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Protecting Sovereignty • Preserving Culture
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December 24, 2024

Bryan Newland
Assistant Secretary–Indian Affairs
U.S. Department of the Interior

RE: Proposed Rulemaking for the Safeguard Tribal Objects of Patrimony, RIN 1076-AF78, and Docket ID BIA-2024-0002

Dear Assistant Secretary of Indian Affairs Newland,

We hope you are well and healthy. Thank you for the opportunity to provide the Association's experience and expertise in helping to shape the Safeguard Tribal Objects of Patrimony (STOP) Act regulations. While we are grateful to see this proposed rulemaking, we are concerned how quickly the final rulemaking will be published, when the Department of the Interior will be staffed, and the Department of Homeland Security trained to enact the law. In addition, there are opportunities to protect Tangible Cultural Heritage within the regulations that are being ignored, which our comments will address. The STOP Act is significant in the body of laws that protect Native cultural heritage because it has the power to shift the burden of proving ownership to the collector and exporter. This is a basic principle of law concerning Native Peoples' "property"¹ rights and is precedential for the STOP Act, and should be used to its fullest extent. See 25 U.S.C. § 194.

This rulemaking has the potential to heal - or further harm - the human and civil rights of Indigenous Peoples from Turtle Island. These regulations also have the power to alter how Indigenous Peoples in this country are represented and viewed by the public because it will shift how individuals and entities interact with us. It is in this spirit that we submit these written comments to the Department of the Interior.

We appreciate the difficult work and coordination of the Department and other federal agencies to implement an effective and efficient framework for these regulations. However, there remain opportunities to improve protection of Native cultural heritage in the new regulations, which we wish to address. The Association on American Indian Affairs has been

¹ Please be aware that the term "property" is less than adequate and is often viewed as an offensive term to describe the cultural and spiritual meaning that we give to our Ancestors and cultural heritage. However, it is a term that the federal government understands.

working with our Tribal Partners Working Group, as well as other Native and non-Native experts in the field, so that we can best support an efficient practice that is in line with the remedies Congress provided to protect Native cultural heritage.

We have provided some general comments regarding concepts relevant to the law and its regulations here, and more detailed comments after.

Trust Responsibility

The very first purpose of the STOP Act is to carry out the trust responsibility of the U.S. to Native Nations and Native Hawaiian Organizations.² The regulations carry out the trust responsibility by giving preference and deferring to NN/NHO Traditional Knowledge and that NN/NHOs have the inherent sovereign right over their cultural heritage wherever it may be located. This inherent authority has never been removed from Native Nations and is recognized in this rulemaking. In addition, the concepts of free, prior and informed consent, as well as “right of possession” are critical to carry out the U.S. trust responsibility under this framework.

However, the purposes of the STOP Act and its implementing regulations require a stronger statement of the trust responsibility. The law clearly states that one of the purposes of the Act is to “carry out the trust responsibility of the United States to Indian Tribes.” Thus, we recommend expressly repeating this language in the purposes section of the regulations and that the recognition of inherent rights over their cultural heritage, deference to Traditional Knowledge, and other language in the purposes section (1194.1) are clearly connected to carrying out the trust responsibility.

Who is The Office?

DOI believes the STOP Act program should be within the Office of the Assistant Secretary-Indian Affairs as have many commenters. However, DOI has not provided any further information on what people or office will implement the Act and its new regulations. The implementation of the STOP Act requires expertise of the laws implicated by the new Act and its upcoming regulations, as well as in the broad area of protecting cultural heritage. Because of the upcoming change of administration, this decision must be made immediately before the change so that there is no delay in staffing for this important legislation.

It is the Association’s suggestion that the Department should place the NAGPRA Program, together with the STOP Act implementation, within the Assistant Secretary-Indian Affairs office under leadership with expertise on federal, state and Tribal cultural heritage laws and repatriation work. This office should also house staff or programs that are involved from the DOI in international repatriation. Having an office under the AS-IA with this expertise will lift up these issues, not just within the U.S. government, but also within NN/NHO government to provide more attention and support that often are not prioritized because of their complexity and lack of available funding.

Training for the Interagency Working Group

25 U.S.C. § 3073(b)(8) requires all relevant federal agencies to participate in training,

² For the terms “Indian Tribe” and “Native Hawaiian Organization”, we will use “Native Nation” or “NN”, and “NHO” for Native Hawaiian Organization (NN/NHO).

including consultation with NN/NHO to develop training for these federal agencies. However, there is nothing in the regulations to support this implementation of training.

