

MEMORANDUM

TO: U.S. Senate Committee on Indian Affairs
FROM: Kyle Peterson, Boise State University
SUBJECT: Transboundary Peyote Sustainability Coalition
DATE: December 2022

The Native American Church of North America (NACNA) has between 250,000 to 400,000 members from more than 100 tribes, and is the largest inter-tribal religion in the United States.¹ Although peyote is listed as a Schedule 1 substance in the Controlled Substances Act of 1970, the American Indian Religious Freedom Act Amendments of 1994 granted Native Americans the right to use, possess, and transport peyote for traditional ceremonial purposes. Yet, this exception does not protect the sacred and exclusive area in which peyote grows, and does not guarantee adequate access to peyote, through which Native Americans can exercise their protected rights.² An example of a barrier to peyote access is the number of licensed peyote distributors, which has fallen from a high of twenty-seven down to just three in 2017¹. Through “exploitative and imbalanced land management practices”,³ peyote is facing habitat loss and is now listed as a “vulnerable” species facing further decline.⁴ Ceremonial use of peyote has become paramount in addressing historical traumas and substance use, and a complete loss of peyote would ultimately destroy the culture and way of life for NACNA members.¹ It is for these reasons that I recommend the creation of a Transboundary Peyote Sustainability Coalition between the United States and Mexico to reduce barriers currently limiting Native American access to peyote.

Background

Peyote, *Lophophora williamsii*, is a spineless cactus that grows exclusively in parts of Southern Texas and Northern Mexico, an area referred to as the Peyote Gardens. It is one of multiple species within the genus *Lophophora* and contains many alkaloids, mescaline being the primary and psychoactive substance leading to the religious and ceremonial use by Native Americans.⁵ The part of the cactus is referred to as a “button” and is cut from the underground root for use and to allow for regrowth. Peyote does not have any state or federal protections within the United States, although it is recognized in Mexico as a species requiring “special protection”¹ and listed as “vulnerable” by the International Union for Conservation of Nature.⁴ Some sources of habitat loss include mining, oil and gas development, wind turbine development, rancher root plowing, cattle grazing, poaching, over harvesting, and improper harvesting by licensed distributors and pickers.³ It is a slow-growing species, often taking a decade to reach a harvestable size.⁶

Figure 2: Peyote cactus⁷



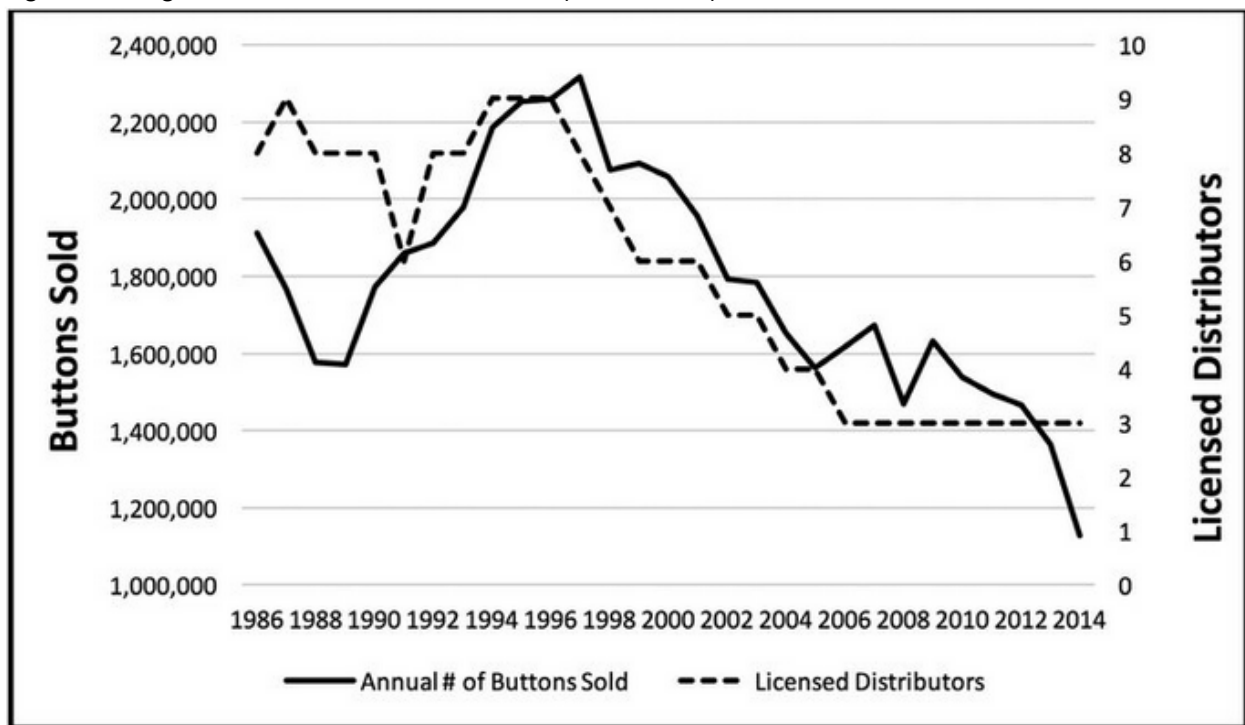
Figure 2: Geographic distribution of *Lophophora*⁷



