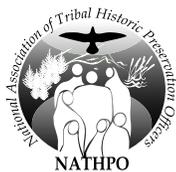




**FEDERAL AGENCY  
IMPLEMENTATION  
OF THE  
NATIVE AMERICAN  
GRAVES PROTECTION  
AND REPATRIATION  
ACT**



A report by the Makah Indian Tribe  
and the National Association of Tribal  
Historic Preservation Officers



June 30, 2008  
Washington, DC

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### **Disclaimer:**

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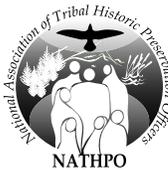
Emma Dulik and great grandson, Austin Jimmicum, 2006. Photo courtesy of the Makah Cultural and Research Center. Photographer: Theresa Parker

**June 30, 2008**

Washington, DC



# **FEDERAL AGENCY IMPLEMENTATION OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT**



**A report by the Makah Indian Tribe and  
the National Association of Tribal Historic  
Preservation Officers**

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**June 30, 2008**

**Washington, DC**



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# FOREWORD

## **Federal Implementation of the Native American Graves Protection and Repatriation Act**

*A Report by the Makah Indian Tribe and the National Association of Tribal Historic Preservation Officers*

For decades, spanning the breadth of two centuries, the human remains of thousands of Native Americans were lodged in federal repositories, museums, and scientific institutions. Many, many more were unearthed to make way for development and urbanization. It required an act of the Congress to ensure that their loved ones are accorded the proper respect in death that they enjoyed in life.

The Native American Graves Protection and Repatriation Act, enacted in 1990, is one of the most important statutes enacted to restore honor to Native Americans, Alaska Natives and Native Hawaiians. It provides authority for Native families to reclaim the remains of their ancestors, their grandparents and parents, their brothers and sisters. This is the first report in the ensuing 18 years to assess the Act's effectiveness. While there is no question that the Act represents a huge step forward in setting the proper stage for repatriation, there remain areas to be clarified, such as a clear priority accorded to the wishes of lineal descendants, as well as the possible expansion of authorities to better ensure that Native Americans are accorded the same respect and dignity that other Americans have rightly come to take for granted once their loved ones are laid to rest.

This is a first step, an important first step to restore honor and dignity to Native Americans, Alaska Natives and Native Hawaiians.

**Senator Daniel K. Inouye**

U.S. Senate

Washington, DC

# I. EXECUTIVE SUMMARY

This study was undertaken to prepare a substantive foundation for assessing the implementation of the Native American Graves Protection and Repatriation Act (NAGPRA) and identifying where improvements might be made. In addition to presenting findings and recommendations, this report provides legal and regulatory information.

As a result of successful repatriation efforts, many Indian communities have brought their relatives and ancestors home. Solemn ceremonies honor the return of these individuals: an honor that each family and community in the United States conducts for their dead in their own way. Also, resumption of ceremonial life can begin anew with the return of sacred, ceremonial objects. Each repatriation enables Native communities to employ the objects and items that have been handed down for countless generations in teaching their younger generations not only the important role that these sacred items have in their Native culture but also the pride, responsibility, and honor that are associated with the profound duty of caring for and conserving these precious resources.



Keex' Kwan Dancers in Juneau, Alaska, 2008. Photo credit: D. Bambi Kraus.

In order to better understand some of the principal reasons for the Native American repatriation movement, the Background section of this report includes historic information that describes one systemic effort that led to Native American ancestors and objects becoming separated from their local communities. Legal and regulatory summaries of the Act are included in the Background Section and Appendix, as well as in the Research Findings.

The Research Findings section is the work of five researchers who conducted original research for this report, analyzed existing public information, and conducted two national surveys to determine how the Act is being implemented around the country and how Federal agencies and Native Americans are working together to achieve the goals that the U.S. Congress established for the Act. Findings are organized by sections of the Act, as well as in general categories that best explain the current state of Federal agency implementation of the Act.

The internal processes and effectiveness of the National Park Service National NAGPRA Program and Park NAGPRA Program were not examined or evaluated, as these tasks are beyond the scope of this project. National Park Service staff were very helpful in providing access to information and checking facts and timelines for the myriad compliance deadlines and processing of information that constitutes the repatriation process.

Findings and Recommendations included in this report reflect the current state of Federal agency compliance with the Act, as of May 2008. For example, research findings indicate that most, if not all, Federal agencies do not have a designated contact person for purposes of the implementation of NAGPRA or if there is a designated contact, the person is typically responsible for other cultural resource compliance issues. There are no apparent enforcement mechanisms or incentives for Federal agencies to comply with NAGPRA, and, there is a clear need and many requests for training and policy development on all aspects of the Act. Recommendations, both general and specific, have been developed and include: improving information sharing; creating and improving databases – both in terms of content and search functions; and urging the U.S. Congress to request that the Government Accountability Office conduct an audit of Federal agency compliance with the statutory and regulatory requirements of NAGPRA for all relevant Federal agencies.

By nature of the goal - assessing implementation and suggesting improvements – this report of Findings and Recommendations examines a process that has a national scope, but which is not, at this time, quantifiable. We have examined a national process of consultation and information sharing that has led to individual success stories at the local level. It is clear from our work that in its 17-year history, the Act has enabled some measure of success in the efforts of Native people to secure the repatriation of Native American human remains and cultural objects, but much work remains.

## II. BACKGROUND



Ponca delegates and interpreters, Washington, DC, 14 November 1877. Photo credit: Charles Milton Bell, National Anthropological Archives, Smithsonian Institution (SPC BAE 4420 Vol 6 01008400). Back Row: Left to Right: Big Snake, John (Baptiste) Barnaby, White Eagle, Charles Le Claire, Big Chief. Front Row: Left to Right: Black Crow, Big Elk, Standing Bear, Standing Buffalo Bull, White Swan, Smoke (or Smoke Maker), Hairy Grizzly Bear (reclining in front of group.)

The Native American Graves Protection and Repatriation Act (NAGPRA) was signed into law on November 16, 1990. The law was enacted in response to accounts that span many generations over the significant portion of two centuries. These accounts document a spectrum of actions from harvesting human remains from the battlefield to disinterment of existing graves to the theft of Native American human remains, funerary objects given to the deceased at burial, sacred objects of different types, and objects of cultural patrimony that belong to the collective Native community.

### A. Congressional Action Leading to Enactment

One of the early hearings before the U.S. Senate Committee on Indian Affairs in February of 1987 revealed that in the late 1880's, the Surgeon General of the United States sent out a directive to military troops in the field to gather the skulls of Indians killed in battle.<sup>1</sup> The purpose of the directive was to enable the examination of the skulls to determine whether there was a

correlation between cranial capacity and intelligence. Reports from the field suggest that the Surgeon General's directive was carried out with efficiency, so that in addition to gathering human remains from the battlefields, the human remains of American Indians were disinterred from their temporary sites of burial as well as from permanent graves. Remains so gathered were shipped to the Army Medical Museum for study. Years later, the Army Medical Museum transferred its collection of Native American human remains to the Smithsonian Institution. The testimony of the Secretary of the Smithsonian Institution in the February 1987 hearing indicated that many of the Native American human remains transferred to the Institution were still retained there.<sup>2</sup>

During this hearing, representatives of Federal agencies responsible for managing the nation's public lands reported that, on occasion, and sometimes frequently, a discovery of Native American burial sites and sites culturally and religiously significant to tribes.<sup>3</sup> They recounted instances of inadvertent discoveries of Native American human remains and funerary objects on Federal lands, and they did not know to whom they should report such discoveries or to whom they should return the objects of the discoveries.<sup>4</sup> Repatriation was a concept that had yet to come to in contemporary times.

Federal land managers also shared with the Committee the accounts that they had received or their direct witness of grave robbing, the desecration of Native sacred sites, and the destruction of Native funerary objects, Native sacred objects and objects of Native cultural patrimony.<sup>5</sup>

<sup>1</sup> February 20, 1987, Hearing before the U.S. Senate Committee on Indian Affairs, on S. 187, the Native American Cultural Preservation Act.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

A second hearing was held in July of 1988 on the bill that had then been amended and re-titled the “Native American Museum Claims Commission Act”<sup>6</sup>. Anthropologists and archaeologists expanded upon the public record with additional accounts of Native sacred site desecration, and the destruction and theft of sacred items and cultural objects that were precious to the Native people of the United States.

Thereafter, a debate emerged about whether museums and scientific institutions should have the right to retain those Native sacred items and cultural objects, and Native ceremonial dress and items used in tribal cultural and religious practices, which had found their way into the collections of museums and scientific institutions. Should these items and objects, as well as Native American human remains, be retained by institutions, because they were valuable subjects of scientific research? Should the museums and scientific institutions serve as the keepers of the Native culture? Or should Native people have the right to reclaim the remains of their ancestors, and to seek the return of the physical manifestations of their tribal cultures and religions?

An opportunity for a national dialogue was requested of the committees of jurisdiction in the Congress – a national dialogue that would involve tribal leaders, Native cultural practitioners, anthropologists, archaeologists, scientists, Federal land managing agency representatives, and officials of museums and scientific institutions, and which would focus on addressing these critical questions. In the interim, the Congress was asked not to move forward with legislation.

A year-long national dialogue ensued – and the participants reported back to the Congress that while they were not able to reach consensus on solutions, they did develop an understanding of and a mutual respect for the respective positions of those involved, and they came to agreement on a set of values that should guide considerations of when and under what circumstances repatriation or retention might be appropriate.<sup>7</sup>

Thereafter, the focus shifted to the Congress to respond to the growing public debate and to demand that, at a minimum, the human remains of Native Americans should be returned to their families, their descendants, or their tribes of origin.

The values developed in the national dialogue served as a guidepost for the discussions in the Congress of how best to strike a balance amongst often competing perspectives and positions. New questions surfaced, such as who should define what is “sacred” to Native cultures? Should there be a measure of how central a cultural object or a sacred item was to a particular Native cultural practice or the religious beliefs of tribal members? If a sacred item or cultural object were not central to a Native belief system, should there be a presumption in favor of it being retained by a museum or scientific institution? Would Native people define everything as “sacred,” with the result that, eventually, the great museums and scientific institutions of the nation would be emptied of their Native American collections?

Ultimately, congressional committees with jurisdiction over matters of Federal Indian law engaged in a process of consultation with all of the interest groups, draft legislative initiatives were developed, further consultation on those initiatives was had, congressional hearings were held, and both houses of the Congress acted upon what became the Native American Graves Protection and Repatriation Act. This Act provided a process for the repatriation of Native American human remains, funerary objects, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony.

The regulations subsequently promulgated to carry out the objectives of the Act provide “a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.”<sup>8</sup>

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<sup>6</sup> Hearing of the U.S. Senate Committee on Indian Affairs, July 19, 1988, on S. 187, the Native American Museum Claims Commission Act.

<sup>7</sup> Hearing before the U. S. Senate Committee on Indian Affairs on S. 1980, the Native American Repatriation of Cultural Patrimony Act, and Heard Museum Report, and on S. 1021, the Native American Grave and Reburial Act, May 14, 1990.

<sup>8</sup> Native American Graves Protection and Repatriation Act Regulations, 60 Fed. Reg. 232, 62134 (Dec. 4, 1995).

## B. Mandated Activities for Federal Agencies and Museums



**Makah Tribal member Polly DeBari examining oil bowl in National Museum of the American Indian collection. Photo courtesy of the Makah Cultural and**

The Native American Graves Protection and Repatriation Act establishes a framework that is designed to facilitate the repatriation of Native American human remains and funerary objects, sacred objects and objects of cultural patrimony. The researchers considered the following major indices as demonstrations of how the Act is being implemented.

First, each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects must compile an inventory of such items and, to the extent possible, also identify the geographical or cultural affiliation of each item, in consultation with tribal government and Native organization officials. As stated in the law, the deadline for compiling inventories for those Federal agencies and museums with collections of Native American remains and objects, in consultation with the affiliated tribe(s), was November 16, 1995. The Federal agencies and museums were to send the final inventory to the culturally affiliated Native communities by May 16, 1996. As of April 20, 2007 (effective date of the “future applicability” rule), this consultation and notification process also applied to newly discovered human remains and associated funerary objects (two years to complete inventory).

Second, within six months of the completion of the inventory, each Federal agency and museum was required to notify the Indian tribe(s) or Native organization(s) if the cultural affiliation of the remains and associated funerary objects was determined, and identify the circumstances surrounding the acquisition of remains or objects. The initial deadline for providing written notification to the affected tribe(s) or Native organization(s) was May 16, 1996, and now is six months from completing a new inventory.

Third, each Federal agency and museum was to prepare a summary of its respective Native American collections which describes the scope of the collection, the kinds of objects in the collections, a reference to geographical location of the objects in the collection, the means of acquisition and the period of acquisition, and cultural affiliation of items in the collection where that information is readily ascertainable. The Act provides that summaries were to be completed not later than November 16, 1993. Summaries are more generalized than inventories, but were also to have been compiled in consultation with Indian tribe(s) and Native organization(s) as part of the process.

As indicated above, these foundational steps in the process are intended to facilitate the process of repatriation of Native American human remains and associated funerary objects, sacred items and objects of cultural patrimony.

The statute does not require the submission of an annual or periodic report to the U.S. Congress on the nature and extent of repatriations that have been effected pursuant to the Act’s authority. Each tribal government or Native organization that has sought and successfully secured the repatriation of the human remains of their relatives, or associated funerary objects, sacred items or objects of cultural patrimony, would know of that repatriation, and in like manner, the Federal agency or museum that affected the repatriation would know of that repatriation. But the statute doesn’t require any entity to maintain a record of each repatriation or an aggregate compilation of all repatriations. The Department of the Interior chose not to include such a reporting requirement in its general implementation regulations. In the absence of such a system for the reporting of each repatriation action and a mechanism for identifying the total number of repatriations, the Congress, on

behalf of the Native American people for whom the law was enacted, lacks the means to determine whether the Act's goals are being effectively implemented.<sup>9</sup>

## **C. Overview of Makah-NATHPO Research Project**

Today, seventeen years after the enactment of the Native American Graves Protection and Repatriation Act, the National Park Service National NAGPRA Program awarded a grant to the Makah Tribe for this project. The Tribe's application proposed a close working relationship with the National Association of Tribal Historic Preservation Officers ("NATHPO") as the basis from which to systematically assess how the Act has worked over that time and whether there remain significant barriers to the effective implementation of the Act.

The report focuses on Federal agency participation in and compliance with the Native American Graves Protection and Repatriation Act, including such overarching issues as completing notices of inventory, determining cultural affiliation, developing and implementing agency policies on tribal consultation, and resources to assist the agency meet its responsibilities under the Act.

The following five researchers and editors conducted the research and summarized their efforts for this report (in alphabetical order): Cindy Darcy; Maria Elena Frias; Amy Kolakowsky; D. Bambi Kraus (Tlingit); Dr. James Riding In (Pawnee); Pemina Yellowbird (Arikara-Hidatsa); and Patricia Zell. Additionally, nine individuals reviewed a draft of this report prior to its publication. More information on researchers and reviewers may be found at the end of this report.

The recommendations proposed in this report are premised upon the findings of the assessments, survey results, and research conducted as outlined above within the context of the limitations referenced.

The researchers referenced the requirements and directives of the statute and employed the following methodology in gathering data to assess implementation of the Act:

### **i. Legislative and Regulatory Review**

A brief summary of the Act and regulations was produced for this report as important background information for several reasons. First, we wanted to identify any sections of the Act that have yet to be codified via the public rulemaking process. Second, there is not an easily accessible compilation of the current regulatory provisions, as of March 2008. In order to understand the state of development for regulations that implement the Act, several sources must be accessed in order to find the current regulatory language. Finally, the report's authors wanted to make this report available to the general reader who may have little to no experience with the Act or its legislative history and regulatory provisions, thus text boxes and sidebars are included in this report to aid the reader a better understanding of the law and regulations. Additionally, Appendix A of this report contains these two summaries:

- The Native American Graves Protection and Repatriation Act, enacted into law on November 16, 1990 (Public Law 101-601).
- Title 25 of the United States Code, the title of the U.S. Code in which most Federal-Indian statutes are codified, and the specific sections which contain the statutory authority for the Native American Graves Protection and Repatriation Act, beginning at section 3001, as well as the regulations promulgated under the authority of the Act, which are found in Title 43, section 10 of the U.S. Code of Federal Regulations.

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<sup>9</sup> In 1990, the Congressional Budget Office estimated that the remains of about 100,000-200,000 Native American individuals and 10-15 million objects were stored in the nation's museum and Federal repositories (S. Rept. 101-473 to accompany S. 1980, providing for the protection of Native American graves and repatriation of Native American remains and cultural patrimony.) Examining publicly available information from the National NAGPRA Program website, 31,383 Minimum Number of Individuals have been approved for return using the repatriation process – roughly fifteen percent (15%) of 200,000. Assuming that all of these remains were actually repatriated, this amounts to about 1% per year.

## ii. Assessing Original Information Maintained in the National NAGPRA Program Office

During the summer of 2007, two individuals reviewed all original information that was submitted by Federal agencies per the inventory component of the Act and which are on file in the NPS National NAGPRA Program in Washington, DC. Reviewed documents included the original inventory correspondence (many dating back to 1995), as well as any additions, amendments, and new data since original submission. They compared this information to the Notice of Inventory Completion that was published in the *Federal Register*. This task was completed for all Federal agencies, as of September 2007, and focused upon the current status of Native American human remains and associated funerary objects within the control of each agency. Findings of this work may be found in Section III.B. of this report.



Reno Franklin inspecting a Kashaya Burden Basket 2003. Photo by Walter Antone.

## iii. Analysis of the “Culturally Unidentifiable Native American Inventories Pilot Database”

An in-depth analysis was conducted of the “Culturally Unidentifiable Native American Inventories Pilot Database,” which is maintained by the National Park Service (NPS), National NAGPRA Program Office in Washington, DC.<sup>10</sup> This free and publicly available database may be requested via email or it may be searched online using the search functions. Pursuant to Section 8 of the Act, the NPS NAGPR Review Committee is responsible for “compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains.” Even though a Notice of Inventory Completion is not required for items now listed in this database, Federal agencies and museums were required to consult with all Indian tribes and Native Hawaiian organizations from whose aboriginal lands the remains were recovered. The consultation process that was actually employed, prior to submission of database entries, is unknown and was not studied as part of this research project.

An analyst reviewed the information contained in the database to determine if the information it contains furthers an understanding of issues involving Federal agency compliance and to what extent the database is a useful tool for assisting Indian tribes and Native Hawaiian organizations in their efforts to implement the Act. Findings of this work may be found in Section III.C. of this report.

## iv. Review and Summary of Two High Profile Federal-Tribal Cases

Two high profile, tribal-federal specific cases were reviewed and summarized as part of this project to assist in the understanding of the repatriation process. The one commonality in both cases was the issue of determining cultural affiliation. A summary of the cases may be found in Section III.D. of this report and the actual case studies may be found in Appendix B.

<sup>10</sup> Database may be accessed on NPS National NAGPRA Program website: <http://64.241.25.6/CUI/index.cfm>

**v. Review of the NPS NAGPRA Grants Program as One Source of the Federal Resources Available for NAGPRA Compliance**

Using publicly available information, a funding history of the NAGPRA Grant Program was developed to provide an insight into the level of support the U.S. Congress and executive branch have provided the program. More information on this topic may be found in Section III.A.v.

**vi. National Surveys of Federal Agencies and Native Americans**

The research team, which included NAGPRA practitioners, developed two surveys: one for Federal agencies and another for tribal governments and Native organizations. Questions contained in the two surveys were tested on Federal and tribal officials and then refined to assure clarity in the questions posed, as well as precision in the responses, including an opportunity for respondents to expand upon their responses to any of the questions posed. Highlights of these two surveys may be found in Section III.A. of this report.

Because there is no list of designated Federal agency personnel charged with the responsibility to implement the NAGPRA statute and regulations, the NATHPO survey was sent to each of the thirty-six (36) distinct agency/departamental Federal Preservation Officers (“FPOs”), as listed on the website of the Advisory Council on Historic Preservation in August 2007.<sup>11</sup> The FPO is the individual(s) that each Federal agency has designated as having the responsibility to implement the National Historic Preservation Act, and other Federal laws and executive orders. Typically, these personnel are involved with all aspects of cultural and historic preservation. For some Federal agencies, there are FPOs for sub-agencies or divisions or bureaus within each agency. NATHPO sent requests to each of these subdivisions in order to ensure that they were apprised of the survey.



**Traditional Anishinaabeg Spirit Houses associated with a Traditional Anishinaabeg Cemetery. Photo provided/taken by Thomas McCauley - White Earth Tribal Archaeologist/Tribal Historic Preservation Officer.**

A survey of Indian tribal governments, Alaska Native corporations and Native Hawaiian organizations was sent to each Native American or Native Hawaiian entity, as identified in the list of Federally-recognized tribes maintained by the U.S. Department of the Interior, as well as Alaska Native entities and Native Hawaiian organizations that are listed in the National Park Service National NAGPRA Program’s “Native American Consultation Database” and which may be found on that program’s website.<sup>12</sup> If a tribal respondent had the time, resources, and interest, they were directed to an online survey that had additional NAGPRA questions. Respondents to the additional questions were fewer in number, but their responses in key areas contain important information and thus are included in this report.

**D. Project Limitations**

The assessment which follows is constrained by the resources available to conduct a systematic analysis of the Act’s implementation at Federal, regional, state and tribal levels and of Federally-funded museums and institutions, as well as, the resources necessary to assess the nature and extent of training, and to prepare accounts of specific repatriation experiences.

<sup>11</sup> ACHP website noted is <http://www.achp.gov/fpoagencyinfo.html>

<sup>12</sup> NPS National NAGPRA Program website noted is <http://home.nps.gov/nacd>

The research conducted through Federal and tribal surveys, the “Culturally Unidentifiable Native American Inventories Pilot Database” analysis and assessment of Federal agency submissions to the National NAGPRA



**Makah doll made by Frank Allabush (1864-1912) in the National Museum of the American Indian collection. Photo taken during Makah delegation visit in 2006. Photo courtesy of the Makah Cultural and Research Center.**

Program Office, and case studies were necessarily constrained by the availability of financial resources to carry out the study of the effectiveness with which the Native American Graves Protection and Repatriation Act has been implemented.

