III. RESEARCH FINDINGS

A. National Survey Results and Interior Department Database Analysis

This section describes the findings from the national surveys of Federal agencies and Indian tribes (including Alaska Native villages and corporations) and Native Hawaiian organizations. Included in this section are analyses of and findings from the following online databases on the National Park Service and Department of the Interior’s websites:

- “Notice of Inventory Completion Database;”¹³
- “Culturally Unidentifiable Native American Inventories Pilot Database,”¹⁴ which lists over 118,000 Native American human remains and over 800,000 associated funerary objects (examined in-depth in Section III.C.); and
- “Greenbooks” Activity: NAGPRA Grants, National Park Service, Department of the Interior.¹⁵

According to the Advisory Council on Historic Preservation’s website, there are 36 Federal agencies. Eighteen (18) departments or agencies replied to NATHPO’s request to complete the survey (a list of all FPOs and respondents may be found in Appendix B):

- Agriculture
- Commerce
- Defense
- Energy
- Health & Human Services
- Homeland Security
- Housing and Urban Development
- Interior
- Justice
- Transportation
- Veterans Affairs
- Environmental Protection Agency
- Federal Communications Commission
- General Services Administration
- National Indian Gaming Commission
- National Air and Space Administration
- Presidio Trust
- Tennessee Valley Administration

¹³ Website at: http://www.nps.gov/history/nagpra/fed_notices/nagpradir/index.htm
¹⁴ Website at: http://64.241.25.6/CUI/index.cfm
¹⁵ Website at: http://home.nps.gov/applications/budget2/gbchoose.htm
Those Federal agencies that did not respond to the survey include:

- American Battle Monuments Commission
- Armed Forces Retirement Home
- Commission on Fine Arts
- Department of Labor
- Department of State
- Department of the Treasury
- Federal Deposit Insurance Corporation
- Institute for Museum & Library Services
- National Archives & Records Administration
- National Capital Planning Commission
- National Endowment for the Arts
- National Endowment for the Humanities
- National Science Foundation
- Nuclear Regulatory Commission
- Small Business Administration
- Smithsonian Institution
- U.S. Postal Service
- Department of Education

Repatriation activities of the Smithsonian Institution are governed by a separate law\(^\text{16}\), however, the Institution’s role as a repository for human remains and Native American objects pre-dates the enactment of NAGPRA. The research conducted for this project indicates that the Smithsonian Institution continues to play a role nationally on matters of repatriation.

The lack of agency or sub-agency NAGPRA contacts was problematic for this research project, from both the perspective of a surveyor, and as a larger process issue. According to our survey, most (if not all) agencies do not have a specific NAGPRA contact, or the person with this task is responsible for other cultural resource compliance issues. The researchers did not seek to resolve the reasons behind this deficit, whether it is due to lack of resources dedicated at Federal agency level or other organizational issues. However, because such information is not readily available, it is difficult to impossible for Native Americans to know with whom to consult or appeal.

Sixty-seven (67) Indian tribes, Alaska Native villages or corporations, and Native Hawaiian organizations responded to the survey; respondents represented Native groups located in 19 states. Tribal governments made up eighty-five percent (85%) of the responses, fourteen percent (14%) came from Alaska Native villages, and there was one (1) response from a Native Hawaiian organization. A list of the Native American respondents to the initial survey may be found in Appendix B. A smaller set of this group assisted by answering additional questions that were supplied to them through an online survey instrument.

\(^\text{16}\) Public Law 101-185, the National Museum of the American Indian, was signed into law on November 28, 1989, establishing the National Museum of the American Indian (NMAI) within the Smithsonian Institution (20 USC 80q). In addition to creating NMAI and the transfer of collections, the Act required the Smithsonian to create and carry out an institution-wide repatriation policy regarding Native American and certain cultural materials. The NMAI Amendments Act of 1996 (Public Law 104-278) added specific repatriation provisions.
Thirty-four (34) of those Native entities responding had from one to five interactions with Federal agencies, eleven (11) had six to ten interactions, eight (8) had eleven to 15 interactions, two (2) had from 16 to 25 interactions, and only four (4) had more than 25 interactions.

Most of the interactions that tribes, Alaska Native entities, or Native Hawaiian organizations had with Federal agencies were related to human remains (36%). Other interactions with Federal agencies focused on funerary objects (27%), sacred objects (22%), or objects of cultural patrimony (15%).

### i. Inventories, Summaries and Notification

**INVENTORIES:** Section 5 of the Act; codified at Title 43 U.S. Code of Federal Regulations, Part 10.9

**HIGHLIGHTS:**
- Inventories must be completed by Nov. 16, 1995, and sent to affected Native Americans by May 16, 1996.
- Only museums may request an extension (no extensions for Federal agencies).
- As of April 20, 2007, “future applicability” for newly discovered cultural items applies. Federal agencies and museums have six months to complete summary or two years to complete inventory.

Information gleaned from the national surveys indicates that the important first step of creating an inventory, including consulting with Native entities and publishing a Notice of Inventory Completion, is an area of concern. The failure to recognize cultural affiliation and the lack of tribal consultation are frequently identified in the survey responses. Survey responses included the following, and for each case, these actions may indicate a compliance issue:
- Four (4) Tribal respondents stated that a Federal agency had not completed an inventory associated with their tribe, village, or Native Hawaiian organization.
- Five (5) Federal agencies stated that they had not completed inventories and summaries of all collections that are subject to NAGPRA.
- Six (6) Tribal respondents stated that they were aware of human remains that are culturally affiliated with their tribe, village, or Native Hawaiian organization, but that information had not yet been published in a Notice of Inventory Completion.
- One (1) Tribal respondent stated that a Federal agency had changed the designation of any sets of human remains, funerary objects, sacred object, or object of cultural patrimony in its control or possession from culturally affiliated to culturally unidentifiable without consulting with a tribe, village or Native Hawaiian organization.
- Eleven (11) Tribal respondents stated that they did not know whether there had been a change in the designation of human remains or objects from culturally-affiliated to culturally-unidentifiable.
On the issue of determining cultural affiliation – at any point in the NAGPRA compliance process – tribal respondents felt strongly that the Federal agencies with which they were in contact could have made a greater effort (see Figure 1). The chart set forth below reflects the results of the responses to the question, “Have federal agencies in contact with your tribe, village, or Native Hawaiian organization made a good faith effort to determine the cultural affiliation of human remains and funerary objects in their control pursuant to NAGPRA?”

**FIGURE 1: “Federal Agencies Made a Good Faith Effort”**

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Always (24%)</th>
<th>Usually (24%)</th>
<th>Rarely (29%)</th>
<th>Never (24%)</th>
<th>NA (0%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>0</td>
</tr>
</tbody>
</table>

The following are some specific responses:

**Tribal Responses**

Two (2) Federal agencies reported that while they had completed inventories and summaries of collections that were removed from the lands managed by their agency, those collections were now in the possession of a foreign institution, and four (4) responded that up to twenty percent (20%) of their agency’s NAGPRA collections are located in non-Federal repositories for purposes of curation. Two agencies reported that between 61%-80% of their collections are located in non-Federal repositories for curation purposes.

Twenty-six (26) Federal agencies indicated that their agency had not withdrawn any summaries, inventories or notices submitted to the National NAGPRA Program Office. Nine (9) indicated that they “did not know” which thus, perhaps, indicates that record keeping at the Federal agency level may need improvement.

ii. Cultural Affiliation Determinations and Repatriation

REPATRIATION:
Section 7 of the Act; codified at Title 43 U.S. Code of Federal Regulations, Part 10.10

HIGHLIGHTS:

- Native American Cultural Items Identified by Inventory
  With regard to Native American human remains and associated funerary objects that are identified as part of the Act’s required inventory, the Act provides for the expeditious return of human remains or objects upon the request of a known lineal descendant of the relevant Native American or of the Indian tribe or Native Hawaiian organization unless the items are deemed to be indispensable to the completion of a specific scientific study whose outcome is of major benefit to the United States or upon a showing which the agency or museum cannot overcome, that the agency or museum does not have the right of possession to the human remains or objects. [Note: If the human remains or associated funerary objects are the subject of scientific study, they must be returned no later than 90 days after the completion of the study.]

