

Safeguard
Tribal Objects
of Patrimony
(STOP) Act

Aloha mai!

**Native Hawaiian Community
Consultation**

**Informing the Drafting of
Federal Regulations**

August 23 and 24, 2023



**OFFICE OF
NATIVE
HAWAIIAN
RELATIONS**



Consultation
Presentation
Overview
*Safeguard Tribal
Objects of Patrimony
(STOP) Act*



Papa hana

- Purpose of Consultation
- Federal Participation
- Why the Regulatory Program is Important
- Objectives of This Consultation
- STOP Act Overview and Highlights
- Discussion Guidelines
- Framing Questions
- Next Steps



Ke kumu o ke kūkā ‘ana

Purpose of
Consultation
*Department of
the Interior
regulations for
the STOP Act*



- Section 10 of the STOP Act requires that the Secretary of the Interior write regulations to carry out the STOP Act;
- No later than 1 year after its enactment, thus by December 21, 2023;
- In consultation with the Secretary of State, the Secretary of Homeland Security, and the U.S. Attorney General; and
- After consultation with Indian Tribes and Native Hawaiian organizations (NHO).



Federal
Participation
*Departments with
responsibilities and
authorities
under the STOP Act*



- *The Department of Homeland Security*, acting through the Commissioner of U.S. Customs and Border Protection, is authorized by the STOP Act to detain items, effect their forfeiture, and repatriate them to the appropriate Indian Tribe or Native Hawaiian organization.
- *The Department of Justice* – Upon a request from the Native Working Group under the STOP Act, the Department of Justice may initiate judicial proceedings domestically or abroad to aid in the repatriation of cultural items and archaeological resources.
- *The Department of State* – Upon a request from the Native Working Group under the STOP Act, the Department of State may initiate a dialogue through diplomatic channels to aid in a repatriation.
- *The Department of the Interior* – The Department of the Interior will oversee the implementation of the STOP Act regulations for export certifications.
- All four agencies are to serve on the STOP Act Interagency Working Group.



Why Regulating Export is Important



The STOP Act attempts to deter the trafficking of iwi kūpuna and Native Hawaiian cultural resources protected under the –

- Native American Graves Protection and Repatriation Act (NAGPRA);
- Archaeological Resources Protection Act (ARPA); and
- other Federal laws and treaties,

by increasing the penalties for domestic trafficking available under NAGPRA as well as making it unlawful “to export, attempt to export, or otherwise transport [them] from the United States” or to conspire to engage in, or conceal, such activity.

If someone wants to sell iwi kūpuna or protected cultural resources, they may increasingly attempt to send them out of the country where United States law does not apply and those countries’ laws may not afford the same protections and penalties.



Objectives of this Consultation *Conversations with and within the Native Hawaiian Community*



Nā pahuhopu hāiki

- Raise awareness and inform about the integral role of NHO in the STOP Act.
- Consult on provisions that specifically require consultation and collaboration with NHO.
- Start discussions between the Native Hawaiian Community and the Federal agencies about how to implement provisions of the STOP Act. *We are here to listen and learn.*
- Start discussions within the Native Hawaiian Community about how it may organize to effectively respond to attempts to export Native Hawaiian cultural resources under the STOP Act, coordinate repatriations, and protect cultural resources while allowing the free movement of contemporary works of cultural practitioners made for various purposes.
- Prepare the Native Hawaiian Community for the Notice of Proposed Rulemaking (NPRM) anticipated near end of 2023 or beginning of 2024 calendar years.



STOP Act Overview



Ke kānāwai

- Signed into law on December 21, 2022.
- Enrolled as [Public Law 117-258](#), consists of 12 sections.
- Adds new sections to [Title 25 of the United States Code, Chapter 32B \(§§ 3071 – 3079\)](#).
- Amends [Title 18 USC § 1170](#), increasing penalties for illegal trafficking of human remains and cultural items protected under the Native American Graves Protection and Repatriation Act (NAGPRA).
- Includes a total of 46 occurrences of “Native Hawaiian” (2) and “Native Hawaiian organization” (44) (“NHO”).

➤ ONHR [FAQs](#), [Framing Questions](#)



STOP Act Overview

Provisions specifically requiring consultation or collaboration with NHO

- ❖ **Publication of characteristics of what does and does not qualify as an Item Requiring Export Certification [consultation];**
- ❖ **Development of an export certification application form [consultation];**
- ❖ **Design and implementation of a secure central Federal database information system for the purpose of making export certification applications available to NHO [collaboration];**
- ❖ **Provision of technical assistance if Native Hawaiian organizations lack sufficient resources to access database or respond to agency communications in a timely manner [consultation];**
- ❖ **Determinations that each Item Requiring Export Certification is eligible for an export certification [consultation with those culturally affiliated] (case by case basis);**
- ❖ **Revocation of export certification [consultation with those culturally affiliated] (case by case basis);**
- ❖ **Development, modification, and delivery of training to Federal personnel to facilitate positive government-to-government interactions and assist U.S. Customs and Border Protection personnel in identifying, handling, and documenting in a culturally sensitive manner Items Requiring Export Certification [consultation]; and**
- ❖ **Referrals for the voluntary return of tangible cultural heritage [consultation] (case by case basis).**
- ❖ **Drafting of regulations to carry out the STOP Act.**

STOP Act Overview

Sections with specific references to Native Hawaiian organizations in **bold**.