As with most surveys, challenges lie in securing responses to the survey instrument. For instance, as identified above, where a Federal agency has not designated an office or an employee of the agency as having responsibility for the implementation of the NAGPRA statute, it is difficult to ascertain where in the Federal agency the responsibility for responding to the survey may have been directed – thereby compounding the challenge of follow-up communication.

The internal processes and effectiveness of the National Park Service National NAGPRA Program and Park NAGPRA Program were not examined or evaluated as these tasks are beyond the scope of this project.

Consistent with these limitations, Section IV of this report contains recommendations for future research to address some of the limitations mentioned here, as well as a means of securing a more comprehensive evaluation of compliance with the mandates of the statute.

### 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;"<sup>13</sup>
- "Culturally Unidentifiable Native American Inventories Pilot Database,"<sup>14</sup> 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.<sup>15</sup>

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



Guests from Angoon at 1904 Sitka potlatch. Alaska State Library – Historical Collections. Photo credit: Elbridge W. Merrill.

<sup>13</sup> Website at: [http://www.nps.gov/history/nagpra/fed\\_notices/nagpradir/index.htm](http://www.nps.gov/history/nagpra/fed_notices/nagpradir/index.htm)

<sup>14</sup> Website at: <http://64.241.25.6/CUI/index.cfm>

<sup>15</sup> 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<sup>16</sup>, 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.

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<sup>16</sup> 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:

- 25 U.S.C. 3003(d)(3), "...Secretary [of Interior] who shall publish each notice in the *Federal Register*."
- 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:

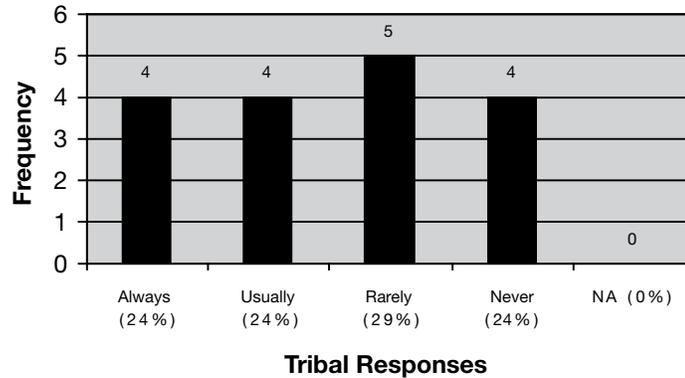
- Four (4) Tribal respondents stated that a Federal agency had not completed an inventory associated with their tribe, village, or Native Hawaiian organization.
- Five (5) Federal agencies stated that they had not completed inventories and summaries of all collections that are subject to NAGPRA.
- Six (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.



Beaded pouch, Seminole. Photo credit: Department of Anthropology, Smithsonian Institution (E380668).

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”**



Strawberry Basket by Minnie Jackson, circa 1998. Photograph by Jennifer Jones. Courtesy of the Ziibiwing Center of Anishinabe Culture & Lifeways, The Saginaw Chippewa Indian Tribe of Michigan.

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 the 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 the remains or objects are not included 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 NAGPRA 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.<sup>17</sup>

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.

<sup>17</sup> National NAGPRA FY07 Final Report For the period October 1, 2006-September 30, 2007. Weblink to report: <http://www.nps.gov/history/nagpra/DOCUMENTS/FY%2007%20Final%20Report%20final%20draft%20102207.pdf>

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.



Wood carving, snipe oil cup. Photo credit: Department of Anthropology, Smithsonian Institution (E43244).

#### 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.



**Makah mask in the National Museum of the American Indian collection. Photo taken during Makah delegation visit in 2006. Photograph by Maria Pascua, courtesy of the Makah Cultural and Research Center.**

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**

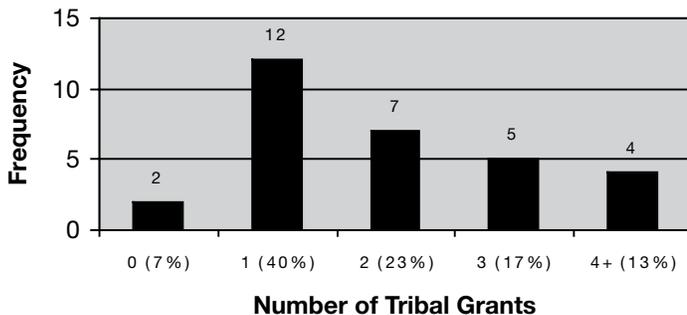
**GRANTS:  
Section 10 of the Act**

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<sup>18</sup>, 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.<sup>19</sup> 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.

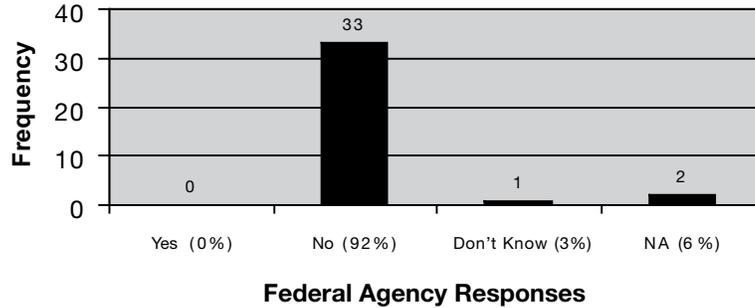
##### **a. Resources and Training for NAGPRA Activities**

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).

<sup>18</sup> Indian tribes and Native Hawaiian organizations may also apply for a Repatriation grant, not to exceed \$15,000 per application.

<sup>19</sup> “National NAGPRA FY07 Final Report For the Period October 1, 2006 – September 30, 2007.” Weblink to report: <http://www.nps.gov/history/nagpra/DOCUMENTS/FY%2007%20Final%20Report%20final%20draft%20102207.pdf>

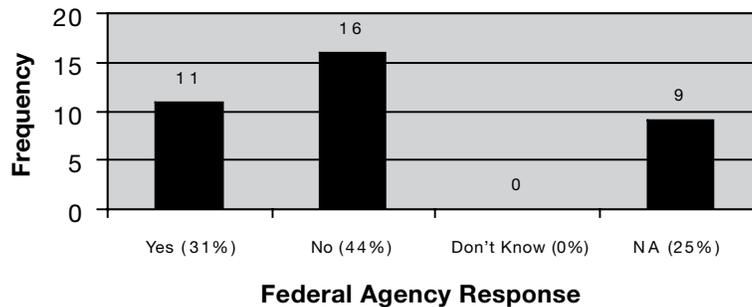
**FIGURE 3: “Do You Work Full Time on NAGPRA?”**



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.

**FIGURE 4: “Receive NAGPRA Training At Outset”**



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.



**Cowlitz basket, circa 1841. Photo credit: Department of Anthropology, Smithsonian Institution (E2614).**

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 NAGPRA 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:

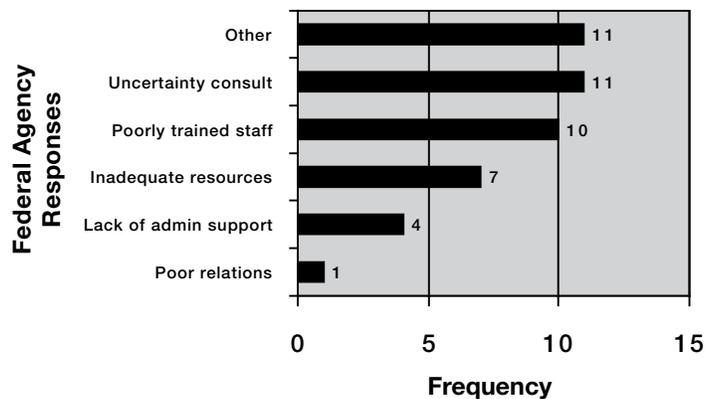
- Some agencies don't recognize NAGPRA issues that fall outside of federal (or state) Indian reservations, even though we claim ancestry to many places in the geographic region.
- Federal staff who work in [Washington] DC are insensitive and do not want to learn, but try to push their responsibility 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.

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”**



Documenting a Caddo cemetery. Photo used with permission of the Caddo Nation.

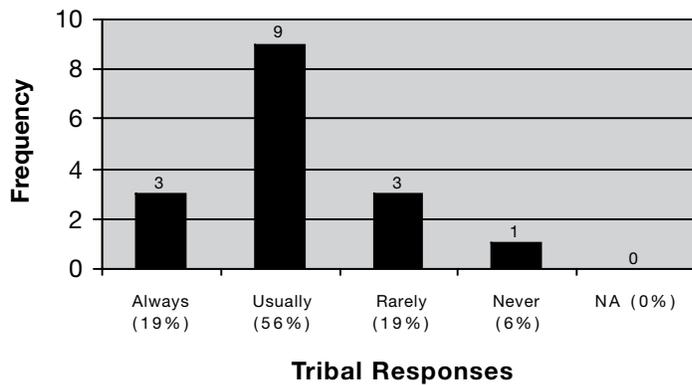
#### **d. Positive Areas to Explore**

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).

**FIGURE 6. “Federal agencies act respectfully”**



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.



**Hamper Basket by Robert Wabhebeck, circa 1998. Photographer unknown. Courtesy of the Ziibiwing Center of Anishinabe Culture & Lifeways, The Saginaw Chippewa Indian Tribe of Michigan.**

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.



***Beauty Despite Hardship Display***, Diba Jimooyung: Telling Our Story permanent exhibit. Penrod/Hiawatha Co. Courtesy of the Ziibiwing Center of Anishinabe Culture & Lifeways, The Saginaw Chippewa Indian Tribe of Michigan.

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.<sup>20</sup> 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.



Traditional Anishinaabeg Spirit Houses associated with a Traditional Anishinaabeg Cemetery. Photo provided/taken by Thomas McCauley-White Earth Tribal Archaeologist/Tribal Historic Preservation Officer.



Beaded bag, Cherokee, circa 1868. Photo credit: Department of Anthropology, Smithsonian Institution (E6938).

<sup>20</sup> Submission of information to the National Park Service was added officially as a requirement in January 1996.

**FIGURE 7: “Federal Agency Files Reviewed”**

<b>Number</b>	<b>Agency</b>
106	Department of Agriculture: Includes regional offices, national forests, and grasslands
3	Department of Commerce
152	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
18	Department of Energy: Includes regional power administrations, laboratories, reserves, and regional offices
1	Department of Health and Human Services
1	Department of Transportation
190	Department of the Interior: Includes Bureau of Indian Affairs and affiliated repository museums, Bureau of Land Management, Bureau of Reclamation, Fish & Wildlife, and National Park Service
2	Geological Survey
9	Department of Justice: Includes Federal Bureau of Investigations
1	Nuclear Regulatory Commission
1	Tennessee Valley Authority

The researchers did not individually count the MNI in the original paperwork for the Tennessee Valley Authority (TVA), which included 8,031 individuals<sup>21</sup>. 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<sup>22</sup> 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.”

<sup>21</sup> The number of 8,031 was derived from the National Park Service National NAGPRA Program report, “Federal Agency Statistics,” October 31, 2006.

<sup>22</sup> 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;
- National Park Service: Navajo National Monument, Dinosaur National Monument, Mesa Verde National Park, Hawaii Volcanoes National Park, Capitol Reef National Park, and Fort Vancouver National Historic Site;
- 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<sup>23</sup> 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.



Iowa tribal council member Joann Comer and tribal chairman Louis DeRoIn stand behind the glass case at the tribal headquarters containing the White Cloud family bear claw necklace that was handed down to traditional Iowa chiefs, 2003, Photographer: Mary Annette Pember, [www.mapember.com](http://www.mapember.com)

<sup>23</sup> Transcript of the Thirty-fifth Meeting of the NAGPR Review Committee, held in Phoenix, Arizona, October 15-16, 2007.

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).<sup>24</sup>

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<sup>25</sup> 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.

<sup>24</sup> 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.



Colville Confederated Tribes Archaeological Monitoring and Survey 2005.

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.<sup>26</sup> 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.



Ojibwe Tulip Bag, circa 1850, *Beauty Despite Hardship Display*, Diba Jimooyung: Telling Our Story permanent exhibit.. Penrod/Hiawatha Co. Courtesy of the Ziibiwing Center of Anishinabe Culture & Lifeways, The Saginaw Chippewa Indian Tribe of Michigan.

### 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 online 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.

<sup>25</sup> 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).

<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup>

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”**

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

<sup>27</sup> <http://www.nps.gov/history/nagpra/ONLINEDB/INDEX.HTM>

<sup>28</sup> 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”**

<b>Institution</b>	<b>US Dept. of Defense, Army COE, Albuquerque District</b>
<b>State/Area</b>	<b>New Mexico</b>
<b>County</b>	<b>Los Alamos</b>
<b>Site</b>	<b>LA 70, site well in Cochiti Dam project area</b>
<b>ID</b>	<b>Catalog #: BAND 21501, BAND 21503</b>
<b>Collection History:</b>	Excavated by USACE in late 1960s and 1970s by Charles Lange; transferred to USACE from Bandelier National Monument some time after 1995.
<b>Age/Culture:</b>	Unknown
<b>MNI:</b>	2
<b>AFO:</b>	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”**

	<b>Culturally Unidentifiable Human Remains</b>	<b>Associated Funerary Objects</b>
<b>Federal Agencies</b>	13,785	66,470
<b>Museums/Institutions</b>	104,690	762,234
<b>TOTAL</b>	<b>118,475</b>	<b>828,704</b>

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.

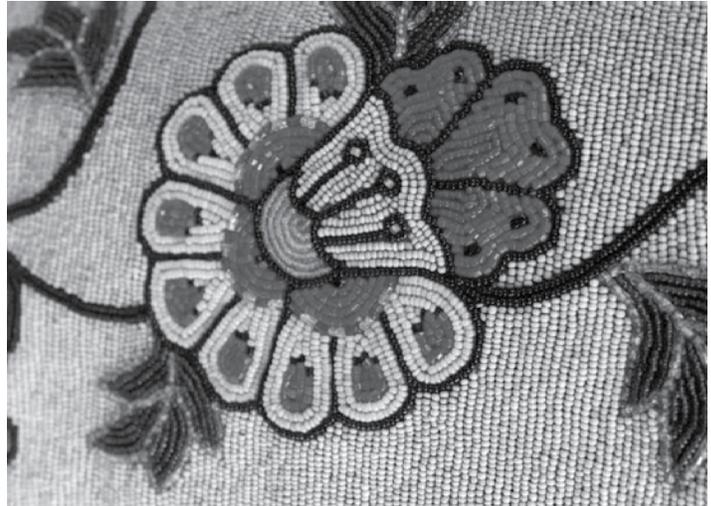
**FIGURE 11: “Ocala National Forest, U.S. Department of Agriculture”**

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

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

<b>INSTITUTION</b>	<b>US Dept. of Interior, NPS, Southeast Archeological Center</b>
<b>STATE/AREA</b>	<b>Georgia</b>
<b>COUNTY</b>	<b>Chatham</b>
<b>SITE</b>	<b>Deptford Site, 09 CH 00002</b>
<b>ID</b>	<b>SEAC-00248; SEAC 7</b>
<b>Collection History:</b>	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
<b>Age/Culture:</b>	Woodland, 500 BC-AD 1000 (Wilmington, AD 500-1000)
<b>AFO:</b>	None
<b>Note:</b>	AFO (bone awls, a mica disc, projectile points), are undergoing inventory and analysis, housed at University of Georgia
<b>MNI:</b>	19
<b>AFO:</b>	0

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).



Detail of Ojibwe Man’s Vest, *Beauty Despite Hardship Display*, Diba Jimooyung: Telling Our Story permanent exhibit. Penrod/Hiawatha Co. Courtesy of the Zibiwing Center of Anishinabe Culture & Lifeways, The Saginaw Chippewa Indian Tribe of Michigan.

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

<b>INSTITUTION</b>	<b>US Dept. of Interior, NPS, Ocmulgee NM</b>
<b>STATE/AREA</b>	<b>Georgia</b>
<b>COUNTY</b>	<b>Bibb</b>
<b>SITE</b>	<b>Middle Plateau-Trading Post, 09 BI 00001</b>
<b>ID</b>	<b>OCMU-00079; OCMU6</b>
<b>Collection History:</b>	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.
<b>Age/Culture:</b>	Early Mississippian; AD 900-1100 (Some elements of site show evidence of occupation dating from Archaic period (2500 BC) through 20th century.
<b>AFO:</b>	Beads?
<b>Note:</b>	Human remains from this project are housed at SEAC and Smithsonian. Those listed here only include those at SEAC
<b>MNI:</b>	8
<b>AFO:</b>	2

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 14: “Felsenthal, National Wildlife Refuge”**

<b>INSTITUTION</b>	<b>US Dept. of Interior, FWS, Felsenthal National Wildlife Refuge</b>
<b>STATE/AREA</b>	<b>Arkansas</b>
<b>COUNTY</b>	<b>Union</b>
<b>SITE</b>	<b>Locust Ridge Site (3Un8), Test Pit 4, Burial 2</b>
<b>ID</b>	<b>Catalog #: 72-534-137</b>
<b>Collection History:</b>	Acquired 10/1/72
<b>Age/Culture:</b>	Components dated to Glendora, Plaquemine, Coles Creek, and Marksville Periods.
<b>AFO:</b>	1 portion of turtle shell
<b>Note:</b>	12 HR and 1 AFO originally inventoried by FWS, but 2004 review comment indicates that USACE Vicksburg was landowner at the time of removal and is responsible for NAGPRA compliance
<b>MNI:</b>	0
<b>AFO:</b>	0

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).

**FIGURE 15: “Carlsbad Caverns, National Park Service”**

<b>INSTITUTION</b>	<b>US Dept. of Interior, NPS, Carlsbad Caverns NP</b>
<b>STATE/AREA</b>	<b>New Mexico</b>
<b>COUNTY</b>	<b>Eddy</b>
<b>SITE</b>	<b>LA-43600</b>
<b>ID</b>	<b>Accession #: CACA-516, 517</b>
<b>Collection History:</b>	Found in association with human skeletal materials on ledge below a pictograph area in the natural entrance of Carlsbad Cavern. Associated skeletal materials have not been located. Collected in 1967 by unknown individuals.
<b>Age/Culture:</b>	Unknown; likely Isleta Tigua; possibly Mescalero Apache
<b>AFO:</b>	Animal bones, brush, sherds, mano fragments, wood
<b>MNI:</b>	0
<b>AFO:</b>	60

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”**

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

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”**

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

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).

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

<b>INSTITUTION</b>	<b>US Dept. of Interior, NPS, De Soto NM</b>
<b>STATE/AREA</b>	<b>Florida</b>
<b>COUNTY</b>	<b>Manatee</b>
<b>SITE</b>	<b>Unknown</b>
<b>ID</b>	<b>DESO-00021; DES02</b>
<b>Collection History:</b>	Collected from park grounds during the 1940s and 1950s by a private individual from unspecified sites within the park; presented to park in 1997
<b>Age/Culture:</b>	Unknown; too old to make a determination of affiliation with a present-day tribe
<b>AFO:</b>	None; impossible to determine if artifacts donated with the human remains are associated
<b>MNI:</b>	3
<b>AFO:</b>	0

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

<b>INSTITUTION</b>	<b>US Dept. of Interior, NPS, Dinosaur NM</b>
<b>STATE/AREA</b>	<b>Colorado</b>
<b>COUNTY</b>	<b>Moffat</b>
<b>SITE</b>	<b>Pool Creek; 5MF2645</b>
<b>ID</b>	<b>ID #: 7; Accession #: DINO-00220; Catalog #: 12127</b>
<b>Collection History:</b>	Found covered with strips of juniper bark and rocks
<b>Age/Culture:</b>	Radio carbon dated to 1300+/-80 yrs BP; Fremont
<b>AFO:</b>	Faunal remains, corn cobs and kernels, projectile point.
<b>Note:</b>	Originally submitted as part of an affiliated inventory with accompanying notice; subsequently determined to be culturally unidentifiable; notice withdrawn
<b>MNI:</b>	2
<b>AFO:</b>	265

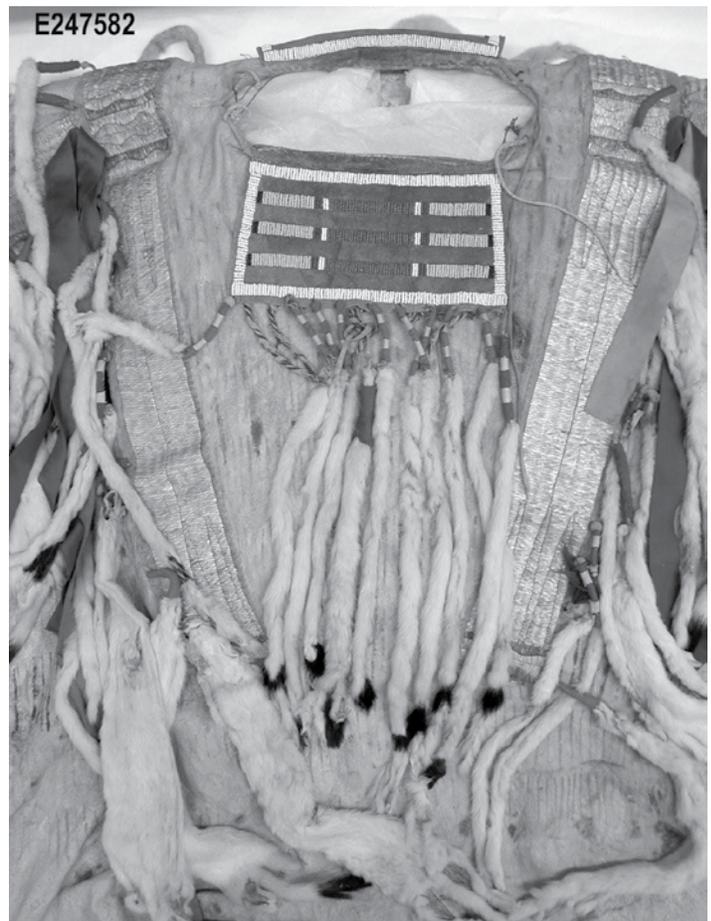
The Bureau of Reclamation-Nebraska Area Office, has withdrawn a cultural affiliation of Pawnee, Wichita or Arikara from a skull taken from a known Central Plains Tradition site in Kansas, reassigned the skull to a non-specific site designation, and stated that the skull would be listed on the Bureau's 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.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup>

TVA manages lands in the states of Tennessee, Alabama, Mississippi, Kentucky, Georgia, North Carolina, and Virginia. The TVA website<sup>32</sup> 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."



Indian shirt. Photo credit: Department of Anthropology, Smithsonian Institution (E247582).