- Native American Cultural Items Identified by Summary
  For Native American human remains and associated funerary objects that are identified as part of the Act’s required summary, the Act provides for the expeditious return of human remains or objects upon the request of a known lineal descendant of the relevant Native American or of the Indian tribe or Native Hawaiian organization unless the items are deemed to be indispensable to the completion of a specific scientific study whose outcome is of major benefit to the United States, or upon a showing which the agency or the museum cannot overcome, that the agency or museum does not have the right of possession to the human remains or objects, or when there are multiple requests and competing claims to any cultural item and the Federal agency or museum cannot determine which requesting party is the most appropriate claimant. In the case of competing claims, the agency or museum may retain a cultural item until the parties either agree on the disposition of the item or the matter is resolved either through a process provided by the Act or by a court of competent jurisdiction.

- Native American Cultural Items not identified as Culturally Associated through Inventory or Summary
  Where the cultural affiliation of Native American human remains or funerary objects has not been established either in the Act’s required inventory or the required summary, or in any inventory, the Act provides for the expeditious return of the human remains or objects upon request of an Indian tribe or a Native Hawaiian organization if the tribe or organization can show by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information and expert opinion, its cultural affiliation with the human remains or objects. The exceptions to the requirement for the repatriation of human remains and objects in this category are for scientific study or where there are competing claims.

- Repatriation of Sacred Objects or Objects of Cultural Patrimony
  The Act provides for the expeditious return of sacred objects or objects of cultural patrimony to a direct lineal descendant of an individual who owned the sacred object, or to an Indian tribe or Native Hawaiian organization who owned or controlled the object, or to an Indian tribe or Native Hawaiian organization if a member of the tribe or organization owned or controlled the object and there are no identifiable lineal descendants of the member or the lineal descendants of the member have failed to make a claim for the object. This requirement is also subject to the exceptions for scientific study, where an agency or museum can prove its right of possession, or in the circumstances of competing claims.

Additional information: With regard to culturally-unidentifiable human remains, if the cultural affiliation of remains cannot be identified, that information must be reported to the Manager of the National NAGPRA Program who will in turn transmit the information to the NAGPR Review Committee. The Review Committee is responsible for compiling an inventory of culturally-unidentifiable remains of each museum or Federal agency, and for recommending to the Secretary specific actions for the disposition of those remains [in the “Culturally Unidentifiable Native American Inventories Pilot Database” maintained by the National Park Service].

CURRENT ONGOING RULEMAKING:
43 CFR §10.11, Disposition of Culturally-Unidentifiable Remains:
This section is reserved for the future promulgation of regulations, which were published in a Notice of Proposed Rulemaking on October 16, 2007. The closing date for comments on this proposed rule was January 14, 2008.
a. Cultural Affiliation Determinations

The researchers’ review of the “Notices of Inventory Completion Database” shows that as of September 30, 2007, 1,106 notices from both museums and Federal agencies have been published. Federal agencies were rated less favorably when Native respondents were asked whether Federal agencies had made contact with their tribes, villages or organizations in a good faith effort to determine the cultural affiliation of human remains and funerary objects in an agency’s control, with more than half indicating that the agencies either rarely or never had made contact for purposes of working with a Native group to determine cultural affiliation of human remains and funerary objects.

Of fourteen (14) responding, two (2) Tribal respondents reported having knowledge of a Federal agency authorizing the conduct of scientific study on human remains in their collections following the enactment of NAGPRA in 1990.

b. Repatriation

The researchers’ review of the “Notices of Intent to Repatriate Database” shows that as of February 2006, 330 notices from museums and Federal agencies have been published. Of this total, 44 notices were from Federal agencies or about thirteen percent (13%). Eight (8) of the 44 were from law enforcement agencies.

There was one survey question which pertains to the provisions of the NAGPRA regulations regarding pesticide treatment. Two (2) tribal respondents indicated that a Federal agency had failed to inform their tribe or village that a repatriated item had been treated with pesticide, as required under the Act (regulations at 43 CFR 10.11(d)).

Six (6) Tribal respondents were aware of human remains that are culturally-affiliated with their tribe or village that have not been published in a notice, which, if corroborated, would be in violation of parts 10.8(f) and 10.9(e) of the NAGPRA regulations.

None of the respondents reported any instance in which a Federal agency had refused to repatriate an item subject to NAGPRA, and one reported a repatriation from a Federal agency prior to notice being published in the Federal Register.

iii. NAGPR Review Committee

NAGPR REVIEW COMMITTEE:
Section 8 of the Act; codified at Title 43 U.S. Code of Federal Regulations, Part 10.16

HIGHLIGHTS:

- Seven-member committee that is charged with monitoring the inventory, summary, and identification process to ensure fair and objective considerations and assessments of all available and relevant information and evidence.
- Facilitates and makes recommendations for the resolutions of disputes as described in 43 CFR §10.17
- Must compile an inventory of culturally unidentifiable human remains that are in the possession and control of each Federal agency and museum and with recommending specific actions for the development of a process for the disposition of human remains if the parties deem it desirable.
- Must consult with Indian tribes and Native Hawaiian organizations and museums on matters within the committee’s scope of work, consulting with the Secretary of the Interior in the development of regulations under the Act, performing other related functions assigned by the Secretary, and making recommendations regarding future care of cultural items that are to be repatriated.

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Survey responses included the following on the NAGPR Review Committee:

- Twenty-eight (28) tribal respondents had used the Review Committee’s “Culturally Unidentifiable Native American Inventories Pilot Database,” that is operated by the NPS National NAGPRA Program in Washington, DC. Slightly more than that, thirty-two (32), replied that they had not.
- When asked if the NPS NAGPR Review Committee had been fair and impartial in its dealings with Federal agencies, including the NPS, in terms of compliance issues, one (1) tribal respondent stated “no;” two (2) stated “yes;” and thirteen (13) stated that they “don’t know.” When asked to elaborate on this question, tribal respondents generally stated that they were not aware of the Committee or have been informed of their dealings.
- Six (6) tribal respondents stated that they had attended a NAGPR Review Committee meeting. Eleven (11) responded that they had not.
- A follow-up question on attendance asked, “Is distance to attend a factor in whether or not you attend?” Thirteen (13) tribal respondents stated that distance is a factor.

iv. Trafficking and Administration of Justice

**PENALTIES AND SUBPOENAS:**

*Section 9 of the Act; codified at Title 43 U.S. Code of Federal Regulations, Part 10.12*

**HIGHLIGHTS:**

The Act authorizes the assessment of civil penalties on museums by the Interior Secretary for violations of the Act, and authorizes the issuance of subpoenas.

- Authorizes the Secretary of the Interior to assess civil penalties for failure to comply with the requirements of the Act.
- Defines “failure to comply” as including actions taken after November 16, 1990, to sell or transfer remains or cultural items in a manner that is contrary to the provisions of the Act, including the unlawful sale or transfer of remains or cultural items to a person or institution that is not required to comply with the Act.
- The Secretary may impose civil penalties for failure to complete summaries after November 16, 1993.
- After November 16, 1995, civil penalties may be imposed if inventories have not been completed.
- After May 16, 1996, or 6 months following completion of an inventory, penalties may be imposed if the museum or Federal agency has not notified culturally-affiliated Indian tribes or Native Hawaiian organizations or refuses to repatriate remains or cultural items, or repatriates remains or cultural items before notice is published in the Federal Register, or does not consult with lineal descendants, Indian tribal officials, or traditional religious leaders, or does not inform repatriation recipients of any presently-known treatment of remains or cultural items with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.
- Each instance of failure to comply constitutes a separate violation.
- The section also provides information on how to notify the Secretary of a failure to comply and the steps the Secretary must then take, including a hearing and appeals process.
ILLEGAL TRAFFICKING IN NATIVE AMERICAN CULTURAL ITEMS:
Section 4 of the Act; codified at Title 18 U.S. Code, Section 1170

HIGHLIGHTS:
- 18 U.S.C. 1170(a), “whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act” shall be fined or imprisoned, or both.
- 18 U.S.C. 1170(b), “whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act” shall be fined or imprisoned, or both.
- A first offense is a misdemeanor with penalties not to exceed $100,000 and one year in jail. A subsequent offense is a felony with penalties not to exceed $250,000 and five years in jail.

Tribal respondents expressed generally negative experiences and perceptions as it relates to the enforcement of the law.