We have learned from NAGPRA that if key components of the Act are left out of the regulations, the practice that develops out of the regulations will likely leave those provisions out as well. Inclusion of training is mandated in the language of the STOP Act. Without a clear mandate for training and consultation to develop the training, we are not confident appropriate training will occur.

Moreover, despite this mandate for training being expressed within the Act, no federal agency has started consultation to develop training necessary for agencies such as the Department of Homeland Security. The DHS will need to train staff around the country as they are the key agency to stopping violations of this law. This work could have already begun and language to implement training and the development of training must be included in these regulations.

The UNESCO Convention and the CPIA: Doesn't the STOP Act Strengthen This?

The Act at 25 U.S.C. § 3071(3)(C) expressly confirms that the President can request agreements and provisional measures from foreign nations to prevent irremediable damage to Native cultural heritage. The regulations do not currently refer to or support the implementation of this provision of the Act. As stated previously, if the regulations do not carry forward or repeat the requirements of the law, their implementation will likely be ignored.

This provision of the Act is referring to the Convention on Cultural Property Implementation Act, or the CPIA: President Ronald Reagan on January 12, 1983, signed into law the CPIA, 19 U.S.C. §§ 2601-2613, which implements the United States' obligations under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("the Convention"). The CPIA provides for emergency actions as well as **bilateral** cultural property agreements between the U.S. and another country to **mutually** protect cultural property. However, the U.S. has only once used the law to protect Native cultural heritage between Canada and the U.S., and that agreement is no longer in effect.

As part of the Department of State's work with the CPIA and Convention, State Department employees establish education campaigns and training, as well as other measures to protect other countries' cultural heritage from being imported into the U.S., but have ignored the exploration of foreign countries' possession of Native cultural heritage and protections against import into those countries. In other words, the State Department has not been carrying out its obligations under the CPIA to protect Native cultural heritage in other countries and seek their return, as other countries have within the U.S. The STOP Act and its express purposes demand regulatory provisions that mandate that the State Department, through its work under the CPIA and the Convention, develop bilateral agreements that are truly bilateral and benefit Native Nations. The bilateral agreements must include requirements for the State Department to obtain and consult with NN/NHOs about information concerning Native cultural heritage in the foreign country's market, as well as in their institutions. In addition, the State Department must include bilateral agreements with those foreign countries to protect against the import of Native cultural heritage in those

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countries.

The proposed regulations are completely silent on this matter, ignoring Congress' intent to carry out the Convention on Cultural Property Implementation Act, and missing an obvious opportunity to protect Native cultural heritage in other countries.

Understanding the Many Laws Relevant to the STOP Act

The STOP Act mandates the use of "other federal laws or treaties" in addition to NAGPRA and ARPA. Yet, the proposed rulemaking ignores defining or giving meaning to this phrase. This makes no sense considering that Congress intended that "other federal laws or treaties" be used to protect Native cultural heritage. The Association believes that ignoring this phrase in the regulations means vital protections will be ignored and Congress' intention not fully carried out under its trust responsibility with NN/NHOs.

We recommend that "other federal laws or treaties" be fully expressed in the regulations, or a clear statement in the regulations of the scope of "other federal laws or treaties" be included. In other words, if only NAGPRA and ARPA are used by the "Office" then they will ignore laws such as the Antiquities Act of 1906, Theft of Indian Property under 18 U.S. Code § 1163, or the Lacey Act, which incorporates violations of Tribal law, and other federal laws or treaties. The Association on American Indian Affairs has seen countless dealers and auction houses consistently ignore other applicable laws if an item is not prohibited from sale under NAGPRA. The original purpose for adding "other applicable law" to the STOP Act was to specifically address the fact that there are many other laws that may apply to the improper taking of cultural heritage.