<sup>29</sup> 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.

<sup>30</sup> Telephone conversation, July 2007 between Pemina Yellow Bird and William Chada.

<sup>31</sup> Frank H. McClung Museum website, University of Tennessee, <http://mcclungmuseum.utk.edu/newpermanent/archaeology/index.html>.

<sup>32</sup> 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.<sup>33</sup>

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.<sup>34</sup>

During the public comment phase of the Nashville, Tennessee, NAGPRA 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.<sup>35</sup>

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<sup>33</sup> TVA Cultural Resources website: <http://www.tva.gov/river/landandshore/culturalresources/cemeteries.htm>

<sup>34</sup> NAGPRA Policy Statement, United South and Eastern Tribes, Resolution 98-28. .

<sup>35</sup> 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.



**Ojibwe Man’s Vest, *Beauty Despite Hardship Display*, Diba Jimooyung: Telling Our Story permanent exhibit. Penrod/Hiawatha Co. Courtesy of the Ziiibwing Center of Anishinable Culture & Lifeways, The Saginaw Chippewa Indian Tribe of Michigan.**

## IV. RECOMMENDATIONS

There are some general themes that emerge from a review of all of the research that was conducted and more specific concepts that suggest that further statutory or regulatory action may be warranted.

### A. General Themes

#### i. Knowledge of Process and Responsibilities

One of the prominent issues that emerges from the results of both Federal agency surveys and the surveys of Native governments and organizations is the need for more training so that Federal agency personnel are aware of their agency's responsibilities under the Act, museum personnel are aware of their museum's responsibilities under the Act, and Native governments and organizations are aware of their rights and responsibilities under the Act.

The survey results would suggest that within the Federal agencies, seldom is there a full-time employee whose principle assignment is to carry out the agency's responsibilities under the Act. More often, if there is an employee who is tasked with assuring that the agency is in compliance with the mandates of the Act, that person's first responsibility is to assure compliance with section 106 of the National Historic Preservation Act. A number of the Federal agencies responding to the survey indicated that the agency has a designated Federal historic preservation officer, who may or may not devote part of his or her time to NAGPRA duties. Several agency respondents reported that they were not certain who had NAGPRA responsibilities within their agency, and others placed the role of determining cultural affiliation in the hands of the National NAGPRA Program through the publication of Notices of Inventory Completion.

It is perhaps thus not surprising that Native government and Native organization respondents reported that they have experienced difficulty in finding anyone within a Federal agency that can tell them with whom they should be addressing NAGPRA-related issues.

#### ii. Access to Information

No less important is the commonly-reported fact that unless a tribal government or Native organization has been contacted directly by a Federal agency or museum, they do not know how they would learn that a Federal agency or museum may have the human remains of their relatives, or associated funerary objects, sacred items or objects of cultural patrimony.

Some tribes report having had to resort to relying upon anecdotal evidence or reports that someone has seen something in a museum that looks like it would have been associated with that tribe's cultural and religious practices. Others have attempted to contact every Federal agency and every museum known to possess Native American collections. Such time-intensive, laborious and costly undertakings could have been rendered unnecessary if the policy and intent of the Act – namely to place the burden of reporting on those institutions that have possession of Native American collections – had been fully and effectively realized.

As referenced above, the Act does provide for a system of notification, but the integrity of the notification process is only as sound as the information that is provided to the Interior Department. The Act does not address how the Department would go about determining whether Federal agencies or museums may have Native American collections for which inventories and/or summaries have not been submitted. In late 2007, several museums and National Park units withdrew many pending Notices of Inventory Completion that would have publicly announced the existence of culturally-affiliated Native American human remains and associated funerary objects, thereby further frustrating the efforts of Native people to identify where human remains and cultural objects could be found.

In addition, a common practice of agencies and museums is to err on the side of caution when the cultural affiliation of human remains or associated funerary objects cannot be definitively determined. In this context, caution is exercised by reporting that such remains or objects are culturally unaffiliated. While such caution is understandable, as discussed in Section III.C. of this report, the classification of remains or associated funerary objects as culturally-unidentifiable often has the effect of placing those remains or objects so classified beyond the reach of the Act's preference for repatriation of Native American human remains and associated funerary objects.

### **iii. Consultation**

As outlined earlier, NAGPRA contemplates and directs that Federal agencies and museums consult with Native governments and Native cultural practitioners in determining the cultural affiliation of human remains and other objects and items within their respective Native American collections. Federal agencies indicated that an element of their success in working with Native Americans in complying with the Act is that they know with whom to consult.

The Act's regulations also provide that consultation is to be carried out as part of the intentional excavation or inadvertent discovery of human remains or objects. Written plans of action must be the product of consultation, and when re-interments are to take place, consultation in how such re-interments or associated repatriations are to take place is also anticipated.

Despite these statutory and regulatory requirements, a review of both Federal agency and Native survey responses suggests that Federal agency personnel often don't know with whom they should be consulting, and Native governments are not always welcomed when they seek to have a Federal agency or a museum engage in consultation. In fact, survey results indicate that there is substantial room for improvement in the area of consultation.

### **iv. Available Resources**

Native Americans place a high value on repatriating the remains of their relatives, ancestors, sacred objects and objects of cultural patrimony. The resources which are currently available to effect these repatriations fall far short of what is needed. While the U.S. Congress and administration have appropriated funds to support the NAGPRA program, overall, those funds have been inadequate to effectively address the mandates of the Act.

Insufficient resources also prevent Native governments and organizations from maintaining a robust NAGPRA program effort needed to assure protection of a tribe's cultural resources. NAGPRA grants to tribes and museums has decreased in the past five years, and an assessment of grants made between 1994 and 2007 indicates that proportionately fewer of the funds appropriated for this purpose are actually being allocated for grants (see Appendix C). Clearly, Federally-appropriated resources have been insufficient to address the needs of the repatriation process. It is unknown what the total need for NAGPRA training is at all levels and for both Federal agencies and Native people.

An examination of fiscal support at the Federal agency level may show parallel lack of support, both in terms of staff support and training for new and current staff tasked with the responsibility to comply with the Act.

#### **v. Standards**

Improving information sharing and establishing standards are important components of the repatriation process. What constitutes correct information and who sets the standards for the following:

- What format is to be used for a Notice of Inventory Completion and when has a Federal agency or museum complied with the Act per the notification process;
- How much evidence is necessary for an accurate determination of cultural affiliation;
- When are the remains of an ancestor considered to be “culturally unidentifiable.”

“Tribal consultation” and “cultural affiliation” are not easily understood and agreed upon processes. There are points in the repatriation process where exclusion from these two important steps prevents active engagement of an affected Indian tribe or Native Hawaiian organization. There are no publicly available standards on what constitutes meeting the requirement to consult with an affected Indian tribe or Native Hawaiian organization. Who sets these standards is also of concern.

#### **vi. Training and Technology**

Many of the challenges identified could be addressed and possibly overcome through the provision of training for Federal agency, museum, and Native government and organization personnel.

Federal agency survey responses suggest that those officials who are charged with carrying out NAGPRA responsibilities are frequently new or reassigned, so that while there may have been some training on the Act for those initially tasked with implementing the agency’s responsibilities, training has not been available to their successors. The same dynamic appears to be prevalent in Native communities, where the unmet need for training is further exacerbated by the lack of resources to gain access to training opportunities.

However, with the widespread advent of technological tools, there are solutions that could be applied to address the need for more knowledge about the Act, to build the capacity for access to information, to facilitate consultation, and to enable expanded training opportunities.

For instance, funds expended on travel of Federal agency personnel to training sites might be reallocated to the development of on-line instructional materials that would be accessible either directly or made available in CD and DVD formats. The development and maintenance of user-friendly databases hold the potential to greatly expand the access by Native governments and organizations to inventory and summary information held by the Interior Department. Computer software programs that enable users with differing levels of security protection to have appropriate access to confidential or proprietary information foster both transparency and accountability.

Most Native groups do not have the means to travel to national or regional hubs to take advantage of in-person training opportunities where such opportunities exist, nor do they have the means to travel to the Nation’s capital to access data that is maintained in paper files. Federal agencies also lack the resources to send Federal agency personnel out to areas of Native America for the critical purpose of consultation that is required under the Act, or to send Federal agency personnel to training sessions that are held at considerable distances from their assigned duty stations.

Many of the recommendations from both Federal agencies and Native groups can be achieved by building on-line, secure data systems that are accessible to the relevant users and their needs for information. Recent developments in computer software programs afford different users access to information that is compatible with statutory and regulatory requirements, while ensuring the security of proprietary and confidential materials. In this manner, Federal funding can be employed to maximize cost-effectiveness as well as to achieve both transparency and accountability.

## B. Specific Recommendations

In a climate in which the funding of Federal programs can be anticipated to fall short of what is needed to assure full compliance with statutory and regulatory requirements, creative and cost-effective alternatives must be identified.

### 1. Statutory

Amend the “Definitions” section of NAGPRA to clarify application to human remains so that “Native American” means of, or relating to, a tribe, people, or culture that is **or was** indigenous to **any geographic area that is now located within the boundaries of** the United States.

### 2. Regulatory

Establish an Inter-Agency NAGPRA Implementation Council within the Executive Branch (possibly the Office of Management and Budget) that would:

#### *a. Assure Compliance within each Federal Agency*

The Council should be vested with the authority to assure that each Federal agency with land management responsibilities or otherwise subject to the provisions of the Act is complying with the Act. The Council should identify instances in which creative approaches to compliance have proven to be effective for purposes of advising Federal agencies of useful models for compliance.

#### *b. Coordinate Compliance across all Federal Agencies*

The Council should also oversee coordination of Federal agency activity to assure compliance with the Act’s requirements across Federal agencies. The Council should maintain a database of compliance with NAGPRA across all Federal agencies including information on the compliance record of each Federal agency.

#### *c. Refer Non-Compliance and Remedies for Non-Compliance*

The Council should establish a mechanism for the referral of complaints concerning a Federal agency’s lack of compliance to the Inspector General of each Federal agency, and the Council should direct the National NAGPRA Program Office to publish relevant information on the referral process as well as information identifying the designated agent within each Federal agency with whom complaints should be filed in the Federal Register. The Council should also establish remedies for non-compliance with the statutory and regulatory requirements and the Council should direct the National NAGPRA Program Office to publish the remedies in the Federal Register.

#### *d. Train*

The Council, in coordination with the National NAGPRA Program within the National Park Service, should **assure** that all Federal agency personnel charged with responsibilities under the Act have the necessary training to effectively carry out their responsibilities under the Act.

***e. Dispute Resolution Role***

The Council should serve as a forum for the resolution of disputes amongst Federal agencies.

***f. Uniform Consultation Guidelines***

Following direct, meaningful and pre-decisional consultation with Indian tribes, Alaska Native villages and Native Hawaiian organizations, the Council should develop a set of uniform NAGPRA consultation guidelines for all Federal agencies. The Council should direct the National NAGPRA Program Office to publish the consultation guidelines in the Federal Register.

***g. NAGPRA Regulations***

The Council shall develop and maintain one set of regulatory language for all provisions of the Act.

**3. Oversight and Enforcement of Statutory Requirements**

***a. Training***

Establish a program to train Federal agency personnel who are assigned responsibility for NAGPRA implementation by each Federal agency including not only statutory and regulatory requirements but also requirements for pre-decisional consultation associated with cultural affiliation determinations and consultation associated with the publication of notices and with repatriation of cultural items as defined by the statute.

- i.* As part of the training effort, Native people with extensive NAGPRA experience in representing their tribes or Native Hawaiian organizations at NAGPRA and other cultural resource consultations, need to become a part of the National NAGPRA Program's training component. Official training conducted thus far (for Native people or for institutions) has been carried out by non-Native people, and while this training has provided some benefits, Native people report that there is still a significant need for education amongst Federal agency personnel when Native people seek to repatriate remains. High turnovers in NAGPRA-responsible staff at both the tribal and Federal levels also underscore the need for the permanent creation of a training team comprised of experienced Native NAGPRA representatives.
- ii.* In consultation with Indian tribes, Alaska Native villages, and Native Hawaiian organizations, the National NAGPRA Program Office should develop training modules, including a component that is accessible through the Internet, or which can be made available to Native groups in compact disc or DVD format.

***b. Issue and Publish NAGPRA Contacts and Policies within each Federal Agency***

- i.* Each Federal agency should promulgate a policy for the implementation of NAGPRA's statutory and regulatory requirements, including consultation requirements, and submit its policy to the National NAGPRA Program Office for publication in the ***Federal Register***.
- ii.* The National NAGPRA Program Office should create a publicly available database that lists each Federal agency repository for curation purposes, including location and contact information.

***c. Demonstrate Consultation with Native Americans***

The process that each agency proposes to follow for pre-decisional consultation associated with the determination of cultural affiliation of human remains and cultural items should be submitted to the National NAGPRA Program Office for publication in the ***Federal Register***.

***d. “Culturally Unidentifiable Native American Inventories Pilot Database”***

- i.* The “Culturally Unidentifiable Native American Inventories Pilot Database” should be revised to enable access to information across all Federal agencies so that an inquiry as to whether any agency has human remains or cultural items from a particular area can be pursued without having to search the records of each individual Federal agency.
- ii.* The National NAGPRA Program Office should require the submittal of information by Federal agencies documenting what pre-decisional consultation was undertaken to determine cultural affiliation of human remains and funerary objects listed in the database.
- iii.* The National NAGPRA Program Office should require the submittal of information by the Federal agencies documenting that human remains or associated funerary objects that the Federal agencies seek to retain for purposes of scientific study to ensure that the agency has met the statutory standard of proving that there is a “compelling scientific interest” in the retention of the remains or funerary objects that are identified in the database.
- iv.* The National NAGPRA Program Office should provide more frequent updates of the database, as well as other databases recommended in this report. The National NAGPRA Program Office should afford tribes and Native Hawaiian organizations an opportunity to provide input in developing new questions for the database.
- v.* The National NAGPRA Program Office should require the provision of uniform information to be contained in the database including: (1) a description of any study beyond counting, sorting, and original location of the burial of human remains or funerary objects, whether used to determine cultural affiliation or not, and whether or not the statute’s standard regarding extra-legal study had been met and by whom; (2) the full address of the current location of the culturally-unidentifiable human remains and associated funerary objects; (3) the title and detailed contact information of the office responsible for writing the database records for each Federal agency; and (4) the title and detailed contact information for each individual who is ultimately responsible for NAGPRA compliance for each Agency.

**4. General NAGPRA Program**

***a. Inventory of Repatriation Process Data***

Under current practice, there is no reporting system in place by which Federal agencies, museums, Indian tribes or Native Hawaiian organizations can submit information about the actual repatriation of human remains, associated funerary objects, sacred objects, or objects of cultural patrimony. Accordingly, the Congress has no means of periodically assessing the effectiveness with which the Act’s goals are being implemented.

- i.* In consultation with Indian Tribes and Native Hawaiian organizations, establish a process by which Federal agencies, museums, Indian tribes and Native Hawaiian organizations can submit data to the National NAGPRA Program Office identifying the number of remains or objects that have been the subject of a completed repatriation.
- ii.* Develop an inventory of all repatriations that have been completed under the authority of the Act, and establish a database to house repatriation information. The National NAGPRA Program Office should require signed statements from each Federal agency and institution that document the repatriation of human remains and cultural items. The inventory should also contain a record of the tribes or Native Hawaiian organizations that have received repatriated remains or cultural items under the authority of NAGPRA. Such a database should provide protection of proprietary information but should also enable access to the number of repatriations in each category (human remains, associated funerary objects, sacred objects, objects of cultural patrimony, unassociated funerary objects).

## **5. NAGPR Review Committee**

- a.* The National NAGPRA Program Office, in consultation with the NAGPR Review Committee, should develop a database of all cases that have come before the Review Committee. Information in the database should identify which cases have been resolved, the manner in which they were resolved, and any outstanding cases that have yet to be resolved.
- b.* The National NAGPRA Program Office should maintain on its website an updated list of any upcoming publications of Notices of Inventory Completion, along with a list of notices that are awaiting publication.
- c.* The National NAGPRA Program Office should maintain a database that contains information on the location of, as well as possession and control of, all Native American human remains, funerary objects, and other cultural items.

## **6. Memoranda of Agreement or Programmatic Agreements**

The National NAGPRA Program Office, in consultation with Indian tribes, Alaska Native entities, Native Hawaiian organization, and Federal agencies, should develop a standard memorandum of agreement or a programmatic agreement that would provide for Native groups to assume stewardship of a site or human remains in the event of an inadvertent discovery of a Native burial on Federal lands. One example of a programmatic agreement is the 2004 Programmatic Agreement reached between 18 Missouri River Tribes, the Corps of Engineers, the National Trust for Historic Preservation, the Advisory Council on Historic Preservation, and the State Historic Preservation Officers for Montana, North Dakota and South Dakota and Nebraska.

## **7. Adequate Funding for the Implementation of NAGPRA**

- a.* The Congress should appropriate adequate funding to assure the effective implementation of the Act at the tribal level. Many Native groups do not have the resources to secure training in repatriation under the Act, or the resources to carry out repatriation activities.
- b.* The Congress should also appropriate adequate funding to assure the effective implementation of the Act at the Federal level, including funding for the activities of the Inter-Agency Council and the additional responsibilities of the National NAGPRA Program Office recommended in this report.

## **8. Compliance Audits**

- a.* The Congress should request that the Government Accountability Office (GAO) conduct an audit of Federal agency compliance with the statutory and regulatory requirements of NAGPRA for all relevant Federal agencies. Such an audit could include:
  - i.* The mechanisms each Federal agency employs for assuring that all human remains and cultural items in the possession or control of the agency have been reported to the National NPS NAGPRA Program Office, and the effectiveness of such mechanisms;
  - ii.* The means by which the National NPS NAGPRA Program Office determines that each Federal agency has fully complied with the mandates of the NAGPRA statute and regulations;

- iii.* The identification of the Federal agency or program office within a Federal agency that is best equipped to provide information to the Congress on a regular basis of how many human remains and cultural items have been repatriated under the authority of the NAGPRA statute and regulations, as well as an assessment of the overall effectiveness with which the provisions of the Act have been implemented, as well as what barriers exist to the effective implementation of the Act;
- iv.* The identification of an entity within the Executive branch that has the authority or can be vested with the authority to oversee and assure the compliance of each Federal agency with the NAGPRA statute and regulations;
- v.* The identification of secure data system alternatives that would enhance public access to the data collected and maintained by the National NPS NAGPRA Program Office while still assuring the security and confidentiality of such data, including the identification of data system capacities to provide differing levels of access to confidential information;
- vi.* The identification of the most cost-efficient manner of providing training to Federal agency employees charged with assuring compliance with the NAGPRA statute and regulations;
- vii.* The identification of the most cost-efficient manner of providing training for Indian tribes, Alaska Native entities, and Native Hawaiian organizations on the NAGPRA statute and regulations; and
- viii.* The identification of a reporting system that would enable the oversight entity within the Executive branch referenced in subparagraph iv of this paragraph to refer potential enforcement actions for failure to comply with the NAGPRA statute to the relevant law enforcement agency or agencies.

*b.* The Inspector General of each Federal agency should investigate any non-compliance with the Act that is identified by the Government Accountability Office audit.

### **C. Future Areas of Research (not listed in priority order)**

1. Evaluate museum compliance with NAGPRA, with the same goals as to how this research project was conducted.
2. Evaluate the role of the Smithsonian Institution, including the intersections of National Park Service NAGPRA and the law governing the Smithsonian's repatriation activities, and Federal agency collections that are now housed permanently or temporarily at the Smithsonian.
3. Evaluate the NPS National NAGPRA Program for efficiency, staffing levels, and areas to improve
4. Examine how unassociated funerary objects have been dealt with in the repatriation process. Research work on this project focused on cultural affiliation and associated funerary objects, and a thorough study of how objects became "unassociated" or if there is means to hasten research time to associating these objects would be of benefit to the local Native community.
5. Examine how the Future Applicability (§10.13) provisions are being implemented.
6. Examine the background process that led a Federal agency to determine whether human remains and associated funerary objects was to be entered into the "Culturally Unidentifiable Native American Inventories Pilot Database," including the process used in working with and notifying tribes of the human remains and associated funerary objects.



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# APPENDIX A

## Summaries of Law and Regulations

### I. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

The Native American Graves Protection and Repatriation Act (NAGPRA) was enacted into law on November 16, 1990. The Act is codified in Title 25 of the United States Code, beginning at section 3001 of Title 25. The Act provides authorization for the repatriation of Native American human remains, funerary objects, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural patrimony.

The regulations promulgated under the authority of the Act are found in Title 43 of the U.S. Code of Federal Regulations beginning at section 10. The regulations develop a “systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.”

#### A. Summary of Statutory Requirements of the Act

##### i. Ownership and Control (Section 3 of the Act)

The Act provides that the priority of ownership or control of Native American cultural items (defined as including Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural patrimony) which are excavated or discovered on Federal or tribal lands after November 16, 1990 shall be first with lineal descendants of a Native American whose human remains and associated funerary objects are the subject of the excavation or discovery.

If lineal descendants cannot be identified, then in the case of unassociated funerary objects, sacred objects, or objects of cultural patrimony, the priority of ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be first with the Indian tribe or Native Hawaiian organization on whose land such objects or human remains were discovered. The next priority is with the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains or objects and that, upon notice, states a claim for the human remains or objects.

If the cultural affiliation of objects cannot be reasonably ascertained and if the cultural items were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the U.S. Court of Claims as the aboriginal land of an Indian tribe, then ownership and control rests with the Indian tribe that is recognized as aboriginally occupying the area in which the cultural items were discovered, if upon notice, that tribe states a claim for human remains or objects. If however, it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the human remains or objects than the tribe that is recognized as aboriginally occupying the area in which the human remains or objects were discovered, then ownership and control is with the Indian tribe that has the strongest demonstrated relationship, if upon notice, that tribe states a claim for the human remains or objects.

The Act also addresses unclaimed Native American human remains and objects, the intentional excavation and removal of Native American human remains and objects, and the inadvertent discovery of Native American human remains and objects. The Act does not prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains or title to, or control over, any funerary or sacred object.

## **ii. Inventory (Section 5 of the Act)**

The first requirement of the Act is the authorization and directive that each Federal agency and each museum that has possession or control over holdings or collections of Native American human remains and associated funerary objects must compile an inventory of such items and identify the geographical and cultural affiliation of each item to the extent possible based on information possessed by the Federal agency or museum.