- When asked if the Federal government has acted responsibly regarding its legal duty to protect Native American burials located on Federal lands, tribal respondents expressed their concern by stating that forty-four percent (44%) believe that the Federal government has not acted responsibly. Thirty-one percent (31%) stated they believe it had.
- Forty-seven percent (47%) of tribal respondents felt that Federal courts have been too lenient when it comes to sentencing those individuals convicted of NAGPRA-related crimes.
- When asked if Federal courts have been too lenient when it comes to prosecuting individuals accused of NAGPRA-related crimes in such NAGPRA matters as grave looting and trafficking, sixty-five percent (65%) stated “yes.” Thirty-five percent (35%) indicated, “don’t know.”
- One (1) tribal respondent reported that his tribe, village or Native Hawaiian organization possessed information that indicated that a Federal agency had sold or transferred NAGPRA items culturally affiliated with his tribe, village, or Native Hawaiian organization. If corroborated, this may indicate a compliance issue.

v. Grants

GRANTS:
Section 10 of the Act
The Act authorizes the Interior Secretary to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting them in the repatriation of Native American cultural items and to make grants to museums to assist them in conducting inventories and preparing summaries.
Survey responses included the following on the issue of grants:

- Tribal responses to the survey indicated that forty-five percent (45%) of those surveyed had applied for a NAGPRA consultation/documentation grant \(^{18}\), and fifty-three percent (53%) of those applying were awarded a grant.

- Thirty-one (31) Tribal respondents indicated that their tribe, village, or organization had applied for a NAGPRA consultation/documentation grant. An almost equal number indicated that they had not. Several did not know.

- When asked whether or not they had received the grant award, twenty-six (26) indicated that they were successful in securing the grant for which they had applied.

- A final, follow-up question on tribal grant awards asked how many awards their tribe, village or organization has received. The overwhelming response was that they received one grant, with many receiving two grants, and a few receiving either three or four grants (see Figure 2).

**FIGURE 2: “Frequency of Grant Awards”**

One researcher examined the funding history of the NAGPRA grant program and compared the amount of federal funds that have been allocated to the grant program to the total amount of funds that are used to support Native American repatriation and museum repatriation efforts. A substantial amount of funds are not being used at the local level (see Appendix C for federal funding history for Grant program). For example, in the past two fiscal years (FY2006 and FY2007), $936,830 that would otherwise be devoted to supporting NAGPRA grants is being used for administrative support of the overall program. \(^{19}\) In FY2005, the U.S. Government used $680,000 of NAGPRA grant funds to cover some of the attorney’s fees that were owed to the plaintiffs in the case of Bonnichsen vs. U.S. (*Kennewick Man* case).

**vi. General Federal-Tribal NAGPRA Issues**

In this section, the following topics are examined: resources and training for NAGPRA activities; law enforcement; areas that need improvement; and positive areas to explore.

**a. Resources and Training for NAGPRA Activities**

Of the Federal agency representatives responding to the survey, none indicated that they work full time on NAGPRA issues. Of those Federal agency employees who reported that they worked less than full time on NAGPRA issues, ninety-seven percent (97%) estimated that their NAGPRA work involves twenty percent (20%) or less of their time (see Figure 3).

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\(^{18}\) Indian tribes and Native Hawaiian organizations may also apply for a Repatriation grant, not to exceed $15,000 per application.

There were several questions for the Federal agency officials on the topic of training:

- Forty-four percent (44%) of the Federal respondents indicated that they do not receive training on NAGPRA (see Figure 4).

- When asked whether or not new Federal employees tasked with implementing NAGPRA receive training on the act, thirty-one percent (31%) indicated that they do not. Only nineteen percent (19%) indicated “yes,” that they receive training. Twenty-five percent (25%) indicated that it was “not applicable.”

- When asked which method of training was used, six indicated that the NPS NAGPRA Program; four said Private Consultant/company; four said In-house training; two said Another Federal agency; and one said Native American entity.

On the topics of resources and training, tribal responses indicate a lack of resources:

- Thirteen (13) tribal respondents, whose tribe/village/organization had received a NAGPRA grant, responded “no” when asked if they felt that the amount was adequate to conduct the proposed NAGPRA work. A slightly larger number of respondents, sixteen (16), reported that they felt they had sufficient resources for the grant project.

- Nine (9) tribal respondents stated that that their tribe/village/organization provides financial assistance to support their NAGPRA work that is independent of Federal grants. Seven (7) stated their tribe/village/organization provided financial assistance independent of Federal grants. When asked to elaborate on the closest ratio of assistance, five (5) tribal respondents stated that the ratio was 3:1 (Tribe : Federal).
Unlike museums, Federal agencies are not eligible for NAGPRA consultation/documentation grants. Thus, each agency is responsible for securing its own funds to comply with NAGPRA.

b. Consultation and Collaboration

Of the twenty-three (23) Federal respondents that had indicated that their agency had developed a tribal consultation policy, only ten (10) had developed step-by-step protocols on how to conduct tribal consultation. Other policies and procedures that the Federal respondents indicated had been developed and implemented by their Federal agency include:

- Eight (8) agencies monitor and enforce compliance with the Act
- Two (2) agencies had cultural sensitivity guidance related to the Act
- Twenty-two (22) had policies on inadvertent discoveries
- Fourteen (14) had guidance on intentional excavations
- None (0) had policies or guidelines to notify tribal recipients of pesticide or contaminants associated with cultural items, as defined in the statute.

When Federal agencies were asked about their agency’s experience with consultation and collaboration, seventeen (17) respondents reported having engaged in face-to-face consultation, one (1) agency publishes a newsletter, twelve (12) respondents reported that their representatives attend Native American meetings, and three (3) agencies regularly attend NAGPR Review Committee meetings.

Rating their relations with tribes and Native Hawaiian organizations, three (3) agencies reported excellent relationships, fifteen (15) agencies reported good relationships, ten (10) agencies reported average relationships, and one agency reported poor relationships.

c. Areas that Need Improvement

Nine of the seventeen tribal respondents reported a difference between local, regional and national Federal offices in addressing NAGPRA issues, but in some cases local agencies were seen to be more responsive, and in other instances, the national offices were attributed with having a greater awareness of their responsibilities under the statute. When asked to elaborate on their negative experiences, tribal respondents indicated sentiments, such as:

- Some agencies don’t recognize NAGPRA issues that fall outside of federal (or state) Indian reservations, even though we claim ancestry to many places in the geographic region.
- Federal staff who work in [Washington] DC are insensitive and do not want to learn, but try to push their responsibility onto the tribes.
- Some tribal respondents reported that they have built strong working relationships at the local level and to some extent at the regional level.
- Another tribal respondent expressed the view that on a national level everything is programmatic, that on a local or regional basis issues tend to be specific and focused, and that typically the national programs understand their obligations much more clearly than the local or regional.
- All have different compliance levels.
- Actually, we hear more nationally and regionally vs. locally. This is probably not appropriate if these Federal agency branches truly want to have a good working relationship with tribes.

Cowlitz basket, circa 1841. Photo credit: Department of Anthropology, Smithsonian Institution (E2614).
Comparing perceptions on the issue of disagreements:

- Three (3) Federal respondents indicated that their agency has been/is involved in legal disputes with a tribe/village/organization. Three (3) Federal respondents also indicated that a tribe has filed a complaint against their agency.
- Twenty-two (22) tribal respondents stated that their tribe, village, or Native Hawaiian organization had a NAGPRA-related disagreement or legal conflict with a Federal agency.

When Federal respondents were asked to identify the top two (2) answers that they felt were negative factors in complying with NAGPRA, eleven (11) stated that uncertainty of whom to consult with was one of the main challenges they faced. Poorly trained staff and inadequate resources were also cited as factors. In the Other category, the majority of these responses reflected limited NAGPRA experience or no NAGPRA compliance required (see Figure 5):

**FIGURE 5: “Negative Factors in Complying with NAGPRA”**

<table>
<thead>
<tr>
<th>Federal Agency Responses</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poorly trained staff</td>
<td>10</td>
</tr>
<tr>
<td>Inadequate resources</td>
<td>7</td>
</tr>
<tr>
<td>Lack of admin support</td>
<td>4</td>
</tr>
<tr>
<td>Uncertainty consult</td>
<td>11</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
</tr>
</tbody>
</table>

**d. Positive Areas to Explore**

There are some indications that the working relationships between Federal agencies and Indian tribes and Native Hawaiian organizations are either working or can be improved.

A survey question for Federal agencies shows that a possible area of improvement is the shared concern, or acknowledgement of a shared problem, that looting is a problem on Federal lands. Five (5) Federal respondents indicated that looting is a problem.