The STOP Act is the first opportunity NN/NHOs have had to hold individuals and organizations accountable to all relevant laws. In addition, ARPA recognizes state law, and federal law and treaties recognize the inherent authority of NN/NHOs over their cultural heritage such that NN/NHO custom, laws and tradition must also be recognized expressly. Moreover, giving preference and deference to Traditional Knowledge supports the position that implementation of this law requires an understanding of relevant NN/NHO customs, laws and traditions. Thus, NN/NHO laws should also carry weight in the implementation of the law to determine whether an item is prohibited from being exported and must return to its Nation. We request an express statement throughout the regulations that other federal, state and NN/NHO laws are also applicable in certificate determinations, detention, forfeiture and repatriation. Training must be provided to relevant agencies under the entire body of law - federal, state and NN/NHO - that applies to Native cultural heritage.

Interagency Working Group

Subpart F regarding the Interagency Working Group should include the requirement of a collective agreement that is made public, that includes consistent consultation requirements among all agencies within the Working Group, as well as consistent clear processes. Of course, consultation is required for the development of such a collective agreement.

Subpart A, General Provisions

§ 1194.1 What is the purpose of this part.

This provision works to carry out 25 U.S.C. 3071, which is the Purposes section of the STOP Act. We appreciate the strong language that expresses that NN/NHOs have recognized

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inherent rights to their cultural heritage, wherever their cultural heritage is located. This is in line with Native Nations custom, laws and traditions across Native Country and confirms that the U.S. has never removed Native Nations inherent authority and jurisdiction over their cultural heritage. The language also confirms that the STOP Act (the "Act") was created for the benefit of NN/NHOs and no others, and that the Secretary must defer and give preference to their expertise as those NN/NHOs understand them.

However, there is no mention in the regulations that implement the express purpose of the Act to encourage buyers to purchase legal contemporary art made by Native artists for commercial purposes. The Department responded to comments on this point simply that they are not proposing "an educational campaign nor an incentive program as part of the proposed regulatory text. The Department will explore these ideas as possible tools following publication of a final rule." However, the express language that Congress included in the Act requires a clear expression of how this provision will be implemented. The Interagency Working Group and the Native Nations Working Group could be tasked expressly with a requirement to develop information or education to implement this requirement within the regulatory language.

We have learned from NAGPRA implementation that often regulations are implemented by nonlawyers; and what is not carried into the regulations from the Act are often ignored. Therefore, it is important that the regulations provide clear plain language about all requirements of the Act. Encouraging buyers to purchase contemporary Native arts must be included either in the purposes provision of the new regulations, or expressly implemented within the two Working Groups.

§ 1194.2 How are key terms defined in the part?

Thank you for including in the definition of business day, "holidays or other days when the Indian Tribe or Native Hawaiian organization that could be culturally affiliated with the relevant item is closed to the public."

Consultation or Consult. Though this definition mirrors the same from the 2024 NAGPRA regulations, this definition adds "including oral history" in subsection (c): "Enable meaningful consideration of the Native American traditional knowledge, *including oral history*, of lineal descendants, Indian Tribes, and Native Hawaiian organizations." Native American traditional knowledge may include a long list of elements, not only oral history. Through expressing only one manifestation of traditional knowledge, you may unintentionally be limiting how this definition will be used to carry out the Act. In addition, because the law recognizes that the term traditional knowledge is understood as the NN/NHO understands it, then it seems unusual that "including oral history" would need to be included alone, separately in the regulations. We strongly suggest that you remove this addition of "including oral history" to the consultation definition as it may restrict the definition, cause confusion or be implemented inconsistently.

Detention is defined to not include "human remains" or "tangible cultural heritage" as provided in the Act. Human remains are prohibited from export and an export certification will not be provided for human remains. See definitions and 1194.102(c). It is contemplated that human remains may be confiscated under the STOP Act, however, neither "tangible cultural heritage" nor "human remains" are included in the process of detention to ensure

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that these items are directly repatriated to affiliated NN/NHOs.

Indian Tribe. Congress specifically provided that this definition has the meaning given in the NAGPRA Act, not the NAGPRA regulations. The NAGPRA regulations underwent a separate rulemaking and do not apply to this rulemaking. The current NAGPRA regulations improperly restrict this definition by citing to the DOI List Act, which is different and more restrictive than the language provided for in the NAGPRA Act. The STOP Act regulations must utilize what Congress has provided for, which was the definition as stated in the NAGPRA statute - not the NAGPRA regulations.