The inventories and identification are to be completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders, and are to be completed not later than November 16, 1995. The inventories and identifications are to be made available to a review committee both during the time they are being conducted and thereafter.

## **iii. Notification**

The Act provides that within six months following the completion of the inventory, the Federal agency or museum shall notify the affected Indian tribes or Native Hawaiian organizations if the cultural affiliation of particular Native American human remains or associated funerary objects has been determined. The notice is to include information that identifies each Native American human remains or associated funerary objects and the circumstances surrounding the acquisition of such remains or objects.

The notice must also list those human remains or associated funerary objects that are clearly identifiable as to tribal origin, as well as those human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian tribe or a Native Hawaiian organization but which are determined, by reasonable belief and the totality of circumstances surrounding the acquisition of the human remains or objects, to be culturally affiliated with the Indian tribe or Native Hawaiian organization to whom the notice has been sent.

## **iv. Summary (Section 6 of the Act)**

The Act also authorizes and directs each Federal agency or museum that has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony to prepare a written summary of those objects based upon available information held by the agency or museum. The summary is to describe the scope of the collection, the kinds of objects in the collection, reference to geographical location, the means and period of acquisition and cultural affiliation where this information is readily ascertainable.

The Act provides that the summary is to be completed not later than November 16, 1993, following consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders, and the summary is in lieu of the object-by-object inventory. Indian tribes and Native Hawaiian organizations are to have access to records, catalogues, relevant studies or other pertinent data for the purposes of determining geographic origin, cultural affiliation, and other basic facts surrounding the acquisition and accession of Native American objects.

**v. Repatriation (Section 7 of the Act)**

The Act establishes the requirements for the repatriation of Native American human remains and objects that are possessed or controlled by Federal agencies and museums.

**a. *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 the museum cannot overcome, that the agency or museum does not have the right of possession to the human remains or objects. If the cultural items are the subject of scientific study, they must be returned no later than 90 after the completion of the study.

**b. *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.

**c. *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 the remains or objects are not included 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.

**d. *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.

**e. Liability**

The Act provides that any museum that repatriates an item in good faith under the authority of the Act will not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the Act. This section of the Act does not address the liability of Federal agencies under the same circumstances.

**vi. Review Committee (Section 8 of the Act)**

The Act authorizes the establishment of a 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. In addition, the Act provides that upon the request of any affected party, the committee is to review and make findings related to the identity or cultural affiliation of cultural items or the return of such items, and facilitating the resolution of any disputes relating to the return of items.

The committee is further charged with compiling 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. Finally, the Act charges the committee with consulting 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.

**vii. Penalties and Subpoenas (Section 9 of the Act)**

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

**viii. 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.

**ix. Application of Act (Section 11 of the Act)**

The Act provides that the requirements of the Act are not to be construed to limit the authority of any Federal agency or museum to return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations or to individuals, or to enter into any other agreement with the consent of a culturally-affiliated tribe or organization as to the disposition or control over items covered by the Act.

The Act further provides that the Act may not be construed to delay actions on repatriation requests that were pending on the date of enactment of the Act, deny or otherwise affect access to any court, to limit any procedural or substantive rights which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations, or to limit the application of any Federal or State law pertaining to theft or stolen property.

## II. SUMMARY OF REGULATORY PROVISIONS

Publicly promulgated regulations play the important role of implementing our nation's laws. Earlier in this section, a brief summary of several sections of the Act was presented as background for this study. The following section further explains the specific language and process to be followed, per the Act. For example, the earlier statutory section, "Inventory (Section 5 of the Act)," is further explained here in the language of the regulatory process as, "Inventories (§10.9)."

### Introduction (Subpart A)

#### Application of Regulations (§10.1)

The regulations to the Act provide that the regulations apply to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are in Federal possession or control, or in the possession or control of any institution or State or local government receiving Federal funds or which are excavated intentionally or discovered inadvertently on Federal or tribal lands.

The regulations also provide that they apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony that are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.

#### Definitions (§10.2)

By defining the terms and phrases "Federal agency", "Federal agency official", "museum", "possession", "control", "receives Federal funds", "museum official" and "person", the regulations identify who must comply with the regulations [§10.2(a)].

By defining the terms "lineal descendant", "Indian tribe", "Native Hawaiian organization", "Native Hawaiian", and "Indian tribe official", the regulations establish who has standing to make a claim under the regulations [§10.2(b)].

By defining the terms "Secretary", "Review Committee", and "Manager, National NAGPRA Program", the regulations establish who is responsible for carrying out the regulations [§10.2(c)].

By defining the terms "human remains", "funerary objects", "associated funerary objects", "unassociated funerary objects", "sacred objects", "traditional religious leader", "objects of cultural patrimony", and "cultural affiliation", the regulations establish what objects are covered by the regulations [§10.2(d)].

By defining the terms "Federal lands", "tribal lands", "inventory", "intentional excavation", and "inadvertent discovery", the regulations establish the types of lands to which the excavation and discovery provisions of the regulations apply [§10.2(f)].

The regulations also contain a definition for the term "cultural affiliation" [§10.2(e)] and definitions of the terms "summary", "inventory", "intentional excavation", and "inadvertent discovery" [§10.2(g)] for purposes of establishing what procedures are required by the regulations.

Although the statute contains a definition of the term "cultural items", which includes human remains, associated funerary objects, unassociated funerary objects, sacred objects and cultural patrimony, the regulations do not contain a definition of the term.

## **Intentional Excavation of Native American Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony from Federal or Tribal Lands (Subpart B)**

The regulations provide that intentional excavation of human remains, funerary objects, sacred objects, and objects of cultural patrimony on Federal or tribal lands is permitted if they are excavated or removed in compliance with the requirements of the Archaeological Resources Protection Act and its implementing regulations. In the case of private lands within the exterior boundaries of an Indian reservation, the Bureau of Indian Affairs (BIA) is designated as the agency to issue permits for such excavations. In the instance of lands administered for the benefit of Native Hawaiians under the Hawaiian Homes Commission Act, 1920, the Department of Hawaiian Home Lands is authorized to issue permits for excavations with the Hawaii State Historic Preservation Division of the Hawaii Department of Land and Natural Resources acting in an advisory capacity.

The regulations further provide that objects can only be excavated on tribal lands following consultation with the tribe or Native Hawaiian organization and the consent of the tribe or organization. The disposition of objects must be consistent with the custody requirements of the regulations, and proof of consultation or consent must be submitted to the agency official who is responsible for the issuance of the required permit.

### **Procedures Associated with Intentional Archaeological Excavations – Notice and Consultation (§10.3)**

The regulations provide that a Federal agency official must make reasonable efforts to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects or objects of cultural patrimony. In addition, prior to the issuance of any approvals or permits for a planned activity, the Federal agency official must provide written notification to Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the remains or objects that may be excavated, as well as written notice to any Indian tribe that aboriginally occupied the area of the planned activity and any other tribes or organizations that the official reasonably believes may have a cultural relationship to the remains or objects.

The written notice must describe the planned activity, the general location of the activity, the basis upon which it was determined that remains or objects are expected to be found, and the basis for determining likely custody pursuant to the regulations. The notice must also propose a time and place for meetings or consultations to further consider the activity, the proposed treatment of any remains or objects that may be excavated, the proposed disposition of any remains or objects, and if there is no response within 15 days of the provision of written notice, telephone contact must also be made with the Indian tribe or tribes or with Native Hawaiian organizations.

Following consultation, the Federal agency official must complete a written plan of action and execute the steps in the plan. If the planned activity is also subject to review under section 106 of the National Historic Preservation Act (NHPA), the Federal agency official must coordinate consultation and any subsequent agreement for compliance with the Act with the requirements of the NAGPRA regulations and must also comply with NHPA's section 106.

### **Inadvertent Discoveries of Native American Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony on Federal or Tribal Lands (§10.4)**

The regulations provide that any person who knows or who has reason to know that he or she has inadvertently discovered human remains or objects on Federal or tribal lands after the date of enactment of NAGPRA (November 16, 1990), must provide immediate telephone notification of the discovery with written confirmation to the responsible Federal agency official with respect to Federal lands and to the responsible Indian tribal official if the discovery is on tribal lands. In addition to providing notice, the person must stop

activity in the area of inadvertent discovery and make a reasonable effort to protect the human remains or objects discovered.

No later than three working days following the receipt of notice of an inadvertent discovery, the responsible Federal agency official must certify receipt of notification, take immediate steps if necessary to further protect the discovered remains or objects, notify by telephone along with written confirmation the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated or have a cultural relationship with the remains or objects. The notification must include pertinent information as to the kinds of remains or objects, their condition, and the circumstances of the discovery. The responsible Federal agency official must then initiate consultation consistent with § 10.5 of the NAGPRA regulations and take steps to assure that requirements and procedures of § 10.3(b) are complied with if the remains or objects must be excavated or removed, or to assure compliance with §10.6 of the regulations to ensure the disposition of all remains or objects.

Thereafter, the activity that resulted in the inadvertent discovery may resume 30 days after the Federal agency receiving notice of the discovery confirms receipt of the notice and if the resumption of the activity is otherwise lawful, or the activity may be resumed if there is a binding agreement executed between the Federal agency and the culturally-affiliated tribes or Native Hawaiian organizations that provides for a recovery plan for the excavation or removal of the remains or objects. In either circumstance, the disposition of all human remains and objects must be carried out consistent with §10.6 of the regulations.

If the inadvertent discovery is made on tribal lands, then receipt of notice must be confirmed by the relevant tribal official no later than 3 working days after notice is made, and the procedures referenced above are to be pursued consistent with sections 10.3(b) and 10.6 of the regulations.

Federal agency officials are charged with coordinating their responsibilities under §10.4 of the regulations with their emergency discovery responsibilities under section 106 of the National Historic Preservation Act (NHPA) or section 3(a) of the Archaeological and Historic Preservation Act (AHPA). Compliance with the NAGPRA regulations does not relieve Federal agency officials from their duty to comply with the requirements of NHPA or AHPA.

Importantly, the regulations provide that all Federal authorizations to carry out land use activities on Federal or tribal lands, including leases and permits, must include a requirement that the holder of the authorization notify the appropriate Federal or tribal official immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony as required by §10.4(b) of the NAGPRA regulations.

### **Consultation (§10.5)**

Section 10.5 of the regulations establishes the manner in which consultation must be carried out as part of the intentional excavation or inadvertent discovery of human remains or objects.

Federal agency officials must consult with known lineal descendants and Indian tribal officials from: (1) Indian tribes on whose aboriginal lands the planned activity will occur or where the inadvertent discovery has been made; (2) Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with human remains or objects; and (3) Indian tribes and Native Hawaiian organizations that have a demonstrated cultural relationship with the remains or objects.

Upon receiving notice or otherwise becoming aware of an inadvertent discovery or a planned activity that has either resulted in or may result in the intentional excavation or inadvertent discovery of human remains or objects, the responsible Federal agency official must take steps to identify the lineal descendants or Indian tribe or Native Hawaiian organization that is entitled to custody of the remains or objects, and must

provide written notice to known lineal descendants and to Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the remains or objects, to Indian tribes that aboriginally occupied the area, and to Indian tribes and Native Hawaiian organizations that have a demonstrated cultural relationship with the remains or objects.

The notice that the Federal agency official provides must propose a time and place for meetings or consultation on the Federal agency's proposed treatment of the remains or objects and consultation must seek to identify traditional religious leaders who should also be consulted. During the consultation, the Federal agency officials must provide written information to lineal descendants and officials of Indian tribes and Native Hawaiian organizations that are likely to be affiliated with the remains or objects. The information provided is to include a list of all lineal descendants and Indian tribes and Native Hawaiian organizations that are being or have been consulted regarding the particular remains or objects, and an indication that additional documentation that is used to identify affiliation will be supplied upon request.

In addition, during the consultation the Federal agency officials must request information from Indian tribes or Native Hawaiian organizations that are, or are likely to be affiliated with the remains or objects including the name and address of the Indian tribal official who is to act as a representative in consultations, the name and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process, recommendations on how the consultation process should be conducted, and the kinds of cultural items the tribe or organization considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

Following consultation, the Federal agency official must prepare, approve and sign a written plan of action that is to be provided to the lineal descendants, Indian tribes and Native Hawaiian organizations involved. The lineal descendants and Indian tribe officials may also sign the written plan of action. The plan of action must comply with §10.3(b)(1) of the regulations and must document the kinds of objects to be considered as cultural items as defined in section 10.2(d), the specific information used to determine custody pursuant to section 10.6, the planned treatment, care and handling of remains or objects, the planned archaeological recording of remains or objects, the kinds of analysis planned for each object, any steps to contact tribal officials at the time of excavation or discovery, the kind of traditional treatment to be afforded remains or objects, the nature of reports to be prepared, and the planned disposition of the remains or objects.

The regulations express a preference for the formulation of comprehensive agreements between Federal agencies and Indian tribes and Native Hawaiian organizations that relate to intentional excavations or inadvertent discoveries, Federal land management activities that could result in excavations or discoveries of human remains or cultural items, consultation, determination of custody, and treatment of remains or cultural items. The signed agreements or correspondence related to the effort to reach agreements must constitute proof of consultation as required by the regulations.

The regulations provide that the Federal agency official must be cognizant that Indian tribal officials may need to confer with traditional religious leaders prior to making recommendations, and that tribal officials are under no obligation to reveal the identity of traditional religious leaders.

### **Custody (§10.6)**

In this section, the regulations establish a definition of the term "custody" and establish an order of priority for custody of human remains or cultural items.

For purposes of this section, custody means ownership or control of human remains, funerary objects, sacred objects or objects of cultural patrimony that are intentionally excavated or inadvertently discovered.

Custody applies to all intentional excavations and inadvertent discoveries made after November 16, 1990, or before the effective date of the regulations.

The order of priority for human remains and associated funerary objects is with the lineal descendants of the deceased individual. Where a lineal descendant cannot be identified or no claim is made, then with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony, the priority is with the Indian tribe on whose lands the remains or objects were excavated or discovered, the Indian tribe or Native Hawaiian organization having the closest cultural affiliation with the remains or objects as determined pursuant to §10.14(b) which sets forth the criteria for determining lineal descent, or in circumstances where the cultural affiliation cannot be determined, the Indian tribe aboriginally occupying the area of Federal land (as recognized by a final judgment of the Indian Claims Commission or the U.S. Court of Claims as being the aboriginal land of an Indian tribe) from which the remains or objects were excavated or discovered, or a different Indian tribe or Native Hawaiian organization that has a stronger cultural relationship with the remains or objects if it can be shown by a preponderance of the evidence that the tribe or organization has the strongest demonstrated relationship with the objects.

The process for the transfer of custody of remains or cultural items provides that the Federal agency official must publish notice in a newspaper of general circulation in the area in which the remains or cultural items were excavated or discovered at least two times a week at least a week apart and the transfer of custody must not take place until at least 30 days after the publication of the final notice. This notice and the information on when and where it was published must also be sent to the Manager of the National Park Service. No transfer of custody can take place if additional claimants come forward and the Federal agency cannot clearly determine which claimant is entitled to custody. If no additional claimants respond to the notice, then transfer of custody to a lineal descendant or the relevant Indian tribe or Native Hawaiian organization can proceed but only following appropriate procedures which must respect traditional customs and practices of the culturally-affiliated tribe or organization.

#### **Disposition of Unclaimed Human Remains, Funerary Objects, Sacred Objects or Objects of Cultural Patrimony (§10.7)**

This section of the regulations is reserved for the future promulgation of regulations.

### **Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections (Subpart C)**

#### **Summaries (§10.8)**

To implement section 6 of the Act, the regulations require each museum or Federal agency that has possession or control over collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony to complete a summary of the collection so that the information contained in the summary may be provided to lineal descendants and culturally-affiliated Indian tribes or Native Hawaiian organizations that may wish to request the repatriation of those objects. The summary is in lieu of an object-by-object inventory of collections, although if an inventory is available, it may be substituted for the summary. Federal agencies are responsible for assuring that these requirements are met for all collections from the lands each Federal agency manages or which are generated by actions of a Federal agency whether the collections are held by the Federal agency or by a non-Federal institution.

The summary must include an estimate of the number of objects in the collection, a description of the kinds of objects included, information on the manner of acquisition of the objects, when and where the objects were acquired, and information relevant to the identification of lineal descendants and cultural affiliation.

Summaries are to be completed no later than November 16, 1993, and in the process of developing the summaries, museum and Federal agency officials are required to consult with tribal officials and traditional religious leaders from whose lands the objects originated or who are or are likely to be culturally affiliated with the objects, or from whose aboriginal lands the objects originated.

Museum and Federal agency officials must document information related to the objects, provide a description of each object and the antiquity of the objects, and must use this documentation to determine the individuals, Indian tribes, and Native Hawaiian organizations with which such objects are affiliated, including accession and catalogue entries, acquisition information, including the source and date and place and means of acquisition, and a summary of the evidence used to determine cultural affiliation.

The repatriation of objects to lineal descendants, culturally-affiliated Indian tribes or Native Hawaiian organizations must not proceed prior to submission of a notice of intent to repatriate being provided to the Manager of the national NAGPRA program, and publication of the notice of intent to repatriate in the Federal Register, describing the objects in sufficient detail so as to enable other individuals, tribes or organizations to determine their interest in the claimed objects, and containing information relative to cultural affiliation. The Manager must publish the notice of intent to repatriate in the Federal Register and repatriation may not occur until at least 30 days after publication of the notice.

### **Inventories (§10.9)**

This section of the regulations implements section 5 of the Act, by requiring each museum and Federal agency that has possession or control over holdings or collections of human remains and associated funerary objects to compile an inventory of such objects, and to the extent possible, identify the geographical and cultural affiliation of each item, for the purpose of facilitating repatriation. Consultation with lineal descendants, and Indian tribes and traditional religious leaders from whose tribal or aboriginal lands the remains or objects originated or who are likely to be culturally-affiliated with the remains or objects.

During the inventory consultation, museums and Federal agency officials must provide written information to lineal descendants and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are likely to be culturally-affiliated with the remains or objects including a list of all tribes and Native Hawaiian organizations that are or have been consulted, a general description of the conduct of the inventory, a projected time frame for conducting the inventory, and an indication that additional documentation used to identify cultural affiliation will be supplied upon request.

Also during the inventory consultation, museum and Federal agency officials may request information from lineal descendants of individuals whose remains and associated funerary objects are or are likely to be included in the inventory and the names and appropriate methods to contact traditional religious leaders who should be consulted, and the kinds of objects an Indian tribe or a Native Hawaiian organization reasonably believes to have been made exclusively for burial purposes or to contain human remains of their ancestors.

The inventories must contain documentation on accession and catalogue entries, acquisition information including the source and date and place and means of acquisition of each object, a description of the remains or objects including dimensions, photographic documentation, antiquity if known, and a summary of the evidence. Two separate documents make up the inventory: (1) a list of all human remains and associated funerary objects that are identified as being culturally-affiliated with one or more present-day Indian tribes or Native Hawaiian organizations; and (2) a list of all culturally-unidentifiable human remains and associated funerary objects for which no culturally-affiliated present-day Indian tribe or Native Hawaiian organization can be determined.

If the inventory results in the identification or likely identification of the cultural affiliation of any particular human remains or associated funerary objects with one or more Indian tribes or Native Hawaiian organizations, the museum or Federal agency must send the inventory to such tribes or organizations including all information required under this section and a notice of inventory completion that summarizes the results of the inventory within 6 months after completion of the inventory. The notice of inventory completion must summarize the contents of the inventory in sufficient detail to enable recipients to determine their interest in claiming the inventoried items, identifying each set of human remains or each associated funerary object and the circumstances surrounding its acquisition, and describe the cultural affiliation or the lack of cultural affiliation but which given the totality of circumstances are likely to be culturally-affiliated with a particular tribe or Native Hawaiian organization.

Upon request by an Indian tribe or Native Hawaiian organization that has received or should have received a notice of inventory completion and a copy of the inventory, a museum or Federal agency must supply additional available documentation to supplement the information provided with the notice. For these purposes, documentation means a summary of existing museum or Federal agency records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining geographic origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

If the inventory results in a determination that the human remains are of an identifiable individual, the museum or Federal agency must convey that information to the lineal descendant of the deceased individual, if known, and to the Indian tribe or Native Hawaiian organization of which the deceased individual was culturally affiliated.

If the museum or Federal agency official determines that it has possession or control over human remains that cannot be identified as affiliated with a particular individual, tribe or Native Hawaiian organization, the museum or Federal agency official must provide a notice of this result and a copy of the list of culturally-unidentifiable human remains and associated funerary objects to the manager of the national NAGPRA program, who in turn must make this information available to the members of the NAGPRA Review Committee.

The notice of inventory completion and a copy of the inventory must also be sent to the manager of the national NAGPRA program, and the manager must publish notices of inventory completion received from museums and Federal agencies in the Federal Register. Good faith efforts to complete an inventory are evidenced by the initiation of active consultation and documentation regarding the collections and the development of a written plan to carry out the inventory process, and at a minimum, the components of the inventory plan must include a definition of the steps required, the position titles of the persons responsible for each step, a schedule for carrying out the plan, and a proposal to obtain the necessary funding.

## **Repatriation (§10.10)**

This section of the regulations provides for the criteria and processes associated with the repatriation of: (1) unassociated funerary objects, sacred objects, and objects of cultural patrimony; and (2) human remains and associated funerary objects; and also addresses exceptions to the repatriation requirements, the place and manner of repatriation, record of repatriation, and the disposition of culturally-unidentifiable human remains.

The regulations provide for the expeditious repatriation of unassociated funerary objects, sacred objects, and object of cultural patrimony if the following criteria are met: (1) the human remains or associated funerary objects meet the definitions established in §10.2(d)(1) or (2)(i), and (2) the affiliation of the deceased individual to a known lineal descendant, present-day Indian tribe, or Native Hawaiian organization has been reasonably traced through the procedures outlined in §10.9 and §10.14 of the regulations or has been shown

by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) of the Act, and non of the specific exceptions listed in §10.10 (c) apply.

Repatriation must take place within 90 days of receipt of a written request repatriation that satisfies the requirements of §10.10(b)(1) from the culturally-affiliated Indian tribe or Native Hawaiian organization provided that the repatriation may not occur until at least 30 days after publication of the notice of inventory completion in the Federal Register as described in §10.9.