When tribes were asked if Federal agencies act respectfully in the treatment and repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony affiliated with your tribe, village or Native Hawaiian organization, the majority indicated that they have had a positive experience (see Figure 6).
In a follow-up question, seventy-six percent (76%) of tribal respondents indicated that some Federal agencies are better to work with than others. When asked to elaborate on why they thought some agencies were better than others, answers included the following:

- Some agencies consult with tribes to find out how to treat these issues, while others don’t know and really do not seem to care. When you do inquire they treat you like an intruder.
- Some agencies at least make an effort to provide notification of changes regarding NAGPRA, while some do not make that effort.
- Some agencies really consult with tribes, while others just merely comply with the letter of the law – nothing more, nothing less.
- Many times it has more to do with the personal perspectives of the staff within an agency.
- Some still see Native American remains as specimens with little connection to modern day tribal government officials. Others see them as people, and, in those cases, they tend to be sensitive and respectful.
- One Federal agency repatriated a large number of boxes (around 45) filled with objects that had never been cataloged or curated up to standards. Items were put into baby food jars bags that were ripped and falling apart. Bones were just tossed into brown paper bags.
- Some agencies allow reburial on Federal lands, while others don’t.
- There are individuals who are very culturally sensitive and work very well with tribal governments and their people.
- In general, Federal agency’s lack of experience is probably the biggest factor.
Federal officials were asked to indicate the top two (2) answers that they felt were positive factors in complying with NAGPRA. Their responses indicate some potential areas of improvement, some of which could be tackled in tandem with Indian tribes and Native Hawaiian organizations:

- Twenty (20) Federal respondents based their positive experience on the knowledge of which Native American tribe(s) to consult with.
- Thirteen (13) Federal respondents thought that their understanding of the Act and policies were positive factors.
- Nine (9) thought that their success was due to their relationship with Native Americans.
- Only six (6) indicated that their positive factors were based on available resources. One (1) thought that it was because of administrative support. Because of these numbers in these two categories, perhaps more positive factors can be produced if resources were increased to Federal agencies.

When Federal agencies were asked to provide any specific recommendations that they felt may improve federal compliance with NAGPRA, the following comments were provided:

- More training in this area would be good.
- Clarification is needed on if/how NAGPRA applies to federal assistance agencies that do not possess/control land or collections.
- Federal agencies often have an environmental/Sect. 106 compliance office and an office that serves as lead for tribal relations. It would be helpful to learn how these types of agencies effectively coordinate their related tribal consultation efforts.
- Regular communications from NAGPRA representatives to Federal Preservation Officers including notices of meetings open to federal agencies.
- Would appreciate the opportunity to participate in any type of NAGPRA training
- Finish Section 10.11 of NAGPRA so that there is information on how to deal with the disposition of culturally unidentifiable remains.
- Dedicated trained staff to work with repositories curating agency-controlled collections. Resources to support partnerships with tribes and repositories to complete summaries and inventories. Training for local law enforcement on the appropriate process for inadvertent discoveries.
- Continued education and outreach to the Federal agencies and to other preservation partners (perhaps including new SHPO and ACHP staff) to ensure all truly understand how and where NAGPRA applies to tribal federal and state lands and collections.

One very positive indicator was that almost half of the tribes, villages, and Native Hawaiian organizations that participated in the national survey indicated that they had been part of a coalition to recover NAGPRA items from a Federal agency. This demonstrates their willingness to work together around such issues as cultural affiliation. Although it must be noted that tribal governments are individual, sovereign nations, their interest and willingness to work together can be explored as ways to build bridges to better communication and consultation with Federal agencies, as well as enhancing the effective implementation of the Act.
B. Notice of Inventory Completion (NIC) Review

The National Park Service National NAGPRA Program has on file all original correspondence from both museums and Federal agencies that details their inventories and summaries of Native American human remains and associated funerary objects. These crucial inventories and summaries facilitate repatriation by providing clear descriptions of human remains, associated funerary objects, and their cultural affiliation. The inventories were to have been prepared in consultation with lineal descendants, Indian tribes (including Alaska Native villages and corporations), and Native Hawaiian organizations so that cultural affiliation could be determined. The museum and Federal agency is responsible for initiating consultation not later than the point at which cultural affiliation is under investigation. Inventories were to have been completed by November 16, 1995. Copies of the inventory were to have been provided to lineal descendants and Native Americans and the National Park Service. For culturally affiliated human remains and associated funerary objects, a Notice of Inventory Completion (NIC) must be published in the *Federal Register* by the Secretary of the Interior.

Original submissions of information described in detail the Native American human remains and associated funerary objects in their collections, including those that can be culturally affiliated or are likely to be affiliated. Templates for how to develop inventories and summaries were included in the NAGPRA regulations, and are included in this report (see Appendix A).

i. Research Method

In the summer of 2007, two individuals visited the National NAGPRA Program’s office in Washington, DC, to review all original submissions and subsequent information from each Federal agency. Each unique collection for each Federal agency has been organized into individual files so that the originally submitted information is filed together with the final published Notice of Inventory Completion in the *Federal Register*. In the absence of a published Notice of Inventory Completion, there can be no repatriation.

The researchers’ task was to review the original Federal agency paperwork and count:

- The minimum number of individuals (“MNI”); and
- The number of associated funerary objects (“AFO”).

The researchers then reviewed the published Notice of Inventory Completion and counted the MNI and AFO and compared the two numbers for the agencies noted in figure 7.
FIGURE 7: “Federal Agency Files Reviewed”

<table>
<thead>
<tr>
<th>Number</th>
<th>Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>106</td>
<td>Department of Agriculture: Includes regional offices, national forests, and grasslands</td>
</tr>
<tr>
<td>3</td>
<td>Department of Commerce</td>
</tr>
<tr>
<td>152</td>
<td>Department of Defense: Includes Air Force bases, Army depots, Proving Grounds, Army recreational areas, presidios, ammunition plants, forts, laboratories, field test facilities, missile ranges, barracks, training sites and Army Corps districts</td>
</tr>
<tr>
<td>18</td>
<td>Department of Energy: Includes regional power administrations, laboratories, reserves, and regional offices</td>
</tr>
<tr>
<td>1</td>
<td>Department of Health and Human Services</td>
</tr>
<tr>
<td>190</td>
<td>Department of the Interior: Includes Bureau of Indian Affairs and affiliated repository museums, Bureau of Land Management, Bureau of Reclamation, Fish &amp; Wildlife, and National Park Service</td>
</tr>
<tr>
<td>2</td>
<td>Geological Survey</td>
</tr>
<tr>
<td>9</td>
<td>Department of Justice: Includes Federal Bureau of Investigations</td>
</tr>
<tr>
<td>1</td>
<td>Nuclear Regulatory Commission</td>
</tr>
<tr>
<td>1</td>
<td>Tennessee Valley Authority</td>
</tr>
</tbody>
</table>

The researchers did not individually count the MNI in the original paperwork for the Tennessee Valley Authority (TVA), which included 8,031 individuals\(^{21}\). The TVA has not published any Notice of Inventory Completion, indicating no culturally affiliated human remains or associated funerary objects.

The researchers developed a chart of the above information that lists: the Federal agency (and subpart); the Minimum Number of Individuals (MNI) indicated in the original inventory; the Minimum Number of Individuals (MNI) indicated in the published Notice; the Associated Funerary Objects indicated in the original inventory; the Associated Funerary Objects (AFO) indicated in the published Notice; the difference between these two numbers, if any; and whether or not there were any joint notices\(^{22}\) published (see Appendix C for the chart).

The researchers also checked some of the information against other publicly-available information maintained by the NPS National NAGPRA Program, such as the "Culturally Unidentifiable Native American Inventories Pilot Database," which is a critical part of the overall repatriation process.

Finally, the researchers included significant notes that were derived from reading the original submissions of information contained in the Inventories. For example, one note states, “Notice for this inventory is on hold by orig.” Another note states, “13 of the remaining MNI that are not in a Notice of Inventory Completion (NIC) were obtained between 1998-2001.” Another note states, “The database lists no AFOs, but the NIC itself has one.” Another researcher note example states, “There is no official inventory, but there is a draft of a NIC that lists human remains belonging to one individual, so I counted that as being part of the park’s inventory since it hadn’t been published.”

\(^{21}\) The number of 8,031 was derived from the National Park Service National NAGPRA Program report, “Federal Agency Statistics,” October 31, 2006.

\(^{22}\) A joint notice is used typically when one entity has possession of remains or objects, while another entity has control.
The researchers’ notes indicate that fourteen (14) Federal agencies had “withdrawn” notices for the following entities (see Appendix C-Withdrawn):

- Waianae Army Recreation Center;
- National Forests: Tongass, and Ozark-St. Francis;
- Army Corps Districts: Omaha, Tulsa, and Albuquerque;
- Bureau of Land Management, Nevada State Office; and
- Bureau of Reclamation Mid-Pacific Region.

