and resources for the office within the Southwest Region of the BIA that works on their repatriation efforts and asked that the

Department provide STOP Act updates and training to incoming Pueblo leadership in January or February 2025.

- The Mille Lacs Band of Ojibwe urged DOI to consider the STOP Act while looking at emergency operations planning and while considering what constitutes proper THPO and Tribal emergency management collaboration.
- The Umatilla Tribe asked whether the Department was concerned whether a new administration would do away with or otherwise diminish its proposed final rule.
- USET SPF requests that the Department apply existing laws, to the fullest extent possible, *e.g.*, using “ARPA’s back-door trafficking prohibition, ‘whereby ARPA’s trafficking prohibition applies to an archaeological resource that may have left its Tribal community or public lands before ARPA’s enactment, but did so in violation of a different statute in place at the time.’” See 16 U.S.C. §§ 470ee(b)(2), and (c).
- State-recognized Tribe, MOWA Band of Choctaw Indians, asked for more time to review the proposed final rule before commenting. The Texas Band of Yaqui Indians, also state-recognized, expressed interest in collaborating with others in their state to protect sacred sites.
- A representative from the Wanapung Heritage Center asked whether art purchased from a Native artist for export requires an export certificate and, if so, whether the Native artist could provide a Tribal authorization for export.
- NATHPO expressed doubts about the cost assumptions the Department provided with respect to implementing the Proposed Rule.

3. Conclusion

In conclusion, the Proposed Rule has been shaped by the multi-year efforts of Agency officials, Tribal and Native Hawaiian stakeholders, and other interested parties. The Proposed Rule incorporated important feedback from Tribes and Native Hawaiian organizations that have consistently dealt with repatriation efforts prior to the STOP Act’s passage. These stakeholders will continue to be important allies, either formally through participation on the NWG, or informally through consistent communication with Agency officials. Ultimately, the STOP Act’s success will depend on streamlined policies and procedures within the Department and the allocation of adequate resources, including culturally appropriate trainings, for all involved in carrying out this new law. The Department will now work toward publishing a Final Rule.