Peyote is an ancestral medicine and has been used by humans for at least 6,000 years,⁵ but came to the northern tribes in more recent history, at a time of “peak colonial devastation”.⁸ The NACNA was established in 1918, following generations of violent removal to reservations and forced assimilation by the US government, essentially erasing the self-determination of Native Americans. Under the protection of the First Amendment of the U.S. Constitution, NACNA members use peyote for ceremonial purposes, although many attempts at suppression of peyote use were made throughout the 20th century.¹ This relative freedom was halted in 1970 with the passing of the Controlled Substances Act, which prohibited peyote use by Native Americans Church members until the passing of the American Indian Religious Freedom Act Amendments (AIRFAA) of 1994.⁵ The NACNA continues to grow today due to its providence of healing and cultural resiliency.

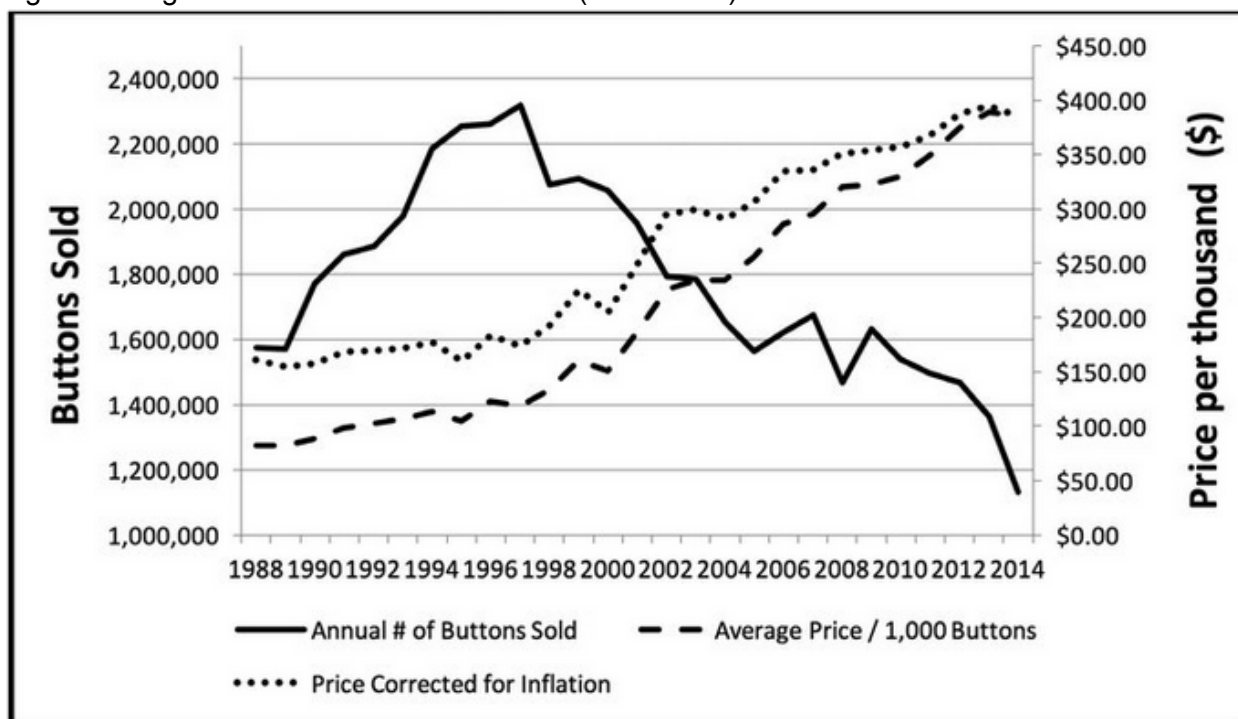
Along with the AIRFAA came the regulatory companion of the Texas licensed peyote distribution system. These licensed distributors called “peyoteros” are legally allowed to harvest, sell, and distribute peyote, and often employ relatives and neighbors to work as peyote pickers. Distributors face licensing fees, as well as expenses including land leases from landowners, wages for pickers, and storage. Availability of land leases—95% of land in Texas is privately owned—heavily relies on relationships, social bonds which have diminished over time as many ranches in the Peyote Gardens have changed hands from Hispanic to Anglo ranchers.¹ These and other barriers have drastically reduced the number of licensed peyote distributors.