It is unclear what effect an agency withdrawing its notice from publication has had on either the culturally affiliated or likely-to-be-culturally affiliated lineal descendants, Indian tribes and Native Hawaiian organizations, which were required to have been notified no later than May 16, 1996, of any relationship.

ii. Findings of Research

A comparison of the original inventories and subsequent paperwork and the published Notice of Inventory Completion shows inconsistencies in the total number of MNI and AFOs. In most instances, the total number of MNI and AFOs is not equal to the total number of MNI and AFOs in the published NIC. Many of the Federal agencies had originally affiliated Native American human remains and associated funerary objects, but when the Notice of Inventory Completion was published, the Notice did not include all the individuals and objects originally identified.

In October 2007, one of the researchers, who had conducted this same process for museums stated in her presentation to the NPS NAGPR Review Committee the following possible reasons for the discrepancies between the original paperwork filed by a museum and the final NIC:

- They may have not yet published a NIC (this would be pending).
- They may have located additional inventory that was not included in the previously published notice.
- They may have affiliated culturally unidentifiable inventory, but have not updated their inventory records with the National NAGPRA Program.
- They may have received a recommendation to publish a Notice for culturally unidentified human remains and associated funerary objects from the NAGPR Review Committee and not updated their inventory records.
- An agency may have withdrawn a notice from publication and not updated their inventory.
- The NPS process of editing the original submissions of information changed over the years. For example, early in the notice publication phase, if a Federal agency described a necklace of beads, it was originally listed as “1” associated funerary object. Later in the notice publication process, the same necklace may have been described as “61” associated funerary objects, reflecting the number of individual beads in the one necklace.

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Some other possible reasons for these discrepancies may be:

- The NPS editing process depended upon the NPS staff person working on the notices and how they interpreted their editing role, and, thus, there is no standardized process for moving an inventory to a published notice.
- The National Park Service template for submitting a Notice of Inventory Completion has changed over time.

Whatever the reasons behind these discrepancies, the situation demonstrates that the process lacks standardization and oversight.

iii. Pending Draft Notices of Inventory Completion

An issue that came to light in the research and production of this report was an effort by the NPS National NAGPRA Program in late 2007 to clear their backlog of unpublished, draft Notices of Inventory Completion (NICs) by asking each museum and Federal agency that has such draft NICs to either approve the draft Federal Register notice and move forward with publication, or to withdraw the effort altogether (and restart the cultural affiliation process, even though they had already culturally affiliated remains and objects in 1995). 24

In other words, many Federal agencies and museums had previously determined human remains to be culturally affiliated based on tribal consultation or previous knowledge of where and how remains were obtained. The agency or museum submitted their information to the National Park Service by the 1996 deadline. It is unknown if this information was sent to the affected Native American entity. This step was not examined as part of this research. Over the intervening 16 years, the National Park Service worked with the agency or museum to finalize the information for publication in the Federal Register. The NPS reports that they will not publish the information in a Federal Register NIC until the museum or agency approves the “final draft notice.” Until the information is published, it is considered “pending” and not official notice. Information contained in these pending notices includes hundreds of Native American human remains that have been culturally affiliated with one or many Tribes.

For example, the Hopi Tribe received on December 27, 2007, a “courtesy copy” of a letter from Sherry Hutt, Manager, National NAGPRA Program, to Steve P. Martin, Superintendent, Grand Canyon National Park (see Appendix F for a copy of letter), that states:

_I am writing in regard to Park NAGPRA’s e-mail request of November 29, 2007 to withdraw one notice submitted from your agency on November 16, 1995 (N0075). This letter confirms that the notice was withdrawn on November 30, 2007_.

_We understand that your institution may be in consultation with tribes and that failure to publish the notice does not mean that you are not working through the process. When you are ready to move forward with a notice for publication, we will be ready to assist you._

This letter was copied to ten (10) Tribal governments. The Hopi Tribe did not receive a copy of the draft NIC or the “Park NAGPRA’s e-mail request” to withdraw the pending NIC. The Grand Canyon National Park also did not consult with the Hopi Tribe about the notice withdrawal.

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24 Personal interview with Sherry Hutt, Manager, National NAGPRA Program Office, on November 27, 2007, on this topic indicated that there are over 200 pending notices in the National NAGPRA Program Office which have been in “pending” status for at least five years and up to 13 years.
In order to better understand how many culturally-affiliated Native Americans may be included in this backlog, the researchers reviewed the nine-page report, "Federal Agency NAGPRA Statistics," Prepared by Cynthia Murdock and Jaime Lavallee, National NAGPRA Program, October 31, 2006. This report indicates that as of that date, Federal agencies had culturally affiliated the remains of 1,652 Native Americans, for which no NIC had been published.

Other statistics in the report about Federal agency cultural affiliation and publication include:

- The total number of MNI in the control or possession of thirteen Federal agencies is 28,411.
- 13,614 of the total 28,411 have been published in NICs (47.9% of total MNI)
- 13,145 of the total 28,411 have been placed in the “Culturally Unidentifiable Native American Inventories Pilot Database” (46.2% of total MNI)
- 1,652 MNI that are in Federal agency inventories as affiliated, but that have not been included in published notices were comprised of: 966 culturally affiliated MNI in the “pending MNI” category; and, 686 culturally affiliated MNI in a separate category of “Other Affiliated MNI”
- The Tennessee Valley Authority failed to determine cultural affiliation for 8,031 of the 8,368 MNI in its control and no Notices of Inventory Completion or Notices of Intended Disposition have been submitted to the National NAGPRA Program Office to date.
- Of the 13,145 MNI that were determined to be “culturally unidentifiable,” 10,981 individuals (83% of 13,145) were held by three agencies:
  - Tennessee Valley Authority;
  - U.S. Army Corps of Engineers; and
  - U.S. Department of the Interior, National Park Service.

C. Analysis of “Culturally Unidentifiable Native American Inventories Pilot Database”

The NAGPR Review Committee is responsible for creating a database of the human remains and associated funerary objects that the Federal agencies and museums have determined to be Native American, but for which remains or objects the agency has not been able to determine are specifically affiliated with a lineal descendant, Indian tribe, or Native organization. The National Park Service’s (NPS) National NAGPRA Program maintains the Committee’s on-line database on the NPS website, which describes the “Culturally Unidentifiable Native American Inventories Pilot Database” in the following manner:

Each record contains the name of the museum or Federal agency in possession or control of the human remains; the state, county, and site, if known, from which the human remains were removed; the collection identification number if given; the minimum number of individuals (MNI); and the number of associated funerary objects (AFO). The remarks section also includes brief collection histories, available age and culture or early group information, and a list of funerary objects, if present.

25 Transcript of the Nineteenth Meeting of the NAGPR Review Committee, held in Juneau, Alaska, April 2-4, 2000. Under the restructuring agreement reached between the NPS and the Interior Department, NAGPRA implementation will be divided into Park NAGPRA (implementation of NAGPRA within the NPS), and general [National] NAGPRA (implementation of NAGPRA beyond the NPS).

26 See Appendix E for entire report or go to this weblink for NPS report: http://www.nps.gov/history/nagpra/review/FEDERAL%20AGENCY%20NAGPRA%20STATISTICS.pdf
Further, the database:

... summarizes the inventory information submitted by museums and Federal agencies and is not meant to be an exact copy of their inventory data. Though an effort has been made to verify the accuracy of the data presented in this database, slight discrepancies between these and the actual museum and agency inventories may remain. The database was updated December 31, 2006. It now includes 15,901 records describing 118,400 Native American human remains and 828,641 associated funerary objects inventoried by 627 museums and Federal agencies. Among the human remains included here are 5,238 that have been affiliated or transferred since they were first inventoried as culturally unidentifiable.27

One researcher analyzed the available information included in the online “Culturally Unidentifiable Native American Inventories Pilot Database,” which is publicly available on the National NAGPRA Program website. Analysis was conducted to determine if the information it contains would further an understanding of issues involving Federal agency compliance with NAGPRA. It also sought to determine to what extent the database is a useful tool for assisting Native Americans in their efforts to implement the process of establishing cultural affiliation, or a shared group identity, between Native human remains and associated funerary objects in the possession or control of Federal agencies.

The online database only contains information that was submitted to the National NAGPRA Program office, which were summarized by a National Park Service technician (from the original paper records on file).