The requirements for repatriation do not apply to: (1) circumstances where human remains or cultural items are indispensable to the completion of scientific study whose outcome is of major benefit to the United States, although repatriation must occur within 90 days after completion of the study; (2) circumstances where there are multiple requests for the repatriation of human remains or cultural items and the museum or Federal agency cannot determine by a preponderance of the evidence which party is the most appropriate claimant, then the remains or items may be retained until the parties agree upon the appropriate recipient or the dispute is resolved pursuant to the regulations or a court of competent jurisdiction; (3) circumstances in which a court of competent jurisdiction determines that repatriation would result in a taking of property without just compensation within the meaning of the Fifth Amendment to the U.S. Constitution, in which case the custody of the items must be in accord with otherwise applicable law; or (4) circumstances where the repatriation is not consistent with other repatriation limitations identified in §10.15 of the regulations. Nothing in the regulations may be construed to prevent a museum or Federal agency, where otherwise so authorized, or a lineal descendant, an Indian tribe, or a Native Hawaiian organization from expressly relinquishing title to or right of possession or control over any human remains or cultural items.

The place and manner of repatriation must be accomplished in consultation with the requesting lineal descendants, or culturally-affiliated tribe or native Hawaiian organization. In addition, the museum or Federal agency official must inform the recipients of any presently-known treatment of the remains or cultural items with pesticides, preservatives, or other substances that represent a potential hazard to either the objects or to persons handling the objects. Museums and Federal agencies are required to adopt internal procedures adequate to permanently document the content and recipients of all repatriations. Pursuant to otherwise applicable law, the museum or Federal agency official may take steps necessary to ensure that information of a particularly sensitive nature is not made available to the general public.

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 NAGPRA 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.

### **Disposition of Culturally-Unidentifiable Remains (§10.11)**

This section is reserved for the future promulgation of regulations.

### **Civil Penalties (§10.12)**

Section 9 of the Act authorizes the Secretary of Interior to assess civil penalties for failure to comply with the requirements of the Act, and section 10.12 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. In addition, 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.

### **Future Applicability (§10.13)**

This section establishes how the Act applies to museums and Federal agencies after the expiration of the statutory deadlines for the completion of summaries and inventories with regard to new holdings or collections, or newly Federally-recognized Indian tribes, or the receipt of new Federal funds, or when a previous decision is amended.

For new holdings and collections, the museum or Federal agency official must provide a summary as required by §10.8 to any Indian tribe or Native Hawaiian organization that is or is likely to be affiliated with the collection within 6 months of receiving the new collection or holdings, and must complete an inventory of the new holding or collection within 2 years after receiving the new collection or holding. Additional pieces or fragments of previously repatriated remains or objects may be returned to the appropriate tribe or Native Hawaiian organization without publication of a notice in the Federal Register, if they do not change the number or cultural affiliation listed in the previous notice.

The same timelines (6 months for summaries and 2 years for inventories) apply to the provision of notice to a newly Federally-recognized Indian tribe. If new Federal funds are received by a museum, it must provide a summary of its collection within 3 years of the receipt of new Federal funds, and must complete an inventory within 5 years of the receipt of new Federal funds. A museum or Federal agency must publish in the Federal Register an amendment to any previously published notice if the museum or Federal agency revises its decision in a manner than changes the number or cultural affiliation of the listed cultural items.

## **General (Subpart D)**

### **Lineal Descent and Cultural Affiliation (§10.14)**

This section establishes procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains or cultural items in museum or Federal agency collections or which have been intentionally excavated or inadvertently discovered from Federal lands. The procedures may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

### **Limitations and Remedies (§10.15)**

This section provides a procedure if there is a failure to make a timely claim prior to repatriation. A subsection is reserved for the promulgation of future regulations where a failure to make a claim occurs when no disposition or repatriation has occurred. The section also contains savings provisions.



### **Review Committee (§10.16)**

The Review Committee is charged with advising the Congress and the Secretary on matters relating to the regulations and the Act, including but not limited to monitoring the performance of museums and Federal agencies in carrying out their responsibilities under the Act, facilitating and making recommendations for the resolutions of disputes as described in §10.17, and compiling a record of culturally-unidentifiable human remains that are in the possession or control of museums and Federal agencies and recommending actions for their disposition.

### **Dispute Resolution (§10.17)**

This section addresses formal and informal resolutions of disputes and the role of the Review Committee in the facilitation of an informal resolution of disputes that are not resolved by good faith negotiations.

## Sample “Summary”

From the Code of Federal Regulations, the following was prepared by the National Park Service and published on August 1, 1994:

The following is a generic sample and should be used as a guideline for preparation of summaries tailoring the information to the specific circumstances of each case.

Before November 17, 1993

Chairman or Other Authorized Official  
Indian tribe or Native Hawaiian organization  
Street  
State

Dear Sir/Madame Chair:

I write to inform you of collections held by our museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. This notification is required by section 6 of the Native American Graves Protection and Repatriation Act.

Our ethnographic collection includes approximately 200 items specifically identified as being manufactured or used by members of your Indian tribe or Native Hawaiian organization. These items represent various categories of material culture, including sea and land hunting, fishing, tools, household equipment, clothing, travel and transportation, personal adornment, smoking, toys, and figurines. The collection includes thirteen objects identified in our records as “medicine bags.”

Approximately half of these items were collected by John Doe during his expedition to your reservation in 1903 and accessioned by the museum that same year (see Major Museum Publication, no. 65 (1965).

Another 50 of these items were collected by Jane Roe during her expeditions to your reservation between 1950–1960 and accessioned by the museum in 1970 (see Major Museum: no. 75 (1975). Accession information indicates that several of these items were collected from members of the Able and Baker families.

For the remaining approximately 50 items, which were obtained from various collectors between 1930 and 1980, additional collection information is not readily available.

In addition to the above mentioned items, the museum has approximately 50 ethnographic items obtained from the estate of a private collector and identified as being collected from the “northwest portion of the State.”

Our archeological collection includes approximately 1,500 items recovered from ten archeological sites on your reservation and another 5,000 items from fifteen sites within the area recognized by the Indian Claims Commission as being part of your Indian tribe’s aboriginal territory.

Please feel free to contact Fred Poe at (012) 345–6789 regarding the identification and potential repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony in this collection that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. You are invited to review our records, catalogues, relevant studies or other pertinent data for the purpose of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of these items. We look forward to working together with you.

Sincerely,

Museum Official  
Major Museum

## Sample Notice of Inventory Completion

From the Code of Federal Regulations, the following was prepared by the National Park Service and published on August 1, 1994:

The following is an example of a Notice of Inventory Completion published in the FEDERAL REGISTER.

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Hancock County, ME, in the Control of the National Park Service.

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given following provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains and associated funerary objects from a site in Hancock County, ME, that are presently in the control of the National Park Service.

A detailed inventory and assessment of these human remains has been made by National Park Service curatorial staff, contracted specialists in physical anthropology and prehistoric archeology, and representatives of the Penobscot Nation, Aroostook Band of Micmac, Houlton Band of Maliseet, and the Passamaquoddy Nation, identified collectively hereafter as the Wabanaki Tribes of Maine.

The partial remains of at least seven individuals (including five adults, one subadult, and one child) were recovered in 1977 from a single grave at the Fernald Point Site (ME Site 43-24), a prehistoric shell midden on Mount Desert Island, within the boundary of Acadia National Park. A bone harpoon head, a modified beaver tooth, and several animal and fish bone fragments were found associated with the eight individuals. Radiocarbon assays indicate the burial site dates between 1035-1155 AD. The human remains and associated funerary objects have been catalogued as ACAD-5747, 5749, 5750, 5751, 5752, 5783, 5784. The partial remains of an eighth individual (an elderly male) was also recovered in 1977 from a second grave at the Fernald Point Site. No associated funerary objects were recovered with this individual. Radiocarbon assays indicate the second burial site dates between 480-680 AD. The human remains have been catalogued as ACAD-5748. The human remains and associated funerary objects of all nine individuals are currently in the possession of the University of Maine, Orono, ME.

Inventory of the human remains and associated funerary objects and review of the accompanying documentation indicates that no known individuals were identifiable. A representative of the Wabanaki Tribes of Maine has identified the Acadia National Park area as a historic gathering place for his people and stated his belief that there exists a relationship of shared group identity between these individuals and the Wabanaki Tribes of Maine. The Prehistoric Subcommittee of the Maine State Historic Preservation Office's Archaeological Advisory Committee has found it reasonable to trace a shared group identity from the Late Prehistoric Period (1000-1500 AD) inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki Tribes of Maine on the basis of geographic proximity; survivals of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary. In a 1979 article, Dr. David Sanger, the archeologist who conducted the 1977 excavations at the Fernald Point Site and uncovered the abovementioned burials, recognizes a relationship between Maine sites dating to the Ceramic Period (2,000 B.P.-1600 A.D.) and present-day Algonkian speakers generally known as Abenakis, including the Micmac, Maliseet, Passamaquoddy, Penobscot, Kennebec, and Pennacook groups.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Wabanaki Tribes of Maine.

This notice has been sent to officials of the Wabanaki Tribes of Maine. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Len Bobinchock, Acting Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609, telephone: (207) 288-0374, before August 31, 1994. Repatriation of these human remains and associated funerary objects to the Wabanaki Tribes of Maine may begin after that date if no additional claimants come forward.

Dated: July 21, 1994

# APPENDIX B

## Survey Respondents

### I. Federal Agencies Responding to NATHPO Survey (as of 12/14/07)

#### OVERVIEW:

- 36** Federal agencies (denoted below by number in column on left).
- 18 Federal agencies responded to NATHPO survey. A total of thirty-eight (38) surveys were submitted to NATHPO.

FPO (from ACHP website)	DEPUTY FPO (from ACHP site)	AGENCY	RETURNED SURVEY?
1	Thomas Sole	American Battle Monuments Commission	No
2	Joseph Woo	Armed Forces Retirement Home	No
3	Thomas Luebke	Commission on Fine Arts	No
4	Edward T. Reilly	(no overall FPO USDA: USDA: Ag Research Service for USDA—all separate)	No
	Bennett Horter	USDA: Farm Service	Yes
	Michael Kaczor	USDA: Forest Service	Yes
	Sarah Bridges	USDA: NRCS	Yes
	Donna Meyer	USDA: Rural Bus	Yes as "Rural
	Donna Meyer	USDA: Rural Housing	Development"
	Mark Plank	USDA: Rural Utilities	No
5	Francesca Ryan	COMMERCE	No
	* Frank Monteferrante	COMMERCE: Econ Develop Admin	Yes
	* Miguel Aparicio	COMMERCE: NOAA	No
6	Maureen Sullivan	Brian Lione	DEFENSE
	Addison Davis	Lee Foster	DEFENSE: Army
	Donald Schregardus	Jay Thomas	DEFENSE: Navy
	Donald Schregardus	James Omans	DEFENSE: Marines
	Michael McGhee	Douglas Burkett	DEFENSE: Air Force
	George Dunlop	Paul Rubenstein	DEFENSE: Army Corps
7	Anthony Fowler	EDUCATION	
8	F.G. Gosling	Terrence Fehner	ENERGY (& BPA & WAPA)
	Heather Campbell		ENERGY: FERC
9	Eric Haukdal	HHS	Yes (agency)
10	David Reese	HOMELAND SECURITY (DHS)	
	Jay Manik	Dave Semnoski	DHS: US Coast Guard
	Renee Smoot		DHS: Customs/Border
	John Ketchum		DHS: FEMA
	Willis Hunter		DHS: Fed Law Enforce Training Centers
	Donna Klee		DHS: Secret Service
11	Richard Broun	David Blick	HUD
12	Aimee Jorjani	INTERIOR	
		*Donald Sutherland	INTERIOR: BIA
		* Robin Burgess	INTERIOR: BLM
		* Thomas Lincoln	INTERIOR: BOR[eclam] No
		* Kevin Kilcullen	INTERIOR: Fish & W Yes

	<b>FPO (from ACHP website)</b>	<b>DEPUTY FPO (from ACHP site)</b>	<b>AGENCY</b>	<b>RETURNED SURVEY?</b>
		* Melanie Stright	INTERIOR: Mineral	Yes
		* Janet Matthews	INTERIOR: Nat'l Park S	No
		* John Craynon	INTER: Surface Mining	No
		* Steve Felch	INTERIOR: USGS	No
13	Ronald Deacon	Chuck Procaccini	JUSTICE	Yes
14	Michael O'Malley		LABOR	No
15	Robert Sanders		STATE	No
16	Linda Lawson		TRANSPORTATION	
		* Michon Washington	TRANS: FAA	Yes
		* MaryAnn Naber	TRANS: FHWA	Yes
		* Carol Hammel-Smith	TRANS: NHTSA	No
		* Carolyn Juneman	TRANS: Maritime	No
		* Michael Johnson	TRANS: Fed Motor Carrier Safety Admin	Yes
		* Amelia Samaras	TRANS: Pipeline and Hazardous Materials	No
		* Alexandra Newcomer	TRANS: Railroad	No
		* Paul Valihura	TRANS: Research & Innovative Tech Admin	No
		* Carrie Mann	TRANS: St. Lawrence	No
		* Victoria Rutson	TRANS: Surface Trans	Yes
		* Julie Atkins	TRANS: Fed Transit	Yes
17	Richard Cote		TREASURY	No
		Dawn Haley	TREAS: Engraving	No
		Frances Augello	TREAS: Thrift Super	No
18	Kathleen Schamel		VETERANS AFFAIRS	Yes
19	Luis Luna		EPA	Yes
20	Stephen Del Sordo		FCC	Yes
21	Sandra Thompson		FDIC	No
22	Rolando Rivas-Camp		GSA	Yes
23	Bradley Mehaffy		NA INDIAN GAMING	Yes
24	Christine Henry		IMLS	No
25	Tina Norwood		NASA	Yes
26	Richard Judson		NATIONAL ARCHIVES & RECORDS ADMIN	No
27	Nancy Witherell		NAT CAPITAL PLANNING COMM	No
28	Karen Elias		NEA	No
29	Heather Gottry		NEH	No
30	Sandra Wozniak		NSF	No
31	James Schaeffer		NRC	No
32	Ric Borjes		PRESIDIO TRUST	Yes
33	Kenneth Etheridge		SBA	No
34	Amy Ballard		SMITHSONIAN	No
35	Bridgette Ellis		TVA	Yes
36	Dallan Wordekemper		USPS	No

## II. Native American Entities Responding to NATHPO Survey (as of 12/14/07)

Chilkoot Indian Association	AK
Native Village of Eklutna	AK
Native Village of Gambell - Alaska Tribe	AK
Gwich'in Tribal Government	AK
Kanaitze Indian Tribe	AK
Native Village of Kotzebue	AK
Native Village of Noatak	AK
Native Village of Tununak	AK
Native Village of White Mountain	AK
Native Village of Selawik	AK
Native Village of Tyonek	AK
Hoonah Indian Association	AK
White Mountain Apache	AZ
Hopi Tribe	AZ
Hualapai Tribe	AZ
Big Pine Paiute Tribe of the Owens Valley	CA
Colusa Indian Community Council	CA
Federated Indians of Graton Rancheria	CA
Redding Rancheria	CA
Robinson Rancheria of Pomo Indians	CA
Susanville Indian Rancheria	CA
Jamul	CA
Timbisha Shoshone Tribe	CA
Bridgeport Indian Colony	CA
Bishop Paiute Tribe	CA
Miccosukee Tribe of Indians of Florida	FL
Seminole Tribe of Florida	FL
Office of Hawaiian Affairs	HI
Iowa Tribe of Kansas & Nebraska	KS
Bay Mills Tribe of Chippewa Indians	MI
Lac Vieux Desert Band of Lake Superior Chippewa	MI
Upper Sioux Community	MN
Bois Forte Band of Chippewa	MN
Mille Lacs Band of Ojibwe	MN
Leech Lake Band of Ojibwe	MN
White Earth Nation of Minn Chippewa	MN
Blackfeet Tribe	MT
Turtle Mountain Band Of Chippewa Indians	ND
Pueblo of Acoma	NM
Pueblo of Santa Clara	NM
Yerington Paiute Tribe	NV
Summit Lake Paiute Tribe	NV
Moapa Band of Paiutes	NV
Washoe Tribe of Nevada & California	NV
St. Regis Mohawk Tribe	NY
Absentee Shawnee Tribe	OK
Shawnee Tribe	OK
Kialegee Tribal Town	OK
Ponca Tribe of Oklahoma	OK
Wyandotte Nation	OK
United Keetoowah Band of Cherokee Indians	OK
Caddo Nation	OK
Cheyenne and Arapaho Tribes of Oklahoma	OK
Choctaw Nation of Oklahoma	OK
Miami Tribe of Oklahoma	OK
Osage Nation	OK
Confederated Tribes of the Umatilla Indian Res	OR
Coquille Indian Tribe	OR
Confed Tribes Coos Lower Umpqua and Siuslaw	OR
Catawba Indian Nation	SC
Flandreau Santee Sioux Tribe	SD
Spokane Tribe	WA
Confederated Tribes of the Colville Reservation	WA
Menominee Indian Tribe of Wisconsin	WI
Stockbridge-Munsee Community Band of Mohican	WI
Lac du Flambeau Band of Lake Superior Chippewa	WI
Bad River Band of the Lake Superior Chippewa	WI

## APPENDIX C

# Federal NAGPRA Appropriations and Grant History

	Federal Appropriations	Allocated to Grants	Number of Grants	Year	Difference Fed Approps & Grants
<b>Total (for FY99-07)</b>	<b>\$21,929,000</b>	<b>\$18,834,179</b>	<b>355</b>		<b>\$3,094,821</b>
	\$2,368,000	\$1,904,282	36	2007	\$463,718
	\$2,368,000	\$1,894,888	39	2006	\$473,112
	\$2,403,000	\$1,380,189	27	2005	\$342,811
					\$680,000
	\$2,437,000	\$2,182,000	40	2004	\$255,000
	\$2,451,000	\$2,201,000	39	2003	\$250,000
	\$2,467,000	\$2,245,820	40	2002	\$221,180
	\$2,467,000	\$2,438,000	46	2001	\$29,000
	\$2,472,000	\$2,252,000	45	2000	\$220,000
	\$2,496,000	\$2,336,000	43	1999	\$160,000
		\$2,338,420	45	1998	
		\$1,976,250	37	1997	
		\$2,097,890	39	1996	
		\$2,242,000	43	1995	
		\$2,140,000	41	1994	

*Bonnichsen payment*

### Additional information:

From NPS website:

<http://www.nps.gov/history/nagpra/GRANTS/ALLAWARDS.htm>

Grants in Brief:

\$29,551,364 [Note difference: \$77,375 in FY 2005 grants]

\$20,286,421 362 grants to AI, AN, & NHOs

\$9,264,943 197 grants to museums

362+197=559

Federal approps from NPS website for Greenbooks (Activity: "NAGPRA grants"):

<http://home.nps.gov/applications/budget2/gbchoose.htm>

# APPENDIX D

## Notice of Inventory Completion Review Chart

AGENCY	MNI		AFO		#s not accounted for in Notices		JOINT Notice
	Inventory	Notice	Inventory	Notice	MNI	AFO	#
<b>US DEPT. OF AGRICULTURE</b>							
Farms Service Agency	0	0	0	0	0	0	
AK FS Alaska Regional Office	0	0	0	0	0	0	
AK FS Chugach National Forest (handwritten inventory only)	24	24	0	0	0	0	
w AK FS Tongass National Forest, Chatham Area	28	0	14	0	28	14	
AK FS Tongass National Forest, Ketchikan Area	22	19	6	4	3	2	
* AK FS Tongass National Forest, Petersburg Office	3	6	1	61	-3	-60	
AK FS Tongass National Forest, Stikine Area	14	6	16	17	8	-1	
AL FS National Forests in Alabama	0	0	0	0	0	0	
AL FS Ouachita National Forest	0	0	0	0	0	0	
AR FS Ozark-St. Francis National Forests	0	0	0	0	0	0	
AZ FS Apache-Sitgreaves National Forest (handwritten inventory)	36	36	5880	5880	0	0	
* AZ FS Coconino National Forest	13	2992	3	5331	-2979	-5328	
AZ FS Coronado National Forest	0	82	0	132	-82	-132	
AZ FS Kaibab National Forest (handwritten inventory)	5	5	0	0	0	0	
AZ FS Prescott National Forest	21	22	6	23	-1	-17	
AZ FS Tonto National Forest (handwritten inventory)	1378	1376	5313	5326	2	-13	
* CA FS Angeles National Forest	4	3	71	0	1	71	
* CA FS Cleveland National Forest					0	0	
CA FS Eldorado National Forest	0	0	0	0	0	0	
CA FS Inyo National Forest	2	2	0	0	0	0	
CA FS Klamath National Forest	0	0	0	0	0	0	
CA FS Lake Tahoe Basin Management Unit	0	0	0	0	0	0	
* CA FS Lassen National Forest	62	62	405	405	0	0	
CA FS Los Padres National Forest	0	0	0	0	0	0	
CA FS Mendocino National Forest	9	4	58	66	5	-8	
CA FS Modoc National Forest	0	0	0	0	0	0	
CA FS Plumas National Forest, Oroville Ranger District	0	0	0	0	0	0	
CA FS San Bernadino National Forest	0	0	0	0	0	0	
CA FS Shasta-Trinity National Forest	0	0	0	0	0	0	
CA FS Sierra National Forest	0	0	0	0	0	0	
CA FS Six Rivers National Forest	0	0	0	0	0	0	
CA FS Stanislaus National Forest	3	0	45	0	3	45	
CA FS Tahoe National Forest	0	0	0	0	0	0	
CO FS Arapaho National Forest	0	0	0	0	0	0	
CO FS Pawnee National Grassland	0	0	0	0	0	0	
CO FS Pike, San Isabel National Forests Cimarron	0	0	0	0	0	0	
CO FS Rio Grande National Forest	0	0	0	0	0	0	
CO FS Roosevelt National Forest	0	0	0	0	0	0	
* CO FS San Juan National Forest	0	0	0	0	0	0	
CO FS White River National Forest	0	0	0	0	0	0	
* FL FS Ocala National Forest	0	8	0	0	-8	0	
FL FS Appalachicola National Forest	0	0	0	0	0	0	
FL FS Chattahoochee-Oconee National Forest	0	0	0	0	0	0	
FL FS Osceola National Forest	0	0	0	0	0	0	
GA FS Southern Region	0	0	0	0	0	0	
ID FS Idaho Panhandle National Forests	0	0	0	0	0	0	
ID FS Payette National Forest	0	0	0	0	0	0	
IL FS Midewin National Tallgrass Prairie	0	0	0	0	0	0	
IL FS Shawnee National Forest	0	0	0	0	0	0	
IN FS Hoosier National Forest	0	0	0	0	0	0	
KY FS Daniel Boone National Forest	0	0	0	0	0	0	
MI FS Allegheny National Forest	0	0	0	0	0	0	
MI FS Hiawatha National Forest	0	0	0	0	0	0	
MI FS Huron-Manistee National Forests	0	0	0	0	0	0	
MI FS Ottawa National Forest	0	0	0	0	0	0	
MN FS Chippewa National Forest (Joint w/Minnesota Indian Affairs)	0	1	0	0	-1	0	NIC0735
MN FS Superior National Forest	0	0	0	0	0	0	
MO FS Mark Twain National Forest	0	0	0	0	0	0	