- Section 1. Short Title.
- **Section 2. Purposes.** [25 USC § 3071] *Prevent the export of human remains, cultural items, and archaeological resources being trafficked; regulate the export of other cultural resources. Includes “to encourage buyers to purchase legal contemporary art made by Native artists for commercial purposes.”*
- **Section 3. Definitions.** [25 USC § 3072] *Definitions of “**Native Hawaiian**” and “**Native Hawaiian organization**” have the same meanings as those terms defined under NAGPRA. New definitions “Item Prohibited from Exportation” and “Item Requiring Export Certification.”*
- Section 4. Enhanced NAGPRA Penalties. [Amends 18 USC § 1170, Illegal trafficking in Native American human remains and cultural items] *Makes consistent with STOP Act penalties.*



STOP Act Overview
Definitions of
“Native Hawaiian”
and “Native
Hawaiian
organization”



Nā kanaka ‘ōiwi

“Native Hawaiian” as defined in NAGPRA means “any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.” 25 USC § 3001(10).

“Native Hawaiian organization” in NAGPRA 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.”
25 USC § 3001(11).



STOP Act Overview

Definitions of Items Covered by the STOP Act



Nā mea makamae

“Item Prohibited from Exportation” is defined in the STOP Act and includes

- Iwi kūpuna and cultural items prohibited from being trafficked under the Native American Graves Protection and Repatriation Act (NAGPRA) and any other Federal law or treaty; and
- Archaeological resources prohibited from being trafficked under the Archaeological Resources Protection Act (ARPA) that are Native American.

“Item Requiring Export Certification” is defined in the STOP Act and includes a cultural item or an archaeological resource, except one for which an **NHO** with cultural affiliation has provided a certificate authorizing exportation of the item.



He holo ‘ana

STOP Act Overview

*Process to export
“Item Requiring
Export Certification”
from the United
States*



The STOP Act outlines the process and timeframe for the Secretary of the Interior to approve or deny an application for export certification:

- DOI receives a completed export certification application from an exporter and immediately makes it available to NHO in a secure Federal database system;
- Within **1 business day**, the Secretary must notify the relevant NHO of the application received;
- Within **9 business days**, the relevant NHO must review the application and notify the Secretary if an item requiring export certification may not be eligible for an export certification;
 - If no such notification is received, the Secretary has **1 business day** to review the application;
 - If such notification is received, the Secretary has **7 business days** to review the application.



Nā ‘elele

STOP Act Overview
*Who should
represent the
Native Hawaiian
Community?*



- **Section 6. Voluntary Return of Tangible Cultural Heritage.** [25 USC § 3074] *Training shall be offered to **NHO**; Secretary shall compile list of representatives from each **NHO** for purposes of referral to facilitate voluntary returns; Secretary shall consult with **NHO** and Native Working Group before making a referral and may consult third-party experts.*
- **Section 8. Native Working Group.** [25 USC § 3076] *Consists of representatives of Indian Tribes and **NHO** with relevant expertise, nominated by Indian Tribes and **NHO**, to advise the Federal Government according to section.*



Discussion Guidance

To allow our facilitation
team to capture your
comments and
discussion



Ke 'olu'olu

- Use the “raise hand” feature if you wish to speak.
 - Wait for our facilitator to call upon you to speak and come off mute.
 - Identify yourself and any organization you may be representing during this consultation.
 - Ask questions using the Q+A feature. Feel free to make comments in the chat.
 - Do not speak over one another.
 - Focus your comments and discussion on today's topic.
- *Help us identify other interested people and subject matter experts we should consult.*

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Framing Questions



He mau nīnau

1. Where within the Department should the STOP Act regulatory program be placed to maximize expertise in the subject matter as well as the operational and procedural requirements to successfully implement the STOP Act?
2. Interagency Working Group named in the STOP Act
 - What should be the role of the interagency working group?
 - What should the group prioritize in the next 1-2 years?
 - What should the group prioritize in the next 5 years?
3. What should the composition of the “Native Working Group” established under the STOP Act be and what selection criteria should be used?



Framing Questions



He mau nīnau

4. What should the Department of the Interior and the Department of State consider when:
 - Determining the type of engagement to pursue with a foreign government regarding Native American tangible cultural heritage;
 - Determining which foreign governments and institutions to prioritize for engagement on the return of Native American tangible cultural heritage; and
 - Engaging with Tribes, Native Hawaiian organizations, foreign governments, and foreign institutions on the voluntary return of Native American tangible cultural heritage?
5. What should or should not be included in the draft regulations to provide for lesser or greater discretion, flexibility, etc.?



Framing Questions

He mau nīnau

6. How should the Department validate written confirmations from Tribes or NHOs authorizing the possession and export of items that would otherwise be covered by the export prohibition?
7. What features should be included in the central Federal database information system?
8. What collateral effects or unintended consequences should be addressed?
 - For example, how should we avoid affecting the free movement of contemporary works of cultural practitioners and artists?



Next Steps

- In-person consultation – Wednesday, August 23, 2023 at 5:00 pm HST.
- Virtual consultation - Thursday, August 24, 2023 at 9:00 am HST.
- Written comments from the Native Hawaiian Community accepted by email to doi_onhr_hhl@ios.doi.gov by 6:00 pm HST on Friday, September 1, 2023.
- All comments compiled and synthesized by end of September.
- Consultation reports completed shortly thereafter.
- Draft regulations released by end of 2023 or beginning of 2024.
- Additional consultation opportunities available during NPRM.



Written Comments

Email to
doi_onhr_hhl@ios.doi.gov
by 6:00 pm HST on Friday,
September 1, 2023.

Mahalo nui loa!