The research conducted on the database indicates that there are 13,785 culturally unidentified remains in the possession or control of Federal agencies. In addition, there are 66,407 associated funerary objects in the possession or control of the twelve Federal agencies that reported culturally unidentified but associated funerary objects. There is a slight discrepancy between the numbers used by the project researcher and what may be found both online and in the actual database. Upon inquiry, the National NAGPRA Program commented that there may be additions that would account for this.28

Demonstrating the value to Federal agencies to consult with Native groups about the remains and associated funerary objects held by Federal agencies that were originally inventoried as culturally unidentifiable, the cultural affiliation of 472 remains and 4,312 associated funerary objects was subsequently determined through tribal consultation (see Figure 8).

FIGURE 8: “Affiliation Determined Through Tribal Consultation”

<table>
<thead>
<tr>
<th>AGENCY</th>
<th>Culturally Unidentifiable Human Remains</th>
<th>Associated Funerary Objects</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Forest Service (Agriculture)</td>
<td>103</td>
<td>405</td>
</tr>
<tr>
<td>U.S. Army Corps Engineers</td>
<td>234</td>
<td>156</td>
</tr>
<tr>
<td>U.S. Army</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>U.S. Navy-Marines</td>
<td>29</td>
<td>3,348</td>
</tr>
<tr>
<td>Bureau of Reclamation (Interior)</td>
<td>15</td>
<td>4</td>
</tr>
<tr>
<td>Bureau of Indian Affairs (Interior)</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Bureau of Land Management (Interior)</td>
<td>2</td>
<td>202</td>
</tr>
<tr>
<td>National Park Service (Interior)</td>
<td>87</td>
<td>196</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>472</strong></td>
<td><strong>4,312</strong></td>
</tr>
</tbody>
</table>

27 http://www.nps.gov/history/nagpra/ONLINEDB/INDEX.HTM
28 Email correspondence with Sherry Hutt, Manager, National NAGPRA Program Office, on November 30, 2007.
Set forth in Figure 9 is an example of the kind of information that is contained in the database, as well as the format in which the information is typically presented.

**FIGURE 9: “Albuquerque District, Army Corps of Engineers”**

<table>
<thead>
<tr>
<th>Institution</th>
<th>US Dept. of Defense, Army COE, Albuquerque District</th>
</tr>
</thead>
<tbody>
<tr>
<td>State/Area</td>
<td>New Mexico</td>
</tr>
<tr>
<td>County</td>
<td>Los Alamos</td>
</tr>
<tr>
<td>Site</td>
<td>LA 70, site well in Cochiti Dam project area</td>
</tr>
<tr>
<td>ID</td>
<td>Catalog #: BAND 21501, BAND 21503</td>
</tr>
</tbody>
</table>

**Collection History:** Excavated by USACE in late 1960s and 1970s by Charles Lange; transferred to USACE from Bandelier National Monument some time after 1995.

**Age/Culture:** Unknown

**MNI:** 2

**AFO:** None

While in the aggregate, Federal agencies appear to have sizeable collections of culturally unidentifiable human remains and associated funerary objects, the size of the MNI and AFO collections held by museums and scientific institutions is even greater, as illustrated in Figure 10:

**FIGURE 10: “MNI and AFO in Database”**

<table>
<thead>
<tr>
<th></th>
<th>Culturally Unidentifiable Human Remains</th>
<th>Associated Funerary Objects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Agencies</td>
<td>13,785</td>
<td>66,470</td>
</tr>
<tr>
<td>Museums/Institutions</td>
<td>104,690</td>
<td>762,234</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>118,475</strong></td>
<td><strong>828,704</strong></td>
</tr>
</tbody>
</table>

As can be seen from the chart’s figures, Federal agency collections represent thirteen percent (13%) of all reported culturally unidentifiable remains, and eight percent (8%) of all reported associated funerary objects.

In some instances, culturally unidentifiable remains and associated funerary objects are transferred to other Federal agencies or institutions. The assessment of the database revealed that 3 MNI and 47 AFO were transferred between the National Park Service and the Albuquerque District of the U.S. Army Corps of Engineers and Ft. Vancouver National Historic Site, respectively.

The assessment found that those who seek to check the database against Federal agency submissions of Notices of Intent to Repatriate or Notices of Inventory Completion must leave the database, open another database, then close that database and reopen the database. This operation must be performed for every question for which an answer is sought, record-by-record, for each reporting Federal agency.

Based on an analysis of comments contained in the database, the assessment found that there is no apparent enforcement of two of the Act’s most critical requirements of Federal agencies — that of pre-decisional consultation where Native American human remains and funerary objects are concerned, and an agency’s burden to prove that scientific study (beyond sorting and counting and record searches to determine the minimum number of individuals in an agency’s possession or control) justifies the agency’s retention of human remains and funerary objects.
Nor is it apparent that there is any oversight or tracking system for any agency that has retained human remains for scientific study – whether the agency has returned the remains or met a burden of proof under the statutory standard of “major benefit” interest. The Act expresses a clear policy that wherever possible, human remains and associated funerary objects should be repatriated rather than retained for scientific study. However, when human remains and the funerary objects associated with them are classified as culturally unidentifiable, there could perhaps be a tendency to retain such remains and associated funerary objects for scientific study and transfer from one institution to another without monitoring and notification.

For example, the Ocala National Forest of the U.S. Department of Agriculture indicates, “Three skulls sent to Smithsonian” (see Figure 11). Another example may be found in the records submitted by the National Park Service Southeast Archeological Center that indicates an unknown number of AFO were not counted in that agency’s culturally unidentifiable database because the AFO “… are undergoing inventory and analysis, housed at University of Georgia” (see Figure 12). It appears that there is insufficient information in the database to determine when this transfer was made, under what circumstances, and if or whether possibly affected Indian tribes were notified or consulted.

**FIGURE 11: “Ocala National Forest, U.S. Department of Agriculture”**

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>US Dept. of Agriculture, FS, Ocala NF</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE/AREA</td>
<td>Florida</td>
</tr>
<tr>
<td>COUNTY</td>
<td>Lake</td>
</tr>
<tr>
<td>SITE</td>
<td>Old Ford (Alexander Springs) Mound (8la25)</td>
</tr>
<tr>
<td>ID</td>
<td>Catalog #: 3378352</td>
</tr>
<tr>
<td>Collection History</td>
<td>Excavated early 1930s by CCC</td>
</tr>
<tr>
<td>Age/Culture</td>
<td>No information</td>
</tr>
<tr>
<td>AFO</td>
<td>None</td>
</tr>
<tr>
<td>Note</td>
<td>Three skulls sent to Smithsonian</td>
</tr>
<tr>
<td>MNI</td>
<td>3</td>
</tr>
<tr>
<td>AFO</td>
<td>0</td>
</tr>
</tbody>
</table>

**FIGURE 12: “Southeast Archaeological Center, National Park Service”**

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>US Dept. of Interior, NPS, Southeast Archeological Center</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE/AREA</td>
<td>Georgia</td>
</tr>
<tr>
<td>COUNTY</td>
<td>Chatham</td>
</tr>
<tr>
<td>SITE</td>
<td>Deptford Site, 09 CH 00002</td>
</tr>
<tr>
<td>ID</td>
<td>SEAC-00248; SEAC 7</td>
</tr>
<tr>
<td>Collection History</td>
<td>Recovered during WPA excavations in 1940. Site consisted of a shell midden extending several hundred feet along the bluff. 42 burials encountered at site, not found in separate cemetery, but in daily living areas. Remains housed at both SEAC and Smithsonian</td>
</tr>
<tr>
<td>Age/Culture</td>
<td>Woodland, 500 BC-AD 1000 (Wilmington, AD 500-1000)</td>
</tr>
<tr>
<td>AFO</td>
<td>None</td>
</tr>
<tr>
<td>Note</td>
<td>AFO (bone awls, a mica disc, projectile points), are undergoing inventory and analysis, housed at University of Georgia</td>
</tr>
<tr>
<td>MNI</td>
<td>19</td>
</tr>
<tr>
<td>AFO</td>
<td>0</td>
</tr>
</tbody>
</table>
Other sources of Federal agency collections can include culturally unidentifiable remains and associated funerary objects that are “on loan” to a museum or Federal agency, without sufficient information to determine how these loans were arranged, for what purpose, and for how long. For example, research of the database records found instances that a total of 12 MNI and 104 AFO have been reported by Federal agencies as “on loan” to another institution. The database does not identify the purpose of each loan, nor is there any information on whether affected tribes that may be culturally affiliated with remains or associated funerary objects have been consulted on such loans. For example, the National Park Service Ocmulgee National Monument in Georgia reports an unknown number of Native American human remains and associated funerary objects for which NAGPRA responsibility rests with the National Park Service as being housed at the Smithsonian (see Figure 13).