Figure 3: Regulated Sales and Distributors (1986-2014)¹



The counterculture movement of the 1960s brought an increased awareness of and desire to use psychedelic substances, including peyote, by non-members of the NACNA. This increase in harvesting, in conjunction with the decrease in distributors, began to tighten the overall peyote supply—an issue which was realized by Native Americans throughout the 1990s.⁵ Along with questions of overall supply came a subsequent increase in price,¹ as shown in Figure 4.

Figure 4: Regulated Sales and Market Price (1986-2014)¹



Recent Developments

The Indigenous Peyote Conservation Initiative was formed in 2017 by the National Council of Native American Churches, following research which highlighted peyote’s threatened population and quality. With support from Riverstyx Foundation and Dr. Bronner’s, 605 acres were acquired in Southern Texas and put under the care of IPCI. Native American ownership of the land upon which peyote naturally grows once again allows for indigenous sovereignty over the medicine, pilgrimage, and spiritual harvest.³

Today peyote activists continue to face obstacles, such as the recent “Decriminalize Nature” movement which aims to decriminalize many psychoactive substances, including peyote. Native Americans worry this open access to peyote use among non-NACNA members will only further diminish peyote populations.⁹ This scenario highlights how peyote represents many different things to different people. It is a natural resource, trade commodity, religious sacrament, medicine, and Schedule 1 drug—all at the same time. Any effort to modernize the environmental governance of peyote will require a broad, integrated understanding of the plant and its many roles.¹⁰ To highlight the complicated nature of peyote governance, Figure 5 describes the stakeholders and actors involved at various points in the cycle of peyote lawmaking, distribution, and use, along with their competing rights and/or interests.

Figure 5: Peyote Governance Stakeholders

Stakeholder	Competing Rights/Interests
NACNA members	Religious freedom
Private landowners	Property ownership and authority
Distributors (peyoteros)	Distribution license Land leases
Mexico	International relations
Senate Committee on Indian Affairs	Trust Responsibility to Native Americans
United States federal government	International relations
Drug Enforcement Agency	Drug control
State of Texas	Peyote distribution system
Indigenous Peyote Conservation Initiative	Indigenous sovereignty

Recommendation #1

I first propose a course of action which emphasizes the conservation of peyote habitat through co-production of sustainability knowledge and practices at the local level. Research by the Nobel Prize winning economist Elinor Ostrom has shown that communities are capable of self-organizing and creating effective natural resource governance policies, without large-scale federal intervention.¹¹ This necessitates bringing all local actors and stakeholders to the table, with a specific focus on Native Americans' historical relationship with and understanding of peyote. A subcomponent of this recommendation includes encouraging landowners through educational outreach to not plow their fields, thereby protecting the slow-growing peyote roots. Actions which can be taken by the federal government to aid in local efforts include assigning a protection status for peyote within the United States, and amending the American Indian Religious Freedom Act to protect the sacred places where peyote grows.

Recommendation #2

My second recommendation is for the formation of a Transboundary Peyote Sustainability Coalition between the United States and Mexico. The priority of this coalition is to improve access to peyote for NACNA members by reducing various market barriers. Access Theory suggests that barriers exist, outside of land development and peyote population decline, which limit Native Americans' ability to guarantee access to peyote for religious purposes. Under the Trust Responsibility, the US government is obligated to protect and facilitate the exercise of Native American rights.¹ Such facilitation might include but is not limited to the following:

1. Reduce barriers for distributors by reducing licensing fees and incentivizing landowners to reduce land lease prices
2. Subsidize travel expenses for NAC members (gas, food and lodging) and remove purchase limits on peyote to allow for less frequent travel

3. Negotiate with the Mexican government regarding free movement and harvesting between the US and Mexico, as well as expanding the Texas distribution system into Mexico (the vast majority of the Peyote Gardens are in Mexico)

The successful cooperation between the US and Mexico regarding the Colorado River Basin provides an exemplar for transboundary natural resource governance.¹² Peyote is to the NACNA as salmon are to the Nez Perce; the adaptive capacity of one relies on the sustained existence of and access to the other.¹³ Should Native Americans living within Texas and the broader United States lose access to peyote entirely, a culture and way of life could be lost in a matter of generations.

Conclusion

While these two recommendations would best work in conjunction with one another, I would prioritize Recommendation #2 in the near-term. Even if improvements are made to protect peyote habitat, that does not guarantee that peyote will reach Native Americans. Should the number of peyote distributors continue to decline and potentially reach zero, that leaves harvesting and distributing—and all the included responsibilities and fees—in the hands of an already burdened population. This model would allow for incremental change over time, providing equity, sustainability, and cultural resilience to Native Americans. As relationships between distributors, pickers, landowners, and NACNA members improve, Native Americans can then utilize their historical understanding and knowledge toward further conservation of peyote habitat.

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