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AGENCY	MNI	MNI	AFO	AFO	#s not accounted for in Notices		JOINT
	Inventory	Notice	Inventory	Notice	MNI	AFO	Notice #
MS FS National Forests in Mississippi	0	0	0	0	0	0	
MT FS Beaverhead-Deerlodge National Forest	0	0	0	0	0	0	
MT FS Bitterroot National Forest	0	0	0	0	0	0	
MT FS Custer National Forest	0	0	0	0	0	0	
MT FS Flathead National Forest	0	0	0	0	0	0	
MT FS Gallatin National Forest	0	0	0	0	0	0	
MT FS Helena National Forest	0	0	0	0	0	0	
MT FS Kootenai National Forest	0	1	0	0	-1	0	
MT FS Lewis and Clark National Forest	0	0	0	0	0	0	
MT FS Lolo National Forest	0	0	0	0	0	0	
NC FS Croatan National Forest	0	0	0	0	0	0	
NC FS Nantahala National Forest	0	0	0	0	0	0	
NC FS Pisgah National Forest	0	0	0	0	0	0	
NC FS Uwharrie National Forest	0	0	0	0	0	0	
ND FS Dakota Prairie Grasslands	0	0	0	0	0	0	
NE FS Lincoln National Forest	0	0	0	0	0	0	
NE FS Nebraska national Forest	0	0	0	0	0	0	
* NMFS Carson National Forest	10	14	4	6	-4	2	
NMFS Cibola National Forest	0	190	0	391	-190	-391	NIC0249
NM FS Gila National Forest	8	185	220	260	-177	-40	
NM FS Lincoln National Forest	0	0	0	0	0	0	
* NM FS Santa Fe National Forest (partly handwritten inventory)	26	20	207	215	6	-8	
* NM FS Southwestern Region	3	1	0	1	2	-1	
* NV FS Humboldt-Toiyabe National Forests	0	5	0	47	-5	-47	
OH FS Wayne National Forest	0	0	0	0	0	0	
OR FS Malheur National Forest	0	0	0	0	0	0	
OR FS Rogue River National Forest	0	0	0	0	0	0	
OR FS Suislaw National Forest	0	0	0	0	0	0	
OR FS Umpqua National Forest	0	0	0	0	0	0	
OR FS Wallowa-Whitman National Forest	3	3	29	29	0	0	
OR FS Winema National Forest	0	0	0	0	0	0	
PA FS Allegheny National Forest	0	0	0	0	0	0	
PR FS Caribbean National Forest	0	0	0	0	0	0	
SC FS Francis Marion & Sumter National Forests	0	0	0	0	0	0	
SD FS Black Hills National Forest	0	0	0	0	0	0	
TX FS National Forests and Grasslands in Texas	0	0	0	0	0	0	
* UT FS Fishlake National Forest	0	1	0	0	-1	0	
* UT FS Manti-La Sal National Forest	0	7	0	3	-7	-3	
UT FS Uinta National Forest (handwritten inventory)	1	1	13558	13558	0	0	
VT FS Green Mountain & Finger Lakes National Forests	0	0	0	0	0	0	
* WA FS Gifford Pinchot National Forest	6	0	0	0	6	0	
WV FS Monongahela National Forest	0	0	0	0	0	0	
WY FS Medicine-Bow Routt National Forests	0	0	0	0	0	0	
* WY FS Shoshone National Forest	0	1	0	1	-1	-1	
WY FS Thunder Basin National Grassland	0	0	0	0	0	0	
GA Soil Conservation Service	0	0	0	0	0	0	
NC Soil Conservation Service	0	0	0	0	0	0	
DC National Resources Conservation Service	0	0	0	0	0	0	
					0	0	
<b>DEPT OF COMMERCE</b>					0	0	
DC Economic Development Administration	0	0	0	0	0	0	
DC National Institute of Centers and Technology	0	0	0	0	0	0	
DC National Oceanographic and Atmospheric Administration	0	0	0	0	0	0	
					0	0	
<b>DEPT OF DEFENSE</b>					0	0	
AK AF Elmendorf Air Force Base	0	1	0	32	-1	-32	
AZ AF Williams Air Force Base	0	0	0	0	0	0	
CA AF Edwards Air Force Base	9	9	24	24	0	0	
FL AF Avon Park Bombing Range	0	0	0	0	0	0	
FL AF Hurlburt Air Field	0	0	0	0	0	0	
FL AF Patrick Air Force Base	0	0	0	0	0	0	
* HI AF 15th Airlift Wing, Hickam AFB	0	15	0	28	-15	-28	
UT AF Hill Air Force Base	0	0	0	0	0	0	
WY AF F.E. Warren Air Force Base					0	0	
AL Army Coosa River Storage Annex	0	0	0	0	0	0	
AL Army Fort McClellan	0	0	0	0	0	0	
AL Army Fort Rucker	0	0	0	0	0	0	
AL Army Redstone Arsenal	0	0	0	0	0	0	
AR Army Fort Chaffee	0	0	0	0	0	0	

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AGENCY	MNI		AFO		#s not accounted for in Notices		JOINT
	Inventory	Notice	Inventory	Notice	MNI	AFO	Notice #
AR Army Pine Bluff Arsenal	0	0	0	0	0	0	
AZ Army Fort Huachuca	1	0	0	0	1	0	
AZ Army Navajo Army Depot Activity	0	0	0	0	0	0	
AZ Army Yuma Proving Ground	0	0	0	0	0	0	
CA Army Fort Hunter Liggett 0	0	0	0	0	0	0	
CA Army Fort Irwin	0	0	0	0	0	0	
CA Army Fort Ord	0	0	0	0	0	0	
CA Army Parks Reserve Forces Training Area	0	0	0	0	0	0	
CA Army Presidio of Monterey	0	0	0	0	0	0	
CA Army Presidio of San Francisco	0	0	0	0	0	0	
CA Army Sierra Army Depot 0	0	0	0	0	0	0	
CO Army Fitzsimons Army Medical Center	0	0	0	0	0	0	
CO Army Fort Carson	0	0	0	0	0	0	
CO Army Pueblo Chemical Depot	0	0	0	0	0	0	
CO Army Rocky Mountain Arsenal	0	0	0	0	0	0	
GA Army Fort Benning	25	25	1550	1551	0	-1	
GA Army Fort Gordon	0	0	0	0	0	0	
GA Army Fort McPerson	0	0	0	0	0	0	
GA Army Fort Stewart	1	1	1	1	0	0	
GA Army Hunter Army Airfield	0	0	0	0	0	0	
HI Army Fort Derussy	0	0	0	0	0	0	
HI Army Fort Kamehameha	9	9	5	5	0	0	
* HI Army Fort Shafter	0	5	0	0	-5	0	
HI Army Kahuku Training Area	0	0	0	0	0	0	
HI Army Makua Military Reservation	0	0	0	0	0	0	
HI Army Pohakuloa Army Recreation Center	2	2	0	0	0	0	
w HI Army Waianae Army Recreation Center	0	0	0	0	0	0	
HI Army Wokapo	0	0	0	0	0	0	
IA Army Fort Leavenworth	0	0	0	0	0	0	
IA Army Iowa Army Ammunition Plant	0	0	0	0	0	0	
IL Army Joliet Army Ammunition Plant	0	0	0	0	0	0	
IL Army Rock Island Arsenal	0	0	0	0	0	0	
IL Army Savanna Army Depot	0	0	0	0	0	0	
IN Army Fort Benjamin Harrison	0	0	0	0	0	0	
IN Army Indiana Army Ammunition Plant	0	0	0	0	0	0	
IN Army Jefferson Proving Ground	0	0	0	0	0	0	
IN Army Newport Army Ammunition Plant	0	0	0	0	0	0	
KS Army Fort Leavenworth	0	0	0	0	0	0	
KS Army Fort Riley	0	0	0	0	0	0	
KS Army Sunflower Army Ammunition Plant	0	0	0	0	0	0	
KS Army Fort Campbell	0	0	0	0	0	0	
KY Army Lexington-Blue Grass Activity	0	0	0	0	0	0	
KY Army US Army Armor Center & Fort Knox	0	0	0	0	0	0	
LA Army Fort Polk (Joint NIC w/Joint Readiness Training Center)	1	1	0	0	0	0	NIC0694
LA Army Louisiana Army Ammunition Plant	0	0	0	0	0	0	
MA Army Materials Technology Laboratory	0	0	0	0	0	0	
MA Army Fort Devens	0	0	0	0	0	0	
MA Army Sudbury Training Annex	0	0	0	0	0	0	
* MD Army Aberdeen Proving Ground	9	0	20	0	9	20	
MD Army Adelphi Laboratory Center	0	0	0	0	0	0	
MD Army Blossom Point Field Test Facility	0	0	0	0	0	0	
MD Army Fort Detrick	0	0	0	0	0	0	
MD Army Fort George G. Meade	0	0	0	0	0	0	
MD Army Walter Reed Army Medical Center	0	0	0	0	0	0	
MO Army Fort Leonard Wood	0	0	0	0	0	0	
MO Army Lake City Army Ammunition Plant	0	0	0	0	0	0	
NC Army Fort Bragg	0	0	0	0	0	0	
NC Army Military Ocean Terminal, Sunny Point	0	0	0	0	0	0	
NE Army Cornhusker Army Ammunition Plant	0	0	0	0	0	0	
NJ Army Fort Dix	0	0	0	0	0	0	
NJ Army Fort Monmouth	0	0	0	0	0	0	
NJ Army Picatinny Arsenal	0	0	0	0	0	0	
* NM Army Fort Wingate Depot Activity	0	0	0	0	0	0	
NM Army White Sands Missile Range	0	0	0	0	0	0	
NV Army Hawthorne Army Ammunition Plant	0	0	0	0	0	0	
NY Army Seneca Army Depot Activity	0	0	0	0	0	0	
NY Army West Point Military Reservation	0	0	0	0	0	0	
OH Army Ravenna Army Ammunition Plant	0	0	0	0	0	0	
OK Army 45th Infantry Division Museum	0	0	0	0	0	0	
OK Army Fort Sill	0	0	0	0	0	0	

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AGENCY	MNI		AFO		#s not accounted for in Notices		JOINT
	Inventory	Notice	Inventory	Notice	MNI	AFO	Notice #
	PA Army Carlisle Barracks 0	0	0	0	0	0	0
PA Army Fort Indiantown Gap	0	0	0	0	0	0	
PA Army Letterkenny Army Depot	0	0	0	0	0	0	
SC Army Fort Jackson	0	0	0	0	0	0	
TN Army Holston Army Ammunition Plant	0	0	0	0	0	0	
TN Army Milan Army Ammunition Plant	0	0	0	0	0	0	
TX Army Camp Bullis Training Site	0	0	0	0	0	0	
TX Army Fort Bliss	0	0	0	0	0	0	
* TX Army Fort Hood (Archaeological Laboratory)	11	61	0	0	-50	0	
TX Army Fort Sam Houston 0	0	0	0	0	0	0	
TX Army Lone Star Army Ammunition Plant	0	0	0	0	0	0	
TX Army Longhorn Army Ammunition Plant	0	0	0	0	0	0	
TX Army Red River Army Depot	0	0	0	0	0	0	
UT Army Dugway Proving Ground	0	0	0	0	0	0	
UT Army Fort Douglas	0	0	0	0	0	0	
UT Army Tooele Army Depot 0	0	0	0	0	0	0	
VA Army Fort A.P. Hill	0	0	0	0	0	0	
VA Army Fort Belvoir	0	0	0	0	0	0	
VA Army Fort Eustis	0	0	0	0	0	0	
VA Army Fort Lee	0	0	0	0	0	0	
VA Army Fort Monroe	0	0	0	0	0	0	
VA Army Fort Pickett	0	0	0	0	0	0	
VA Army Fort Story	0	0	0	0	0	0	
VA Army Installation Management Agency	0	0	0	0	0	0	
VA Army Radford Army Ammunition Plant	0	0	0	0	0	0	
VA Army Vint Hill Communications & Electronics	0	0	0	0	0	0	
VA Army Woodbridge Research Facility	0	0	0	0	0	0	
WA Army Fort Lewis	0	0	0	0	0	0	
WA Army Vancouver Barracks	0	0	0	0	0	0	
WI Army Badger Army Ammunition Plant	0	0	0	0	0	0	
WI Army Fort McCoy Headquarters	0	0	0	0	0	0	
AL Army COE Mobile District 0	0	0	0	0	0	0	
AR Army COE Little Rock District	0	0	0	0	0	0	
CA Army COE Los Angeles District	1	0	3	0	1	3	
CA Army COE Sacramento District	11	7	9	9	4	0	
CA Army COE San Francisco District	0	0	0	0	0	0	
IL Army COE Rock Island District	52	0	28	0	52	28	
KS Army COE Kansas City District	0	0	0	0	0	0	
MI Army COE Detroit District 0	0	0	0	0	0	0	
* MN Army COE St. Paul District	0	35	0	1060	-35	-1060	
MO Army COE St. Louis District	0	0	0	0	0	0	
MS Army COE Vicksburg District	0	0	0	0	0	0	
MS Army COE Waterways Experiment Station	0	0	0	0	0	0	
NC Army COE Wilmington District	0	0	0	0	0	0	
w NE Army COE Omaha District	58	22	209	0	36	209	
w NM Army COE Albuquerque District	229	233	156	156	-4	0	
* OK Army COE Tulsa District 65	157	179	8748	-92	-8569		
OR Army COE Portland District	178	22	22248	21651	156	597	
PA Army COE Pittsburgh District	0	0	0	0	0	0	
TN Army COE Memphis District	35	35	3	2	0	1	NIC0914
TX Army COE Fort Worth District	0	0	0	0	0	0	
TX Army COE Galveston District	0	0	0	0	0	0	
WA Army COE Seattle District	0	0	0	0	0	0	
* WA Army COE Walla Walla District	200	94	3289	6220	106	-2931	NIC0905
CA Navy Naval Air Weapons Station, China Lake	14	11	3238	3238	3	0	
CA Navy North Island Naval Air Station	0	0	0	0	0	0	
CA Navy Point Loma Naval Base	0	0	0	0	0	0	
CA Navy West Coast Naval Facilities Engineering	0	0	0	0	0	0	
* FL Navy Coastal Systems Substation, Panama City	175	171	3152	3098	4	54	
* HI Navy Pacific Division, Naval Facilities Engineering Command	8	13	1	356	-5	-355	
NV Navy Naval Air Station, Fallon	0	0	0	0	0	0	
* WA Navy Port Hadlock Detachment	0	6	0	42	-6	-42	
WA Navy Whidbey Island Naval Air Station	?	6	? 4	2			
CA Marine Corp AC/S Environment Security	0	0	0	0	0	0	
* CA Marine Corp Camp Pendleton	25	14	241	488	11	-247	
* HI Marine Corp Hawaii	0	1582	0	255	-1582	-255	
NC Marine Corp Camp Jejeune	0	0	0	0	0	0	
DC Armed Forc Institute of Pathology	141	16	0	0	125	0	

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AGENCY		MNI	MNI	AFO	AFO	#s not accounted for in Notices		JOINT
		Inventory	Notice	Inventory	Notice	MNI	AFO	Notice #
<b>DEPT. OF ENERGY</b>								
CA DOE	Naval Petroleum Reserves in California	0	0	0	0	0	0	
CO DOE	Rocky Flats Office	0	0	0	0	0	0	
CO DOE	Western Area Power Administration	0	0	0	0	0	0	
ID DOE	Idaho Operations Office	0	0	0	0	0	0	
IL DOE	Batavia Area Office	0	0	0	0	0	0	
IL DOE	Fermi National Accelerator Laboratory	0	0	0	0	0	0	
NJ DOE	Princeton Area Office, Princeton Plasma Physics	0	0	0	0	0	0	
NMDOE	Los Alamos Area Office	0	0	0	0	0	0	
NV DOE	Nevada Operations Office, Nevada Test Site	1	1	10	1318	0	-1308	
NV DOE	Yucca Mountain Site Characterization Office	0	0	0	0	0	0	
NY DOE	Brookhaven Area Office	0	0	0	0	0	0	
OHDOE	Fernald Environmental Management Project	0	0	0	0	0	0	
OR DOE	Bonneville Power Administration	0	0	0	0	0	0	
SC DOE	Savannah River Operations Office	0	0	0	0	0	0	
TN DOE	Oakridge Operations Office	0	0	0	0	0	0	
TX DOE	Superconducting Super Collider	0	0	0	0	0	0	
* WADOE	Richland Operations Office	5	4	13	22	1	-9	
WYDOE	Naval Petroleum & Oil Shale Reserves	0	0	0	0	0	0	
<b>US Dept. of Health and Human Services</b>								
AK	Office of Environmental Health & Engineering	0	0	0	0	0	0	
<b>US Dept. of Transportation</b>								
CT	US Coast Guard Museum	0	0	0	0	0	0	
<b>US Dept. of Interior</b>								
AK DOI	Anasca Office	0	0	0	0	0	0	
DC DOI	BIA (not joint)	1	1	0	0	0	0	
DC DOI	BIA & Univ. of AZ, ASM	178	189	5901	5906	-11	-5	
DC DOI	BIA & Brigham Young University	0	1	0	2	-1	2	
DC DOI	BIA & Milwaukee Public Museum	0	29	0	229	-29	-229	
DC DOI	BIA & Minnesota Indian Affairs Council	8	27	3	1543	-19	-1540	
DC DOI	BIA & Nevada State Museum	6	6	6	362	0	-356	
DC DOI	BIA & Oshkosh Public Museum	0	1	0	20	-1	-20	
DC DOI	BIA & Peabody Museum	9	9	1	2	0	-1	
DC DOI	BIA & Phoebe Hurst Museum	0	3	0	1	-3	-1	
DC DOI	BIA & The Univ. of California, Riverside	3	1	0	0	2	0	
DC DOI	BIA & Univ. of Colorado, Boulder	0	1	0	0	-1	0	
DC DOI	BIA & University of Denver	0	5	0	0	-5	0	
DC DOI	BIA & Univ. of Montana, Missoula	30	2	8	0	28	8	
						0	0	
DOI	BIA & Indian Arts & Crafts Board, Southern Plains Indian Museum	0	1	0	0	-1	0	
DOI	BIA & NPS, Mesa Verde		1		0	-1	0	
						0	0	
DC DOI	BLM, Alaska State Office	142	477	3327	3505	-335	-178	
DC DOI	BLM, Arizona State Office	61	63	544	545	-2	-1	
DC DOI	BLM, Anasazi Heritage Center	405	431	3587	3724	-26	-137	
* DC DOI	BLM, California State Office	23	65	690	2238	-42	-1548	
DC DOI	BLM, Idaho State Office	0	7	0	584	-7	-584	
DC DOI	BLM, Dakotas Area Office	0	0	0	0	0	0	
DC DOI	BLM, New Mexico State Office	116	87	38	59	29	-21	
DC DOI	BLM, Socorro Resource Area	0	0	0	0	0	0	
*w DC DOI	BLM, Nevada State Office	69	43	0	4078	26	-4078	
DC DOI	BLM, Oregon State Office	63	13	0	16	50	-16	
* DC DOI	BLM, Utah State Office	11	11	936	938	0	-2	
DC DOI	BLM, Wyoming State Office	0	1	0	502	-1	-502	
DC DOI	BOR, Lower Colorado Region, Phoenix Area	492	491	4156	3420	1	736	
*w DC DOI	BOR, Mid-Pacific Region	8	0	39	0	8	39	
* DC DOI	BOR, Great Plains Region	135	15	1084	4	120	1080	
DC DOI	BOR, Lower Colorado Region, Albuquerque	0	0	0	0	0	0	
DC DOI	BOR, Upper Colorado Region	10	10	3	3	0	0	
* AK DOI	FWS, Anchorage (Alaska Region)	20	2	126	126	18	0	
AL DOI	FWS, Wheeler National Wildlife Refuge	0	0	0	0	0	0	
AR DOI	FWS, Big Lake National Wildlife Refuge	0	0	0	0	0	0	
AR DOI	FWS, Felsenthal National Wildlife Refuge	0	0	0	0	0	0	
AR DOI	FWS, White River national Wildlife Refuge	0	0	0	0	0	0	
AZ DOI	FWS, Office of Law Enforcement	0	0	0	0	0	0	
CA DOI	FWS, Klamath Basin National Wildlife Refuge	20	20	5	5	0	0	
FL DOI	FWS, Cedar Keys National Wildlife Refuge	0	0	0	0	0	0	