Item Prohibited From Exportation. The Act and these proposed regulations provide for a strong deference to Traditional Knowledge. Yet, the regulations miss the opportunity to include a definition of Tangible Cultural Heritage as an Item Prohibited From Exportation. First, the definition of Tangible Cultural Heritage should recognize that term as NN/NHOs understand it, deferring to Traditional Knowledge. Secondly, the phrase cultural heritage (and similar terms such as cultural property, cultural patrimony) alone connotes a nation, collective or community ownership of such cultural heritage. Thus, no individual or entity could claim ownership of Tangible Cultural Heritage without having obtained a "right of possession" requiring that free, prior and informed consent was obtained at the time of dispossession to turn the cultural heritage into a commercial item. To further support the need to define Tangible Cultural Heritage in the regulations as items prohibited from exportation, the Act itself includes reference to other federal laws or treaties, and recognizes NN/NHO inherent sovereign authority over tangible cultural heritage. Therefore, Tangible Cultural Heritage must be included as items prohibited from exportation, unless the holder has a right of possession, or has obtained free, prior and informed consent from the affiliated NN/NHO.

In addition, this definition can be improved by further recognizing other federal laws that may be applicable to determining whether an item is prohibited from exportation. Please see "Understanding the Many Laws Relevant to the STOP Act" section above.

Item requiring Export Certification. This definition should include any cultural item (NAGPRA), archaeological resource (ARPA), as well as Tangible Cultural Heritage, in which the NN/NHO has provided authorization to export. Again, NN/NHOs possess inherent sovereignty over their own cultural heritage, as well as their rights to define what is tangible cultural heritage. In addition, other federal laws or treaties may apply to Tangible Cultural Heritage.

Native American. This definition has been wrongly interpreted by the 9th Circuit Court of Appeals in the Bonnichsen case to only refer to Tribes that are *currently* Indigenous to the U.S. However, the Court's understanding ignores the definition of the term "Indigenous" to qualify the definition. From any dictionary, the term Indigenous, in referring to a people, means "inhabiting or existing in a land from the earliest times or from before the arrival of colonists." Thus, there is no need to say "is or was" Indigenous as the term Indigenous connects the past (was) with the present (is). Therefore, it would be redundant to say "is or was" because "is Indigenous" means Indigenous Peoples are current people connected to the past with a shared relationship.

Right of Possession. This term is defined in the same way it is defined under the current NAGPRA regulations, however, the term "human remains" is not included under subsection

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(b) of the definition. Moreover, this phrase must also apply to archaeological resources and tangible cultural heritage - which includes human remains. No tangible cultural heritage item should be considered "rightfully stolen"; in other words, without free, prior and informed consent, no individual or organization has the right to turn cultural heritage into a commercial item. NAGPRA specifically defines human remains and cultural items as items that cannot be dispossessed without free, prior and informed consent. Though NAGPRA does not provide a remedy when private individuals steal cultural items and Ancestors, the STOP Act does and therefore all items considered by a NN/NHO to be "cultural items", "archaeological resources" and "tangible cultural heritage" must require clear consent by a NN/NHO official at the time of taking for a party to have proper "title".

Tangible Cultural Heritage. This term is defined by the proposed regulations the same as it is defined in the STOP Act. What is missing is the recognition that tangible cultural heritage will also be protected in accordance with the other principles of this law that require the definition to be understood as NN/NHOs understand it, deference to Traditional Knowledge, and free, prior and informed consent.

Tribal land. NATHPO has requested an inclusion of the McGirt and Oklahoma Tax Commission cases in this definition. However, because federal court created principles may change over time, any reference to these cases may require a caveat considering that these decisions may change.

§ 1194.3 What are the timeframes and methods of delivery of documents under this part?

It would be helpful to repeat that days counted under the law are weekdays and not weekends or holidays. Though this information is included where a timeframe is described in the proposed rulemaking, considering that this provision is general and calls out "timeframes," it would be helpful to repeat that counting method here.

§ 1194.4 How does severability apply under this regulation?

No comments.

Subpart B - Export Certification System

§ 1194.101 What is the purpose of the Federal Register Notice under this part?

This section arises from 25 U.S.C. § 3073(b)(1)(B), which requires the Secretary to consult with NN/NHOs that includes "a description of characteristics typical of items requiring export certification," among other things. However, it must be clarified that this requirement does not require pictures or illustrations, may be similar to those federal register notices provided under the CPIA for import restrictions, and provide only typical characteristics. Those should merely include: types of materials (wood, pigment, stone, animal parts, beadwork); and may be developed into items such as masks, alters, clothing, tools, shields, textiles, etc.; and similar broad categorical language.