Several dozen MNI and an unknown number of AFO were attributed as being the responsibility of the U.S. Army Corps of Engineers-Vicksburg District, but not all of the MNI and AFO were accounted for on the record for the Vicksburg District. Also, unknown number of MNI and AFO noted on the Felsenthal National Wildlife Refuge database record are missing (see Figure 14). Another area of interest and concern is that the database record for St. Mark’s River National Wildlife Refuge showed 118 AFO, however project research showed a count of 161 AFO.

**FIGURE 13: “Ocmulgee National Monument, National Park Service”**

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>US Dept. of Interior, NPS, Ocmulgee NM</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE/AREA</td>
<td>Georgia</td>
</tr>
<tr>
<td>COUNTY</td>
<td>Bibb</td>
</tr>
<tr>
<td>SITE</td>
<td>Middle Plateau-Trading Post, 09 BI 00001</td>
</tr>
<tr>
<td>ID</td>
<td>OCMU-00079; OCMU-6</td>
</tr>
</tbody>
</table>

**Collection History:** Recovered during the WPA era excavations in the Middle Plateau area of the Macon Plateau site complex. Projects include excavations at the trading post, Mound E, Middle Plateau East, West and Central control trenches, pit houses, stockade and moat excavations. Excavations conducted from 1933 to 1940s.

**Age/Culture:** Early Mississippian; AD 900-1100 (Some elements of site show evidence of occupation dating from Archaic period (2500 BC) through 20th century.

**AFO:** Beads?

**Note:** Human remains from this project are housed at SEAC and Smithsonian. Those listed here only include those at SEAC.

**MNI:** 8

**AFO:** 2
In other instances, Federal agencies have reported to the NAGPR Review Committee and National NAGPRA Program that they may have once reported possession or control over culturally unidentifiable human remains and associated funerary objects, but the remains or objects are now missing, or are in an unknown location, or that the agency is unsure of the location of the remains or objects. A review of the database reveals that a total of 501 MNI and 703 AFO have been reported by Federal agencies as either missing, placed in an unknown location, or there is uncertainty as to where the remains or objects can be found. For example, an unknown number of missing MNI has been reported by Carlsbad Caverns National Park (see Figure 15).

In some circumstances, the database may contain information on the source from which a Federal agency acquired human remains or associated funerary objects. Private gifts represent one such source. For instance, the Armed Forces Institute of Pathology, National Museum of Health, has accepted the private gifts of 158 MNI (there were no AFO recorded as being part of the gifts, and if there were AFO discovered when the remains were first excavated, the record is silent as to their current location). Eighteen of the MNI
were presented as a private gift in 2003, by Jacqueline E. White of Woodbine, MD (see Figure 16). Eighty-eight of the MNI were presented as private gifts, from 1875 to 1915, to the Institute by Clarence B. Moore of Philadelphia, PA. Other sources of Federal agency acquisition of human remains or associated funerary objects include purchases or exchanges, or were transfers from the Smithsonian Institution.

**FIGURE 16: “Armed Forces Institute of Pathology, National Museum of Health”**

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>US Dept. of Defense, Armed Forces Inst. of Pathology, National Museum of Health &amp; Medicine</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE/AREA</td>
<td>California</td>
</tr>
<tr>
<td>COUNTY</td>
<td>Inyo</td>
</tr>
<tr>
<td>SITE</td>
<td>Battlefield at Owens Valley</td>
</tr>
<tr>
<td>ID</td>
<td>Accession #: 2003.0057</td>
</tr>
<tr>
<td>Collection History:</td>
<td>Donated by Jacqueline E. White of Woodbine, MD, in December 2003</td>
</tr>
<tr>
<td>Age/Culture:</td>
<td>No information</td>
</tr>
<tr>
<td>MNI:</td>
<td>1</td>
</tr>
<tr>
<td>AFO:</td>
<td>0</td>
</tr>
<tr>
<td>AFO:</td>
<td>None</td>
</tr>
</tbody>
</table>

Research on the database conducted for this project indicates that the number of human remains and associated funerary objects in the possession or control of a Federal agency which have been noted as “non-Native” are 19 MNI and 43 AFO (see Figure 17). It is unknown why these remains and objects are included in this database.

**FIGURE 17: “Fort Bowie National Historic Site, National Park Service”**

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>US Dept. of Interior, NPS, Fort Bowie NHS</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE/AREA</td>
<td>Arizona</td>
</tr>
<tr>
<td>COUNTY</td>
<td>Cochise</td>
</tr>
<tr>
<td>SITE</td>
<td>Fort Bowie NHS</td>
</tr>
<tr>
<td>ID</td>
<td>FOBO-00098</td>
</tr>
<tr>
<td>Collection History:</td>
<td>Surface-collected by park staff before July 2, 1985 (date of recording).</td>
</tr>
<tr>
<td>Age/Culture:</td>
<td>Unknown; too old to make a determination of affiliation with a present-day tribe</td>
</tr>
<tr>
<td>AFO:</td>
<td>None</td>
</tr>
<tr>
<td>Note:</td>
<td>One set of remains may not be Native American</td>
</tr>
<tr>
<td>MNI:</td>
<td>2</td>
</tr>
<tr>
<td>AFO:</td>
<td>0</td>
</tr>
</tbody>
</table>

Some Federal agencies have indicated that the reason they have categorized the remains or associated funerary objects as being culturally unidentifiable is that the remains or objects are “too old to be associated with present-day Indian Tribe” (see Figure 18). The database information is insufficient as to whether determinations have been made after consulting with an affected Tribe(s).
Another determination that a Federal agency may make is that remains or associated funerary objects are culturally affiliated with a non-Federally recognized Tribe, although the records don’t indicate whether there was any consultation with one or more non-Federally-recognized tribes in making such determinations.

In other instances, a Federal agency may have originally included human remains and associated funerary objects in its Notice of Inventory Completion and then later may have withdrawn the submitted information and reassigned the remains or objects as culturally unidentifiable or as non-Native. Research on the database indicates that a total of 9 MNI and 267 AFO have been withdrawn by Federal agencies from their published Notice of Inventory Completion, which had previously determined cultural affiliation. The remains were reassigned as culturally unidentifiable or as non-Native. The Dinosaur National Monument of the National Park Service has withdrawn, without explanation, 8 MNI and 267 AFO and re-assigned these cultural items as unidentifiable. This record contained no statement that consultation with affected Tribes concerning remains and objects had been conducted prior to this determination (see Figure 19).

**FIGURE 18: “De Soto National Monument, National Park Service”**

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>US Dept. of Interior, NPS, De Soto NM</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE/AREA</td>
<td>Florida</td>
</tr>
<tr>
<td>COUNTY</td>
<td>Manatee</td>
</tr>
<tr>
<td>SITE</td>
<td>Unknown</td>
</tr>
<tr>
<td>ID</td>
<td>DESO-00021; DES02</td>
</tr>
</tbody>
</table>

Collection History: Collected from park grounds during the 1940s and 1950s by a private individual from unspecified sites within the park; presented to park in 1997

Age/Culture: Unknown; too old to make a determination of affiliation with a present-day tribe

AFO: None; impossible to determine if artifacts donated with the human remains are associated

MNI: 3

AFO: 0

**FIGURE 19: “Dinosaur National Monument, National Park Service”**

<table>
<thead>
<tr>
<th>INSTITUTION</th>
<th>US Dept. of Interior, NPS, Dinosaur NM</th>
</tr>
</thead>
<tbody>
<tr>
<td>STATE/AREA</td>
<td>Colorado</td>
</tr>
<tr>
<td>COUNTY</td>
<td>Moffat</td>
</tr>
<tr>
<td>SITE</td>
<td>Pool Creek; 5MF2645</td>
</tr>
<tr>
<td>ID</td>
<td>ID #: 7; Accession #: DINO-00220; Catalog #: 12127</td>
</tr>
</tbody>
</table>

Collection History: Found covered with strips of juniper bark and rocks

Age/Culture: Radio carbon dated to 1300 +/- 80 yrs BP; Fremont

AFO: Faunal remains, corn cobs and kernels, projectile point.