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AGENCY		MNI		AFO		#s not accounted for in Notices		JOINT	
		Inventory	Notice	Inventory	Notice	MNI	AFO	Notice	
								#	
FL DOI	FWS, Lake Woodruff National Wildlife Refuge	0	0	0	0	0	0		
FL DOI	FWS, Loxahatchee National Wildlife Refuge	0	0	0	0	0	0		
FL DOI	FWS, Merritt Island National Wildlife Refuge	0	0	0	0	0	0		
FL DOI	FWS, St. Marks National Wildlife Refuge	0	0	0	0	0	0		
FL DOI	FWS, St. Vincent National Wildlife Refuge	0	0	0	0	0	0		
GA DOI	FWS, Eufaula National Wildlife Refuge	0	0	0	0	0	0		
GA DOI	FWS, Harris Neck National Wildlife Refuge	0	0	0	0	0	0		
GA DOI	FWS, Savannah Coastal Refuges	27	27	36	36	0	0		
GA DOI	FWS, Southeast Region			Joint NIC0914 with US, DOD, Army COE, Memphis					
HI DOI	FWS, Honolulu	0	7	0	0	-7	0		
IL DOI	FWS, Crab Orchard National Wildlife Refuge	8	0	0	0	8	0		
KS DOI	FWS, Kirwin National Wildlife Refuge	0	0	0	0	0	0		
LA DOI	FWS, Bayou Sauvage National Wildlife Refuge	0	0	0	0	0	0		
LA DOI	FWS, D'Arbonne National Wildlife Refuge	0	0	0	0	0	0		
LA DOI	FWS, Tensas River National Wildlife Refuge	0	0	0	0	0	0		
MN DOI	FWS, Great Lakes-Big Rivers Region	0	0	0	0	0	0		
MN DOI	FWS, Sherburne National Wildlife Refuge	0	0	0	0	0	0		
MO DOI	FWS, Mark Twain National Wildlife Refuge	0	0	0	0	0	0		
MO DOI	FWS, Mingo National Wildlife Refuge	0	0	0	0	0	0		
MS DOI	FWS, Yazoo National Wildlife Refuge	0	0	0	0	0	0		
MS DOI	FWS, Cedar Island National Wildlife Refuge	0	0	0	0	0	0		
NM DOI	FWS, Office of Law Enforcement	0	0	0	0	0	0		
NV DOI	FWS, Stillwater national Wildlife Refuge	0	0	0	0	0	0		
NY DOI	FWS, Valley Stream	7	10	0	0	-3	0		
* OR DOI	FWS, Malheur National Wildlife Refuge	18	18	13	210	0	-197		
SC DOI	FWS, Pinckney Island National Wildlife Refuge	0	0	0	0	0	0		
SC DOI	FWS, Santee National Wildlife Refuge	0	0	0	0	0	0		
TN DOI	FWS, Lower Hatchie National Wildlife Refuge	0	0	0	0	0	0		
TN DOI	FWS, Tennessee National Wildlife Refuge	0	0	0	0	0	0		
TX DOI	FWS, Laguna Atacosa National Wildlife Refuge	0	0	0	0	0	0		
UT DOI	FWS, Fish Springs National Wildlife Refuge	0	0	0	0	0	0		
VI DOI	FWS, Sandy Point National Wildlife Refuge	0	0	0	0	0	0		
WI DOI	FWS, Eastern Region	0	0	0	0	0	0		
WI DOI	FWS, Trempealeau national Wildlife Refuge	0	0	0	0	0	0		
AK DOI	NPS, Alaska Support Office	0	0	0	0	0	0		
AK DOI	NPS, Bering Land Bridge National Preserve	0	0	0	0	0	0		
* AK DOI	NPS, Glacier Bay National Park & Preserve	3	3	28	16	0	12		
AK DOI	NPS, Katmai National Park & Preserve	21	25	6	6	-4	0		
AK DOI	NPS, Noatak National Preserve	1	1	0	0	0	0		
AK DOI	NPS, Northwest Alaska Areas	0	0	0	0	0	0		
AK DOI	NPS, Sitka NHP	1	1	22	22	0	0		
* AK DOI	NPS, Horseshoe Bend NMP	0	0	0	0	0	0		
AL DOI	NPS, Russell Cave NM	0	0	0	0	0	0		
AR DOI	NPS, Arkansas Post NM	0	0	0	0	0	0		
AR DOI	NPS, Buffalo National River	0	0	0	0	0	0		
AZ DOI	NPS, Canyon de Chelly NM	68	0	375	0	68	375		
AZ DOI	NPS, Casa Grande NM	65	63	78	63	2	15		
AZ DOI	NPS, Fort Bowie NHS	0	0	0	0	0	0		
* AZ DOI	NPS, Glen Canyon NRA	14	0	180	0	14	180		
AZ DOI	NPS, Grand Canyon NP	22	0	14	0	22	14		
AZ DOI	NPS, Hubbell Trading Post NHS	7	5	970	970	2	0		
AZ DOI	NPS, Montezuma Castle NM	95	0	99	0	95	99		
w AZ DOI	NPS, Navajo NM	84	0	453	0	84	453		
AZ DOI	NPS, Organ Pipe Cactus NM	1	1	0	0	0	0		
AZ DOI	NPS, Petrified Forest NP	7	0	709	0	7	709		
AZ DOI	NPS, Pipe Spring NM	0	4	0	0	-4	0		
AZ DOI	NPS, Saguaro NP	6	6	4	4	0	0		
* AZ DOI	NPS, Tonto NM	9	8	53	52	1	1		
AZ DOI	NPS, Tumacacori NHP	24	0	25	0	24	25		
AZ DOI	NPS, Tuzigoot NM	42	0	38	0	42	38		
AZ DOI	NPS, Walnut Canyon NM	45	0	103	0	45	103		
AZ DOI	NPS, Western Archaeological and Conservation Center	33	31	198	175	2	23		
AZ DOI	NPS, Wupatki NM	74	0	1477	0	74	1477		
CA DOI	NPS, Channel Islands NP	6	6	0	0	0	0		
CA DOI	NPS, Death Valley NP	30	28	925	348	2	577		
* CA DOI	NPS, Joshua Tree NM	11	11	12625	12225	0	400		
CA DOI	NPS, Sequoia & Kings Canyon NP	4	1	0	0	3	0		
* CA DOI	NPS, Lassen Volcanic NP	0	4	0	0	-4	0		
CA DOI	NPS, Lava Beds NM	0	0	0	0	0	0		
CA DOI	NPS, Pacific West Field Area	0	0	0	0	0	0		

\* See Notes Page  
w See Withdrawn Notices Page

AGENCY	MNI		AFO		#s not accounted for in Notices		JOINT
	Inventory	Notice	Inventory	Notice	MNI	AFO	Notice #
CA DOI NPS, Whiskeytown-Shasta-Trinity	0	0	0	0	0	0	
CA DOI NPS, Yosemite NP	4	1	175	176	3	-1	
CO DOI NPS, Bent's Old Fort NHS	2	2	0	0	0	0	
CO DOI NPS, Curecanti NRA	0	0	0	0	0	0	
w CO DOI NPS, Dinosaur NM	0	0	0	0	0	0	
CO DOI NPS, Hovenweep NM	4	0	1	0	4	1	
CO DOI NPS, Intermountain Region	0	0	0	0	0	0	
CO DOI NPS, Mesa Verde	1595	1464	4633	4533	131	100	
CO DOI NPS, Rocky Mountain NP	1	1	0	0	0	0	
DC DOI NPS	0	0	0	0	0	0	
FL DOI NPS, Big Cypress National Preserve	1	5	2	5044	-4	-5042	
FL DOI NPS, Canaveral NS	0	0	0	0	0	0	
FL DOI NPS, De Soto NM	0	0	0	0	0	0	
FL DOI NPS, Everglades NP	11	2	1	41	9	-40	
FL DOI NPS, Fort Caroline NM	0	0	0	0	0	0	
FL DOI NPS, Fort Matanzas NM	0	0	0	0	0	0	
FL DOI NPS, Gulf Islands NS	9	8	5	5	1	0	
FL DOI NPA, Southeast Archaeological Center	44	0	246	0	44	246	
GA DOI NPS, Cumberland Island NS	0	0	0	0	0	0	
GA DOI NPS, Fort Frederica NM	0	0	0	0	0	0	
GA DOI NPS, Ocmulgee NM	68	67	31216	31246	1	-30	
HI DOI NPS, Haleakala NP	16	16	0	0	0	0	
HI DOI NPS, Pu'uhonua O Honaunau	3	0	0	0	3	0	
IA DOI NPS, Effigy Mounds NM	1	12	1	3	-12	-2	
ID/WDOI NPS, COE Walla Walla, WSU Nez Perce NHP	0	94	0	6220	-94	-6220	
LA DOI NPS, Jean Lafitte NHP and Pres	12	1	74	74	11	0	
MA DOI NPS, Cape Cod NS	2	2	0	0	0	0	
MD DOI NPS, Chesapeake & Ohio Canal NHP	1	0	0	0	1	0	
MD DOI NPS, Fort Washington Park	11	0	0	0	11	0	
ME DOI NPS, Arcadia NP	9,1	9,1	2	0	0	0	
MI DOI NPS, Isle Royale NP	12	0	0	0	12	0	
MN DOI NPS, Grand Portage NM	2	2	11,121	11,000	0	121	
MN DOI NPS, Pipestone NM	0	0	0	0	0	0	
MN DOI NPS, Voyageurs NP	3	0	0	0	-3	0	
MO DOI NPS, Ozark National Scenic Riverways	103	0	4	0	-103	-4	
MS DOI NPS, Natchez Trace Parkway	63	284	1127	5973	-221	-4846	
MS DOI NPS, Vicksburg NMP	1	0	0	0	-1	0	
MT DOI NPS, Grant-Kohrs Ranch NHS	1	0	0	0	1	0	
MT DOI NPS, Little Bighorn Battlefield NM	0	2	0	0	-2	0	
NC DOI NPS, Blue Ridge Parkway	1	0	0	0	-1	0	
ND DOI NPS, Fort Union Trading Post NHS	7	7	2362	2098	0	264	
ND DOI NPS, Knife River Indian Villages NHS	9	10	0	0	-1	0	
NE DOI NPS, Agate Fossil Beds NM	10	10	10	10	0	0	
NE DOI NPS, Homestead NM	0	0	0	0	0	0	
NE DOI NPS, Scotts Bluff NM	8	18	0	16			
NM DOI NPS, Aztec Ruins NM	137	126	103	176	11	-73	
NM DOI NPS, Bandelier NM	50	7	13	0	-43	-13	
NM DOI NPS, El Morro NM	22	0	65	0	22	65	
NM DOI NPS, Fort Union Trading Post NHS	6	4	0	40	2	-40	
* NM DOI NPS, Chaco Culture National Historical Park[SW]	544	256	828	703	288	125	
NM DOI NPS, Gila Cliff Dwellings NM	46	162	15	316			
NM DOI NPS, Pecos NHM	160	4	40	36	156	4	
MM DOI NPS, Salinas Pueblo	909	1048	245	598			
NV DOI NPS, Great Basin NP	110	110	0	0	0	0	
NY DOI NPS, Statue of Liberty	6	6	1	1	0	0	
OH DOI NPS, Cuyahoga Valley NP	2	0	0	0	2	0	
OH DOI NPS, Hopewell Culture NP	160	0	401	0	160	401	
OK DOI NPS, Chickasaw NRA	2	2	0	0	0	0	
* OR DOI NPS, Fort Clatsop N MEM	1	0	0	0	1	0	
PA DOI NPS, Delaware Water Gap NRA	45	0	68	0	45	68	
SD DOI NPS, Badlands NP	1	1	0	0	0	0	
TN DOI NPS, Big South Fork NRRRA	27	0	0	0	27	0	
TN DOI NPS, Shiloh NMP	0	0	1	0	0	1	
* TX DOI NPS, Alibates Flint Quarries NM [SW]	31	0	278	0	31	278	
TX DOI NPS, Amistad NRA	94	0	184	0	94	184	
TX DOI NPS, Big Bend NP	8	0	75	0	8	75	
TX DOI NPS, Guadalupe Mountains NP	22	10	12	0	12	12	
TX DOI NPS, Lake Meredith NRA	0	28	0	347	-28	-347	
TX DOI NPS, Padre Island NS	4	0	0	0	4	0	
TX DOI NPS, San Antonio Missions NHP	1	0	1	0	1	1	
UT DOI NPS, Canyonlands NP	3	0	119	0	3	119	

\* See Notes Page  
w See Withdrawn Notices Page

AGENCY	MNI		AFO		#s not accounted for in Notices		JOINT
	Inventory	Notice	Inventory	Notice	MNI	AFO	Notice #
UT DOI NPS, Capitol Reef	1	0	0	0	1	0	
* UT DOI NPS, Zion NP	18	11	9	0	7	9	
VA DOI NPS, Colonial NHP	19	0	8	0	19	8	
WA DOI NPS, Fort Vancouver NHS	13	0	0	0	13	0	
WA DOI NPS, Olympic NP	1	1	0	0	0	0	
* WA DOI NPS, San Juan Island National Historical Park [PN]	117	0	213	0	117	213	
WA DOI NPS, Whitman Mission NHS	2	2	20	20	0	0	
WY DOI NPS, Yellowstone NP	5	4	11	105	1	94	
CA FBI	0	1	0	0	-1	0	
* KY FBI	5	5	1	1	0	0	
SD FBI USGS	2	2	0	0	0	0	
* OK <b>Department of Justice</b>	1	1	2	1	0	1	
OR FBI, California Office	0	0	0	0	0	0	
FBI, Louisville Office					0	0	
FBI, Rapid City Resident Agency	0	0	0	0	0	0	
Marshals Service, Western District of Oklahoma	0	0	0	0	0	0	
US Attorney, District of Oregon	0	0	0	0	0	0	
<b>Department of Transportation</b>	0	0	0	0	0	0	
<b>Department of Veterans' Affairs</b>	0	0	0	0	0	0	
<b>US Environmental Protection Agency</b>	0	0	0	0	0	0	
<b>Federal Communications Commission</b>	0	0	0	0	0	0	
<b>Federal Emergency Management Agency</b>	0	0	0	0	0	0	
<b>General Services Administration</b>	0	0	0	0	0	0	
<b>Metropolitan Washington Airports Authority</b>	0	0	0	0	0	0	
<b>US National Aeronautics and Space Administration</b>	0	0	0	0	0	0	
* <b>TVA US Nuclear Regulatory Commission</b>	35	0	2651	0	35	2651	
<b>US National Archives</b>							
<b>US National Archives and Records Administration, Presidential</b>							
<b>Presidio Trust</b>							
<b>Tennessee Valley Authority</b>							

\* See Notes Page  
w See Withdrawn Notices Page

## NOTES

### AGENCY

FS, Santa Fe National Forest and the Carson National Forest	Inventory for sites LA 38962, LA 9203, LA9204, LA9205, & LA9206 are in inventory files for both the Santa Fe National Forest and the Carson National Forest. Carson has NIC for 3 of the 5 MNI in LA 9204-9206.
FS, Southwestern Region	Also duplicates sites LA 38962, and LA 9203-9206 (didn't included in Southwestern Region's count).
FS, Tongass National Forest, Petersburg Office	Unable to locate the inventory for 5 MNI and the 61 AFO in the NIC. Seems to be 2 MNI and 1 AFO with no NIC. Only inventory found was filed with an NIC
FS, Coconino National Forest	Only inventory found was found in NIC file
FS, Angeles National Forest	Only inventory found was found in NIC file
FS, Cleveland National Forest	Unable to differentiate between affiliated and unidentifiable, as well as between AFO and UFO, etc.
FS, Lassen National Forest	There is a note in the folder to remove these items, however they are still in the inventory file, and there is still a valid NIC for them
FS, San Juan National Forest	There are 2 NICs in this file. However, there is no inventory in this file. One of the NIC says it was corrected to be under the control/possession of Univ. of Denver, and the other lists 0 MNI/AFO in the DB
FS, Ocala National Forest NIC	is in the folder, but no inventory. In computer as National Forests in Florida
FS, Humboldt-Toiyabe National Forests	A note in the file indicates a letter was sent to agency asking for a copy of inventory in 2003
FS, Fishlake National Forest	Unable to locate the inventory
FS, Manti-La Sal National Forest	Unable to locate the inventory
FS, Gifford Pinchot National Forest	There are items in inventory file, but it doesn't indicate if they are AFOs or not.
FS, Shoshone National Forest	Unable to locate the inventory
Air Force, 15th Airlift Wing, Hickam AFB	Number of AFO is not listed on Details page on the database.
Army, Fort Shafter	Unable to locate inventory
Army, Aberdeen Proving Ground	Affiliation is not clear, however there are no CUI entries for this agency.
Army, Fort Wingate Depot Activity	Agency holds 1 MNI and 5 AFO that are CUI (shows affiliated w/Anasazi). But there is no NIC and no entry in the CUI DB
Army, Fort Hood (Archaeological Laboratory)	Not able to find the numbers in the inventory to support the NIC
Army COE, St. Paul District	Unable to locate inventory

Army COE, Walla Walla District	This inventory is from a single site, and there is a NIC published for the site. The NIC notes that there were initially 260 individuals, an unknown number of which were re-interred on a hill overlooking the original burial site. There are an additional 2914 funerary remains that the agency calls "associated" but there are not remains they are associated with. If they were included, it would bring the AFO count up to 6203.
Navy, Coastal Systems Substation, Panama City	There are 2 sets of inventory, which appear to be a new and older edition, a there are duplicates, and the newer set has more records for AFOs. To verify, one would have to compare records by record by reading the details, as many don't have individual numbers.
Navy, Pacific Division, Naval Facilities	The inventory for the 1 AFO I found lists the item as "Associated Funerary Objects" and describes them as "Assorted limestone non-artifact lithics, but doesn't give a number.
Navy, Port Hadlock Detachment	The NIC is in the folder, but unable to locate the inventory that goes with it, or any inventory for that matter.
Navy, Whidbey Island Naval Air Station	Entire inventory is included in the file as CUI. Apparently some were affiliated, removed from the CUI database, and published in NIC0254. However, their inventory pages weren't removed from the CUI folder and/or noted as being affiliated. The CUI database entry is also somewhat unclear. It states the original number of MNI was 42, then reduced to 15 and affiliated and published in a NIC in 1999. However, the only NIC is only for 6 MNI.
Marine Corps, Camp Pendleton	There are actually 76 records of human remains in the inventory. It appears that many different records are for the same individual. When they list the burial numbers, you can take care of duplicated individuals, but there are a number of entries with unknown burial numbers. Unable to get an accurate count. Also, the AFOs records often appear to represent multiple items, but the numbers are often not given, which probably accounts for my low AFO count.
Marine Corps, Hawaii	Unable to locate inventory. Bishop Museum is the possessor
DOE, Richland Operations Office	Inventory is joint with Burke Museum, Univ. of Washington. Couldn't find the AFO inventory associated with one part of NIC0462 for site 45-BN-157 (which is 8 AFO)
BLM, California State Office	The numbers of MNI and AFO in the inventory file do not match what was listed in the NIC, at least for NIC0437. Didn't check further.
BLM, Nevada State Office Only	inventory found was filed in the NIC0670 folder.
BLM, Utah State Office Tennessee Valley Authority	Shows the Inventory & Draft Notice checked out by Muder, unkn date All the inventory in the TVA files appears to be CUI. The National NAGPRA database indicates that there is TVA inventory housed at the Frank H. McClung Museum at the University of Tenn, Knoxville, and the Alabama State Museum of Natural History at the University of Alabama. I was able to find some inventory that included TVA items in the Univ. of Tenn files, but not with the numbers found in the database for TVA inventory housed at Univ of Tenn. The files for the Univ. of Alabama indicated that they did not include inventory for any Federal agencies in their inventories. Unable to find the inventory for TVA/Univ. of Alabama. NAGPRA's database has MNI/17 AFO/2272 for inventory housed at the Univ. of Tenn and MNI/320, AFO/1. Also, checked for NICs by TVA, and both the Tenn and Alabama agencies.

BOR, Mid-Pacific Region	Notice for this inventory is on hold by orig.
BOR, Great Plains Region	There is an OUT card with nothing written on it in a folder with an empty Affiliated Inventory file. Though the file might go with a 3 ring binder of inventory?
FWS, Anchorage (Alaska Region)	13 of the remaining MNI that are not in an NIC were obtained between 1998-2001
FWS, Malheur National Wildlife Refuge	The NIC data in the database lists 17 MNI, but if you read through the notice there are actually 18, which is the number I used for this count. Also, the inventory for 35HA49 only lists bags of bone, flakes and bon/shell, and not actual numbers, which is probably where the discrepancy with the number of AFOs comes from.
FBI, Louisville Office	The inventory doesn't differentiate between the UFO and the AFO so I could not obtain an accurate count and just went with what was in the notice. All items in the inventory appear to be accounted for by either a NIC or an NIR
Marshals Service, Western District of Oklahoma	The database lists no AFOs, but the NIC itself has one.
NPS, Glacier Bay National Park & Preserve	The AFO counts between the inventory and the NIC are likely just differences in counting style
NPS, Horseshoe Bend NMP	Folder checked out, unkn which, it just says "blue"
NPS, Glen Canyon NRA	There is a NIC in the folder from 1996.
NPS, Tonto NM	I came up with different numbers, but all sites are represented in the NIC
NPS, Joshua Tree NM	I came up with different numbers, but all sites appear to be represented in the NIC
NPS, Lassen Volcanic NP	Inventory possibly checked out? There is a folder with an OUT card which has LABE-Cor (?) on it checked out in 2004. The file doesn't have an agency identifier on it.
NPS, Isle Royale NP	only CUI inventory was present
NPS, El Morro NM	There is no NIC available, but a NIR was published and is included in the file
NPS, Fort Union Trading Post NHS	only CUI inventory and published notice available
NPS, Chaco Culture National Historic Park	There is a page missing from the inventory list, so results are likely skewed
NPS, Gila Cliff Dwellings NM	The numbers describing the inventories and the published notices could be discrepant because the Park is in control of more items than are in its possession; perhaps the numbers lists describe the items the Park possesses, while the inventory descibes all of the items in the Park's control.
NPS, Statue of Liberty NM	There are several items listed that are not counted in the inventory and are listed as 0 for the item count, but these items seem like they should be subject to being listed as MNI or AFO

NPS, Alibates Flint Quarries NM	One portion of the inventory has a note before listing the items that says that even though the the numbered human remains appear to be in the hundreds, approximately 22 individuals are represented. I used 22 as the MNI for that portion of the inventory.
NPS, Capital Reef NP	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 publish
NPS, Zion NP	
NPS, San Juan Island	The MNI counts in the inventory seem high and might reflect number of human remains instead of number of individuals
NPS, Mesa Verde	Pages missing from inventory, so results might be skewed

**WITHDRAWN NOTICES**

<b>AGENCY</b>	<b>SUBAGENCY</b>	
Army	Waianae Army Recreation Center	Inventory and Notice were Withdrawn. The remains were part of an ongoing reburial program at the time of enactment of NAGPRA and therefore are not covered by NAGPRA, according to a letter in the file.
FS	Tongass National Forest, Chatham Area	There is a withdrawn NIC for 2 of the MNI that "Notice wasn't needed, as remains came from FS lands after 1990
Army COE	Omaha District	Human remains and AFOs were repatriated pursuant to an agreement from 1988
Army COE	Tulsa District	A note in the folder indicates Tulsa District is slowing sending in inventory, and owe inventory for 23 sites in addition to other requirements from 1998
	NPS, Navajo NM	Note indicates they are revising their inventory and there will be a re-submission forthcoming as of 04/05
	NPS, Dinosaur NM	Inventory and NIC withdrawn and re-submitted as CUI
	Ozark-St. Francis National Forests	"Withdrawn - added to CUI database; no determination of affiliation made; tribes not responsive to requests for consultation" according to the database Army
	COE Albuquerque District	Notice was on hold as they hadn't reached affiliation decision, then was withdrawn
	BLM, Nevada State Office	"After checking with Stephanie Damadio, Garth Portillo (Utah State Archaeologist) and Shane Baker at BYU regarding this notice record, which has never had a corresponding paper file, the conclusion of the NAGPRA office is that it is not a notice. The record was probably created when some confusion arose about a BYU notice the HRs for which may have come from Forest Service land (not BLM). Correspondence has been placed in a paper file, and the notice is marked as withdrawn." - NAGPRA database

BOR, Mid-Pacific Region	"Rec'v letter asking to withdraw notice until ownership/control issues decided." for N0384, N0528, & N0424
NPS, Mesa Verde NP	"it appears at the time the published notice was drafted, it was decided to not include remains/ objects in that notice because they may have been recovered outside park boundaries" -- email from Jaime Levallee to Mary S. Carroll
NPS, Hawaii Volcanoes National Park	"Due to the continuing consultation information on that inventory list of Human Remains and Associated Funerary Objects is no longer accurate. HAVO has no human remains or associated funerary objects in its collections." --letter from HAVO's Park Superintendent to the Associate Director of Cultural Resources
NPS, Capitol Reef NP	"Withdrawn-Per note from Mary Carroll, Capitol Reef only has 1 CUI remain and no affiliated. Entry in the CUI database has been corrected., Letter in file indicates that Capitol Reef had withdrawn this notice and had informed the tribe(s) that the single HR was unidentifiable and was withdrawing the notice." --NAGRPA database
NPS, Fort Vancouver NHS	"Withdrawn - Per note from Mary Carroll, Fort Vancouver only has CUI remains, no affiliated and the CUI database has been updated to reflect the numbers." --NAGPRA database

## APPENDIX E

# Letter from National NAGPRA Program to Grand Canyon National Park



United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street, N.W.  
Washington, D.C. 20240

RECEIVED  
DEC 27 2007

BY: HCPD

IN REPLY REFER TO:

W24 (2253)

Steve P. Martin, Superintendent  
Grand Canyon National Park  
P.O. Box 129  
Grand Canyon, AZ 86023

COPY FOR YOUR  
INFORMATION

Dear Superintendent Martin:

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.