If this provision requires more detail than what is typical under the CPIA for import restrictions, then the burden on 574 federally recognized Nations will be too great and will be contrary to the protection of secret or confidential information that cannot be shared in a public notice.

Finally, these items defined as "cultural items" and "archaeological resources" are the same or

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similar to tangible cultural heritage - all of which require NN/NHO consent for an individual or entity to possess.

§ 1194.102 When do I need an Export Certification?

No comments.

§ 1194.103 What is the process for applying for an Export Certification?

This provision at (a)(2) provides that a NN/NHO with an interest in a particular Item Requiring Export Certification may submit to the Office an Export Certification Application." A NN/NHO should be able to provide an official letter requesting a certification to travel with the item, or on the behalf of an exporter and should not have to fill out an export certification application.

The term "evidence" is used by this provision but never defined. In addition, there is no express requirement in this provision about the attestation of the exporter, which is required in the Act at § 3073(3)(A)&(B). Moreover, the proposed regulations do not allow an exporter to provide additional evidence as allowed for in the Act. This could lead to litigation and weaken the law.

Subsection (i) requires a description and pictures (if culturally appropriate) of the Item Requiring Export Certification. This is problematic because it relies on the exporter to know if including pictures is culturally appropriate. Furthermore, considering that NN/NHOs need to review the information to determine whether an item can be exported, they will need to have pictures or the ability to view the items in question. Thus, it seems pertinent that the exporter include pictures or visuals that are protected information under those relevant provisions.

The subsection (v) does not define who a "leader" of the Indian Tribe or Native Hawaiian organization is. The regulations should either refer to NN/NHO understanding of who their leader(s) are, and/or include a general definition such as an individual or individuals serving in an official governmental capacity to represent a NN/NHO, or that individual's delegate, as recognized by an official letter from the NN/NHO.

Subsection (vii) refers to section 3 of NAGPRA but it is unclear what that is and may be a typo. 25 U.S.C. § 3003 of NAGPRA refers to the inventory process. Section 10.3 of the NAGPRA regulations refers to cultural affiliation. Can you clearly express what section 3 of NAGPRA refers to in this provision through utilizing the full citation format?

§ 1194.104 What is the process for the Office to review an Export Certification?

Subsection (a) requires the "Office" to notify relevant NN/NHOs of the receipt of an application. However, this provision does not include how long it will take the Office to determine who the relevant NN/NHOs are, or how long it will take to notify them. We request that the Office provide notice to NN/NHOs immediately upon the determination of relevant NN/NHOs. This immediate notification should apply in all instances where notification is required to NN/NHOs.

Subsection (d) requires notification to NN/NHOs the following business day when the application is complete. Again, we request that the notification be immediate upon receipt of a complete application.

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Unfortunately, subsection (e) only provides NN/NHOs with 9 business days to review application and supporting docs. This language comes directly from the language of the Act and cannot be amended to provide additional time. However, subsection (g) allows additional time for the Office to extend their review of an application for up to 30 business days. For provision (g), the regulations should allow the Office to work in consultation with NN/NHOs to allow them and the Office additional time to review. In addition, subsection (g) is not clear whether it's an additional 30 days on top of the original 20 days, or whether they have an additional 10 days. It would be our recommendation that the language of this provision state clearly: "for up to an additional 30 business days, in consultation with NN/NHOs if credible evidence is provided that the Item Requiring Export Certification may not be eligible for an Export Certification."

§ 1194.105 What is the process for the Office to approve an Export Certification?

This provision does not provide for a situation where the exporter is a NN/NHO. A NN/NHO should never have to provide an application for export certification or pay the fee; instead, a NN/NHO should be simply able to provide an official letter stating that they will be traveling with, or exporting, an item that may or may not require an export certification. It should be within the sovereign authority of a NN/NHO to care for and protect items that are being moved across borders. This is especially true for Native Nations whose lands are adjacent or near to the Canadian or Mexico borders.

In addition, there is nothing in the regulations that will allow a NN/NHO to appeal a decision of the "Office." There is no explanation for this and it is not prohibited by the Act itself. If the "Office" makes a misguided determination and grants an export certificate, a NN/NHO must have rights to appeal that determination and exhaust administrative remedies. If that's not the case, then an alternative should allow for the NN/NHO to sue the Department directly in a federal district court and use the Office's determination as a final agency action.