Note: Originally submitted as part of an affiliated inventory with accompanying notice; subsequently determined to be culturally unidentifiable; notice withdrawn

MNI: 2

AFO: 265
The Bureau of Reclamation-Nebraska Area Office, has withdrawn a cultural affiliation of Pawnee, Wichita or Arikara from a skull taken from a known Central Plains Tradition site in Kansas, reassigned the skull to a non-specific site designation, and stated that the skull would be listed on the Bureau’s Culturally Unidentifiable inventory. A senior scientist at the Smithsonian and professor of the University of California-Davis were then allowed by the Bureau of Reclamation to conduct scientific analysis, including DNA studies, on the skull, which may have resulted in the destruction of part, or all, of the skull. This was done after a NAGPRA claim to the skull was submitted to the Bureau of Reclamation by one or more of the affected Tribes, and after at least one affected Tribe objected, in writing, to any destructive study of the skull.29

A researcher contacted the Nebraska Area Office to attempt to determine which of the MNI on that agency’s database record referred to the skull in question, and was told by an archeologist for the Nebraska Area Office that the skull has now been determined to be non-Native. He also stated that the skull is now believed to be historic, and could have been brought back from the war in Europe during the 1940s by the person who had the skull. It is unclear how the skull came into the possession of the Nebraska Area Office.30 This skull was also the subject of Congressional testimony submitted to the Senate Committee on Indian Affairs at its NAGPRA oversight hearing held on July 25, 2000.

The Federal agency that had the most number of MNI and AFO in the database was the Tennessee Valley Authority (TVA). The database lists a minimum of 8,031 human remains and 20,871 affiliated funerary objects in the TVA’s control and possession.

In 1933, Congress created the Tennessee Valley Authority (TVA) as a Federal corporation. With the construction of ten reservoirs along the Tennessee River and its tributaries, the TVA developed an archaeology program that surveyed the land and removed human remains, funerary objects, and cultural items from the area to be flooded. This archaeological work, funded in large part by the Works Project Administration, excavated approximately 1.5 million square feet of sites where Indians had lived for thousands of years.31

TVA manages lands in the states of Tennessee, Alabama, Mississippi, Kentucky, Georgia, North Carolina, and Virginia. The TVA website32 indicates that it consults with 18 sovereign tribes with a historical and cultural connection to the Tennessee Valley on projects involving NAGPRA. Although it has failed to finalize and publish a Notice of Inventory Completion in concert with the National NAGPRA Program, the TVA provided information about its holdings listed as culturally unidentifiable for inclusion in database. The TVA website also states, “A minimum of 8,368 Native American remains are curated at the Alabama State Museum of Natural History, University of Alabama, and at the Frank H. McClung Museum, University of Tennessee, Knoxville. Other repositories have not been identified.”

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29 Letter from the Three Affiliated Tribes, September 5, 2000; Letter to NAGPRA representative of the Three Affiliated Tribes, from Fred Ore of the Nebraska Area Office of the Bureau of Reclamation, November 18, 2002.
30 Telephone conversation, July 2007 between Pemina Yellow Bird and William Chada.
32 TVA Cultural Resources website: http://www.tva.gov/river/landandshore/culturalresources/index.htm
The TVA's treatment of Relocated Cemeteries, which were also impacted by the flooding, are discussed in a separate section of the TVA website. Assuming responsibility for this massive effort, the TVA surveyed the cemeteries, removed the caskets, and reburied them in accordance with the wishes of the next of kin. The cemetery removal program also took the markers and headstones from the original graves and placed them at the site of the new graves.\textsuperscript{33}

In accordance with the American Antiquities Act of 1906, the TVA had placed the disinterred in six universities and museums. In 1990, with the enactment of the Native American Graves Protection and Repatriation Act, the TVA was also compelled to comply with that statute.

Indian occupancy of the Southeast reaches back in time for thousands of years. Archaeologists divide the occupancy into five temporal periods: Paleoindian, Archaic, Woodland, Mississippian, and Historic. The Cherokees, Choctaws, Chickasaws, Muscogees, and Seminoles have maintained a connection to their ancestral homelands in the Southeast although they were forcibly removed from their birthplaces, their sacred places, and the graves of their ancestors during the 1800s. Many of these town sites were situated along the valleys and waterways that crossed the landscape.

During that ensuing century, former Indian inhabitants demanded protection for their sacred places, burials, and other culturally sensitive land. In 1998, these tribes issued their NAGPRA Policy Statement, Resolution 98-28. The document begins with a statement of the sovereignty, and the tribes agreed:

- To recognize a two-foot perimeter surrounding the grave, along with its human remains and funerary objects, as sacred.
- To regard as sacred excavated Earth even with the absences of the human remains and funerary objects.
- To consider any cleaning or washing of grave articles as a human rights violation.
- To discourage all forms of scientific testing on ‘historic or prehistoric (Paleo) Native American human remains for the purposes of determining cultural affiliation or age dating.
- To claim, either separately or collectively, those human remains from the Southeast categorized as culturally unidentifiable.\textsuperscript{34}

During the public comment phase of the Nashville, Tennessee, NAGPR Review Committee meeting in December 2000, James Bird, Cultural Resource Director and Tribal Historic Preservation Officer of the Eastern Band of Cherokee, noted the repatriation problems the Cherokees were having with the TVA, whose collections are contained in six universities and museums. Indicating that Tennessee has no federally-recognized Indian tribes located within its boundaries, he stated that much of the State falls within the Cherokee Nation’s traditional territory. Bird noted that TVA officials had declined to report its NAGPRA compliance efforts to the Review Committee. He cast doubt on the University of Alabama’s claim of encountering problems affiliating human remains without adequate evidence, although the Cherokees had provided scholarly information about the Cherokees’ occupation in the area.\textsuperscript{35}

\textsuperscript{33} TVA Cultural Resources website: http://www.tva.gov/river/landandshore/culturalresources/cemeteries.htm
\textsuperscript{34} NAGPRA Policy Statement, United South and Eastern Tribes, Resolution 98-28...
\textsuperscript{35} Minutes, Native American Graves Protection and Repatriation Act Review Committee, Twentieth Meeting, December 11-13, 2000.
D. Two High-Profile Federal–Tribal Case Studies

One member of the project team also examined two specific, high profile Federal–Native cases for any commonalities. In the course of his work, the researcher found that the determination of cultural affiliation – for both human remains and associated funerary objects classified as culturally unidentifiable – can become a matter of considerable controversy. The first case study examined the “Spirit Cave” controversy. The second probed the issues surrounding the disagreement over the Ancient One, also known as Kennewick Man.

In the first case study, the Bureau of Land Management (BLM), joined by the Nevada State Museum, sought to control the process of determining cultural affiliation so as to reach an apparently predetermined outcome. In doing so, the agency appears to have gone to great lengths to avoid its compliance responsibilities. Due to BLM’s actions, the members of the Fallon-Paiute Shoshone Tribe felt that they had no choice but to engage in a lengthy, time-consuming and expensive process that has, to date, failed to establish cultural affiliation and subsequent repatriation of one of their ancestors. This research examined major aspects of the Paiutes’ efforts to have the BLM change its classification of the remains and funerary objects from “culturally unidentifiable” to “culturally affiliated” for the purpose of repatriation. The BLM’s maneuvering has enabled the illegal scientific study of human remains and funerary objects, in direct conflict with the beliefs of the Paiutes. The Federal district court’s ruling, which found BLM’s behavior to be arbitrary and capricious, may eventually result in that agency’s fair and impartial weighing of the Tribe’s evidence.

The Ancient One case also involves a dispute over the cultural affiliation of a set of human remains stemming from a 1996 inadvertent discovery, six years after NAGPRA became law, on lands managed by the U.S. Corps of Engineers. This research discusses some of the key facts of this highly-publicized case including the legal challenge initiated by a group of scientists to a 2000 Secretary of the Interior decision that culturally affiliated the Ancient One, based on a preponderance of the evidence, with four Northwest Indian tribes and one non-federally recognized band. The struggle over the human remains found along the banks of the Columbia River in Washington State was eventually decided by a Federal appellate court’s affirmation of a district court’s decision that vacated the Secretary of the Interior’s decision regarding cultural affiliation based on geography and oral history. The Secretary interpreted NAGPRA as Indian law, finding that its ambiguities must be interpreted liberally and in the favor of Indian interests. The appellate court’s decision places less reliance on oral evidence than information generated by other forms of evidence.

This research draws from the National NAGPRA website, including the minutes of the NAGPR Review Committee meetings, the “ Culturally Unidentifiable Native American Inventories Pilot Database,” and the NAGPR Review Committee Reports to Congress. It is also based on information from legal briefs, legal cases, newspapers, and other websites.