§ 1194.106 What is the process for the Secretary to revoke an Export Certification?

No comments.

§ 1194.107 What is the Export Certification Database?

Thank you for providing FOIA exemptions for any information from NN/NHO, any information that a NN/NHO designates as sensitive or confidential, and any other information that any person submits pursuant to this law. This broad exemption supports comments from NN/NHOs and will keep this sensitive information away from the market and other interests that seek to capitalize on NN/NHO cultural heritage.

What we believe is missing from the regulation concerns the use of data by federal agencies. Federal agencies must be restricted in their use of data contained in the Export Certification Database unless it is relevant to STOP Act implementation. Any other use of the database by a federal agency must be prohibited. Such a request is in line with the trust responsibility and a NN/NHO's use and control of their own data.

§ 1194.108 When are Export Certification Fees assessed?

Thank you for exempting NN/NHOs from payment of a fee for the application. However, it is important that the NN/NHO not be required to follow the same process as another exporter. NN/NHOs should only need to provide an official letter to travel or move across borders with

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their own cultural heritage. In addition, it is not clear whether the application fees will be used to support the implementation of the STOP Act, or will pass through to Treasury. We hope that the fees will be used to support the STOP Act.

§ 1194.109 Under what circumstances may a Tribal Authorization be issued?

For NN/NHOs, this is an important provision to consider how best to issue a "Tribal Authorization" for items, such as contemporary art and crafts, that do not require a certificate. NN/NHOs may wish to consider developing policies and template authorizations for their artisans so items can be freely purchased and transported internationally that states "this item is a Native-made item for commercial purposes." This could be a subject that the Native Working Group can develop.

§ 1194.110 How does the Paperwork Reduction Act affect this part?

No comments.

Subpart C - Procedures for Detention, Forfeiture, Repatriation, and Return

§ 1194.201 When can certain items be detained by CBP?

U.S. Customs and Border Protection (CBP) is the key agency that will come across items either prohibited from export, or requiring a certificate for export that is absent. Therefore, CBP must be fully trained on how to spot NN/NHO cultural heritage. There seems to be no provisions to train CBP under these regulations. Training requirements must be included in these regulations.

A problematic provision under this section is (g), which allows the release of a sensitive item back to the exporter if the "Office" fails to respond to CBP within the timeframe. There are no remedies that the NN/NHO can use to stop the release of a sensitive item, and will therefore - those that are supposed to be protected under the law will be punished if the Office does not fulfill their responsibilities under the law.

Considering that there is no information about how the "Office" will be staffed, or where it will be staffed within AS-IA, it is deeply concerning that an item can be lost due to the Office's failure. Moreover, there is no provision provided that would allow an NN/NHO to appeal this failure. The regulations require express rights of a NN/NHO to assert authority if the "Office" fails to act, or if the "Office" decides contrary to NN/NHO law, custom or traditions, as well as contrary to NAGPRA, ARPA or other relevant federal laws.

Finally, subsection (i) allows an exporter's abandonment of an item to be considered a "voluntary return," and the exporter will not be held liable for thwarting the Act. We believe this runs afoul of the Act's mandate that it is unlawful to conspire or to conceal an activity as described under 25 U.S.C. § 3073. It further incentivizes exporters to attempt to export without certification in the hopes that their luggage will not be checked by CBP. If such contraband is found, the exporter can simply abandon the item and not face any violation of the law. This incentivizes exporters to take their chances hoping - because of the quantity of transportation and goods crossing borders, that our cultural heritage will not be found. Abandonment must not be considered a voluntary return.

§ 1194.202 How does CBP deliver items to the Office?

There have been commenters stating that NN/NHOs should be notified of detention by CBP.

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However, it is the "Office's" expertise within the Bureau of Indian Affairs to consult with affiliated NN/NHOs; requiring CBP to notify affiliated NN/NHOs is likely beyond their expertise and capacity. The framework of these regulations should always require the Office to provide notice to affiliated NN/NHOs immediately.

§ 1194.203 What is the process for forfeiture proceedings?

No comments.

§ 1194.204 Does safe harbor apply to this regulation?

Voluntary returns may happen before the commencement of an active federal investigation. However, an exporter may abandon an item even though they are deemed to understand the law and therefore are aware of the requirements of certification prior to export. An exporter should not be incentivized to bypass the certification process and must be investigated when attempting to take items across borders without following the STOP Act process.

§ 1194.205 What are civil penalties for violations of this regulation?

The base penalty for an item that is prohibited from being exported is only \$800, while an item requiring an export certificate is \$8,000. An item that is prohibited from being exported - such as human remains - should require (at least) just as high a penalty as an item requiring a certificate, because it is PROHIBITED from export.

In addition, an increased penalty should not include an evaluation of "commercial value." This is known as an extremely offensive requirement. Furthermore, it is likely that exporters will attempt to evaluate the commercial value of an item as low so they can use this element to convince the Department that the item is of no consequence. There is no need to include commercial value to increase a penalty amount as the central point of this law is to protect cultural heritage, whose value cannot be appraised or equated with a dollar amount due to their historic, cultural, religious and other non-monetary value - that is immeasurable.

§ 1194.206 How is an item repatriated or returned?

Please amend subsection (a) and (b) to include the return of Tangible Cultural Heritage to affiliated NN/NHOs.

Subpart D - Administrative Appeals

§ 1194.301 What is the purpose of this section?

Subpart D provides no rights for the NN/NHO to appeal decisions of the Office. There must be a right the NN/NHO may assert to appeal decisions made by the "Office" that are contrary to the Traditional Knowledge, custom and laws of the NN/NHO. In fact, the NN/NHO should have an expedited right to seek redress because their sensitive item may quickly move out of the country unless the item is detained pending such an appeal.

§ 1194.302 How do I request a hearing?

A NN/NHO must possess an expedited right to appeal the "Office's" determination against the NN/NHO's interests.

§ 1194.303 What are the hearing procedures?

Though a NN/NHO may file a notice of appeal of the administrative law judge's decision to the IBIA, a NN/NHO has no right to appeal the original determination of the "Office."

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§ 1194.304 *How do I appeal a decision?*

No comments.

Subpart E - Voluntary Return of Tangible Cultural Heritage

§ 1194.401 *What is the purpose of this section?*

This section allows for the voluntary return of tangible cultural heritage and does not include cultural items under NAGPRA or archaeological resources under ARPA. Voluntary return should be available for any item of cultural heritage regardless of how these various laws define cultural heritage. NAGPRA and ARPA are restricted through the remedies they provide against certain activity, such as the status of land or federal funding. However, “tangible cultural heritage” should include those same definitions provided for cultural items, human remains and archaeological resources. This position is further strengthened considering that these proposed regulations utilize definitions from those laws to define what types of items are protected.

§ 1194.402 *When is consultation initiated?*

No comments.

§ 1194.403 *What is the process for consultation and return of items under this regulation?*

No comments.

Subpart F - Interagency Working Group

§ 1194.501 *What is the Interagency Working Group?*

No comments.

§ 1194.502 *What is the membership of Interagency Working Group?*

No comments.

§ 1194.503 *What are the duties of the Interagency Working Group?*

No comments.

Subpart G - Native Working Group

§ 1194.601 *What is the relationship between the Office and the Native Working Group?*

No comments.

§ 1194.602 *What is the membership of the Native Working Group?*

Regarding subsection (d), it is unclear why a NN/NHO should be able to nominate an individual outside of the NN/NHO’s region. Nominations should be restricted to the NN/NHO’s region. This approach ensures that nominees have a deep understanding of the unique cultures, customs, and histories within that region, leading to more effective and consistent representation.

However, if this provision was meant to address the fact that NN/NHOs have been removed from their homelands, which may be in another BIA region, then the language of this provision should clearly provide for that as it is overly broad. For example: “Any Indian Tribe or Native Hawaiian organization may nominate a person from a particular BIA Region or Hawai’i for membership, even if that Indian Tribe or Native Hawaiian organization is not in that Region or in Hawai’i, *when that Indian Tribe or Native Hawaiian organization’s homelands (or*

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aboriginal territory) were in the other BIA Region."

§ 1194.603 What are the duties of the Native Working Group?

No comments.

Thank you for allowing the Association to provide comments on the proposed rulemaking for the STOP Act. If you have any questions or concerns, please do not hesitate to reach us at 240-314-7155, or directly by email at Shannon@Indian-Affairs.org.

Yakoke,



Shannon O'Loughlin (Choctaw)
CEO & Attorney

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