If you have any questions or require additional information, then please feel free to contact Jaime Lavallee, Notice Coordinator, via telephone at (202) 354-2204, or by e-mail at [Jaime\\_Lavallee@contractor.nps.gov](mailto:Jaime_Lavallee@contractor.nps.gov).

Sincerely,

Sherry Hutt,  
Manager, National NAGPRA Program

CC: Dr. Mary Carroll, Park NAGPRA, Program Lead, 12795 W. Alameda Parkway, Denver, CO 80225

Havasupai Tribe of the Havasupai Reservation, Arizona  
Hopi Tribe of Arizona  
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona  
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona  
Paiute Indian Tribe of Utah  
Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)  
Pueblo of Acoma, New Mexico  
Pueblo of Cochiti, New Mexico  
Pueblo of Isleta, New Mexico  
Pueblo of Jemez, New Mexico

# APPENDIX F

## “Federal Agency NAGPRA Statistics,” 2006\*

### FEDERAL AGENCY NAGPRA STATISTICS

Prepared by the National NAGPRA Program

October 31, 2006

#### INTRODUCTION

At the May 2006 meeting in Juneau, AK, members of the Review Committee expressed some concern regarding Federal agency NAGPRA compliance. This report presents the submissions of the 13 land managing agencies to the National NAGPRA office as of October 2006 with a focus on the current status of Native American human remains in their control. The report does not contain information on agencies such as the Department of Justice, which have sporadic NAGPRA compliance obligations, but which have published notices.

As of October 24, 2006, 301 notices describing Native American human remains have been published by 163 Federal land holding/land managing agency units. Of these, 242 are Notices of Inventory Completion (human remains from collections) and 59 are Notices of Intended Disposition (new discovery/excavation). These 301 published notices describe human remains representing a minimum of 13,614 individuals. Included in the online Culturally Unidentifiable Inventories Database are human remains representing 13,145 individuals held by Federal agencies that have not been included in these notices. The National NAGPRA database includes an additional 1,642 sets of human remains identified by Federal agencies in their inventories as affiliated, but that have not been included in published notices. The total of human remains accounted for by Federal agencies is 28,411. In addition, Federal agencies have published 51 Notices of Intent Repatriate since NAGPRA was enacted (cultural items).

As an indicator of recent progress, it should be noted that Federal agencies have published 43 Notices of Inventory Completion describing 790 individuals and 12,578 associated funerary objects during the last two years. During that same time period, Federal agencies have published 10 Notices of Intended Disposition, which include 35 individuals. In addition, agencies have published 10 Notices of Intent to Repatriate cultural items.

Each table below is a summary by department and agency of 1) notices published, including Federal Register Notices of Inventory Completion (NIC) and Notices of Intended Disposition (NID), 2) the minimum number of human remains (MNI) included in published notices, 3) other affiliated remains reported in inventories, but not yet included in notices, and submissions not yet published, 4) culturally unidentifiable (CUI) human remains posted on the online database. The first column, labeled “SNIR,” records the number of “No Statement of Inventory Required” voluntarily submitted by units within agencies that do not have control over any collections containing human remains or associated funerary objects. NAGPRA regulations do not require agencies or museums to report that they control no collections subject to NAGPRA and do not require reporting of actual repatriations.

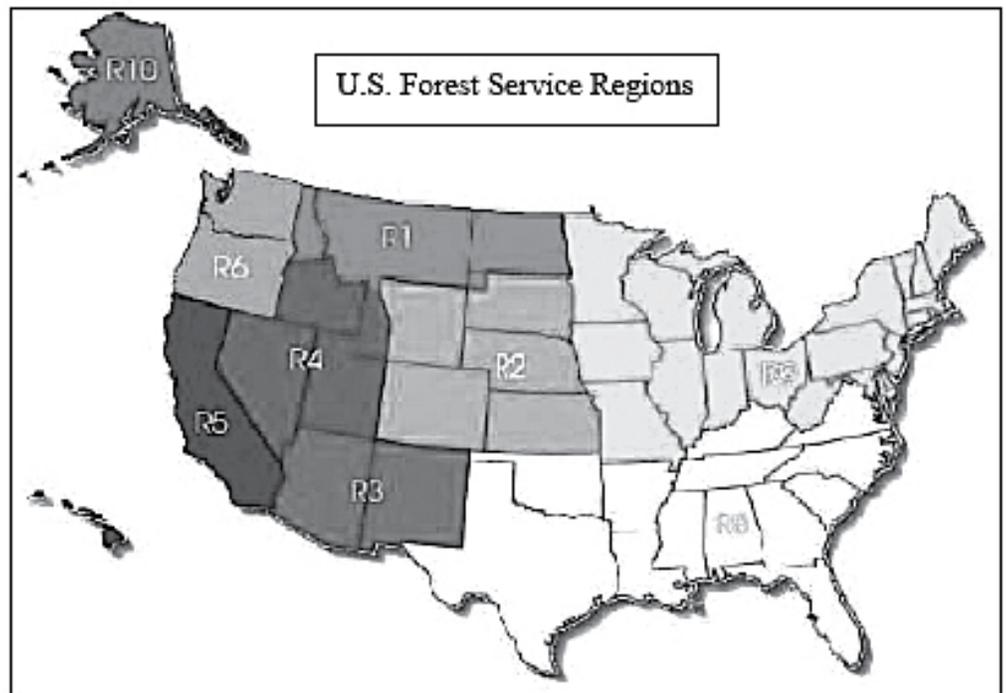
\* Weblink for NPS report: <http://www.nps.gov/history/nagpra/review/FEDERAL%20AGENCY%20NAGPRA%20STATISTICS.pdf>

## U.S. Department of Agriculture

<b>Forest Service (119 of 134 Forests reporting)</b>	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
Region 1—Northern	10	1	1			3	4
Region 2—Rocky Mountain	4	3	3		7	84	94
Region 3—Southwestern		17	4923			478	5401
Region 4—Intermountain	7	4	14		2		16
Region 5—Pacific Southwest	10	8	76		6	124	206
Region 6—Pacific Northwest	14	4	5	1	8	1	14
Region 8—Southern	7	1	8			67	75
Region 9—Eastern	9	1	1			32	33
Region 10—Alaska		8	68	18	28		114
<b>Totals</b>	<b>62</b>	<b>47</b>	<b>5099</b>	<b>19</b>	<b>51</b>	<b>789</b>	<b>5958</b>

The **U.S. Forest Service** has been active in the NAGPRA process. Numbers are reported here for the nine regions shown in the map below. (There is no Region 7.) To date the Forest Service has published 42 Notices of Inventory Completion and 7 Notices of Intended Disposition. Two Notices of Inventory Completion describing 19 individuals are pending publication. In addition, the Forest Service has published 14 Notices of Intent to Repatriate cultural items and another is pending. Voluntary submissions of “Statements of No Inventory Required” were received from 62 units.

Since October 2004, the Forest Service has published 9 Notices of Inventory Completion describing 71 individuals and 4 Notices of Intended Disposition describing 4 individuals.



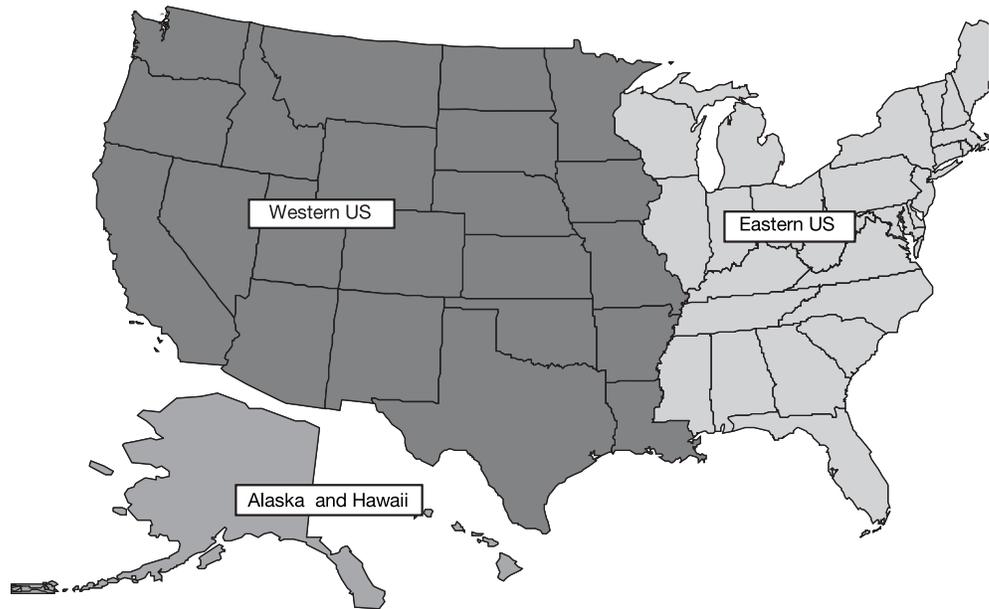
## U.S. Department of Defense

<b>Air Force</b> (192 Bases)	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
<b>Eastern US</b>						3	3
<b>Western US</b>	1	2	8				8
<b>Alaska and Hawaii</b>		9	71				71
<b>Totals</b>	<b>1</b>	<b>11</b>	<b>79</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>82</b>
<b>Army Corp of Engineers</b> (38 Districts in 8 Regions)							
	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
<b>Eastern US</b>		4	86			251	337
<b>Western US</b>		19	568	17	56	1230	1871
<b>Alaska and Hawaii</b>							
<b>Totals</b>	<b>0</b>	<b>23</b>	<b>654</b>	<b>17</b>	<b>56</b>	<b>1481</b>	<b>2208</b>
<b>Army</b> (99 Bases)							
	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
<b>Eastern US</b>	3	3	27	2		23	52
<b>Western US</b>	8	5	64			109	173
<b>Alaska and Hawaii</b>	1	5	17				17
<b>Totals</b>	<b>12</b>	<b>13</b>	<b>108</b>	<b>2</b>	<b>0</b>	<b>132</b>	<b>242</b>
<b>Navy and Marine Corp</b> (141 Bases)							
	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
<b>Eastern US</b>		2	172			214	386
<b>Western US</b>		8	57		2		59
<b>Alaska and Hawaii</b>		4	1595				1595
<b>Totals</b>	<b>0</b>	<b>14</b>	<b>1824</b>	<b>0</b>	<b>2</b>	<b>214</b>	<b>2040</b>

The **U.S. Department of Defense**, except for the Army Corps of Engineers, does not report by regions. However, in order to compare Defense statistics with other agencies, submissions have been divided into three major regions, using the Mississippi River as the dividing line between the Eastern and Western states.

It was reported in October 2004 that branches within the U.S. Department of Defense were actively revising their inventories and that a final report would be sent to the National NAGPRA office upon completion. To date no report has been received. Since 2004, however, eight Notices of Inventory Completion have been published including 165 individuals. There are four NICs pending publication. The Department of Defense has also published five Notices of Intended Disposition since the fall of 2004, which include a minimum of 20 individuals.

### THREE MAJOR REGIONS OF THE U.S.



### U.S. Department of Energy

US Dept. of Energy	SNIR	# NICs and NIDs	Pub'l MNI	Pend. MNI	Other Affil MNI	CUI Unpub	Total MNI
Eastern US	2					20	20
Western US	2	3	6	1			7
<b>Totals</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>20</b>	<b>27</b>

The **Department of Energy** has submitted two Notices of Inventory Completion and one Notice of Intended Disposition, which include a total of six individuals. One notice has been published since October 2004. In addition, three Notices of Intent to Repatriate cultural items have been published by the Department.

### U.S. Department of Homeland Security

U.S. Coast Guard	SNIR	# NICs and NIDs	Pub'l MNI	Pend. MNI	Other Affil MNI	CUI Unpub	Total MNI
Hawaii		0		1			1

The **U.S. Coast Guard**, recently transferred from the U.S. Department of Transportation to Homeland Security, has one notice pending publication. DHS controls approximately 110,000 acres of land in both rural and urban areas.

## U.S. Department of Interior

Bureau of Indian Affairs	SNIR	# NICs and NIDs	Pub'l MNI	Pend. MNI	Other Affil MNI	CUI Unpub	Total MNI
Eastern US		1	9				9
Western US		20	265	4		20	289
<b>Totals</b>		<b>21</b>	<b>274</b>	<b>4</b>		<b>20</b>	<b>298</b>

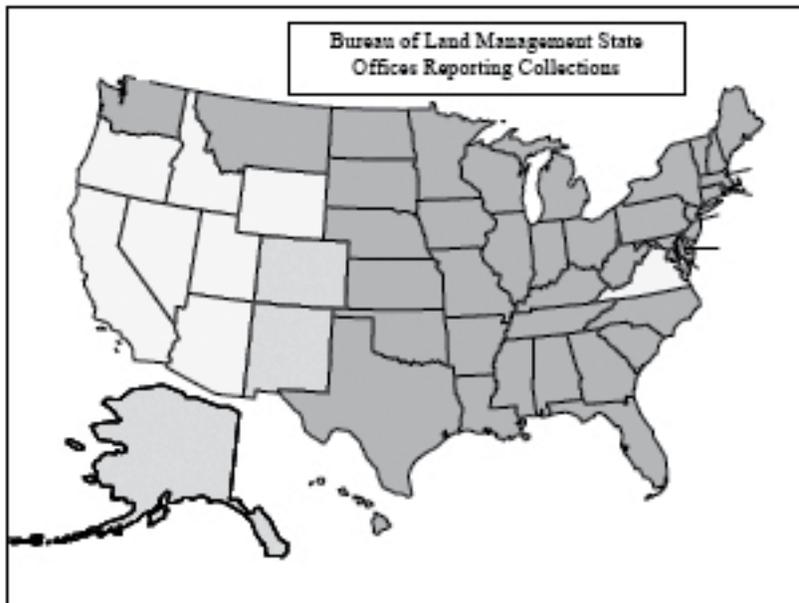
The **Bureau of Indian Affairs** is the controlling agency for all human remains and other cultural objects removed from Indian land after 1906. In one instance, the Bureau accepted a skull donated by a private individual and published a Notice of Inventory Completion in order to repatriate it. The human remains in the notices recorded in the table have been or are now in the physical custody of 14 different museums. The remains were recovered from tribal land in Arizona, California, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, Wisconsin, and Wyoming. In addition, the Bureau has published four Notices of Intent to Repatriate cultural items and one is pending.

Since October 2004, BIA, in conjunction with the possessing museums, has published 5 Notices of Inventory Completion describing 16 individuals. Two notices await publication.

Bureau of Land Management (11 of 13 offices reporting)	SNIR	# NICs and NIDs	Pub'l MNI	Pend. MNI	Other Affil MNI	CUI Unpub	Total MNI
Eastern US		1	3				3
Western US		46	755			161	916
Alaska		13	477				477
<b>Totals</b>		<b>60</b>	<b>1235</b>	<b>0</b>	<b>0</b>	<b>161</b>	<b>1396</b>

The **Bureau of Land Management** is not organized into regions, but has 19 State offices, 17 of which are located in the West. The map below indicates in yellow the State offices reporting NAGPRA collections in federal repositories. Seventeen of the 60 notices recorded above are Notices of Intended Disposition, including the one from the Eastern States Office in Virginia, and account for 37 individuals. Most of the human remains from the West were recovered in Colorado and New Mexico.

Since October 2004, BLM has published five Notices of Inventory Completion describing 617 individuals.



<b>Bureau of Reclamation</b> (11 of 20 offices reporting)	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
<b>Great Plains</b>		5	18		61	113	192
<b>Lower Colorado</b>		4	491		1		492
<b>Mid-Pacific</b>		0		49		21	70
<b>Pacific Northwest</b>					84		84
<b>Upper Colorado</b>		3	15				15
<b>Totals</b>	<b>0</b>	<b>12</b>	<b>524</b>	<b>49</b>	<b>146</b>	<b>134</b>	<b>853</b>

The **Bureau of Reclamation** is divided into five regions, with three to six area offices in each region. Unlike most other agencies, its regions are not delineated by state boundaries. The Bureau controls no land in the East or in Alaska and Hawaii. Four of the 12 notices recorded above are Notices of Intended Disposition describing 8 sets of human remains.

Reclamation has not published a Notice of Inventory Completion within the last two years. Three notices from the Mid-Pacific region are pending and two were withdrawn prior to publication.



<b>Fish and Wildlife Service (74 of 536 Refuges Reporting)</b>	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
Pacific Region		6	57				57
Southwest Region		1	ukn		2	4	6+
Midwest Region	29	1	1		4	46	51
Southeast Region	1	1	27		2	636	665
Northeast Region	1	1	10				10
Mountain Prairie Region	5					5	5
Alaska Region		2	2	95	2		99
<b>Totals</b>	<b>36</b>	<b>12</b>	<b>97</b>	<b>95</b>	<b>10</b>	<b>691</b>	<b>893</b>

The **Fish and Wildlife Service** is divided into seven regions. Of the 12 notices reported above, 5 are Notices of Intended Disposition describing 13 individuals, plus an unknown number in the Southwest Region NID.

One Notice of Inventory Completion describing one individual has been published within the last two years. Five recently submitted notices from the Alaska Region account for all 95 of the individuals listed in the pending column.

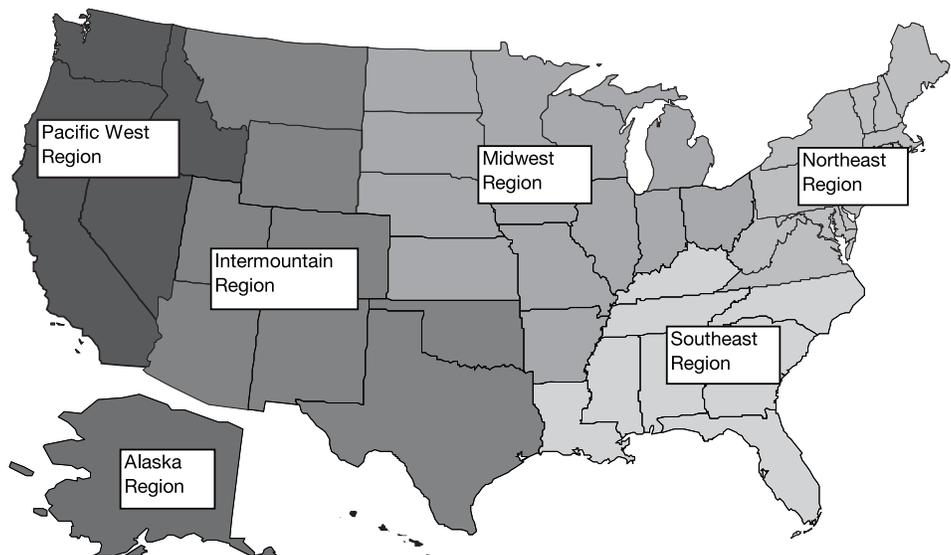


<b>National Park Service</b>	<b>SNIR</b>	<b># NICs and NIDs</b>	<b>Pub'l MNI</b>	<b>Pend. MNI</b>	<b>Other Affil MNI</b>	<b>CUI Unpub</b>	<b>Total MNI</b>
Northeast Region		4	17	33		5	55
Southeast Region		15	346	96		843	1285
Midwest Region		12	58			261	319
Intermountain Region		34	3165	585	84	345	4179
Pacific West Region	3	14	96	64		15	175
Alaska Region		6	32				32
<b>Totals</b>	<b>3</b>	<b>85</b>	<b>3714</b>	<b>778</b>	<b>84</b>	<b>1469</b>	<b>6045</b>

The **National Park Service** is divided into six regions illustrated in the map below. Of the 85 notices recorded in the table, 9 are Notices of Intended Disposition describing 7 individuals, and 78 are Notices of Inventory Completion describing 3707 individuals. In addition, the Park Service has published 15 Notices of Intent to Repatriate cultural items.

Thirteen Notices of Inventory Completion have been published since 2004 describing 82 MNI. Sixteen notices are pending publication, from 1995 to date, accounting for 778 MNI.

#### NATIONAL PARK SERVICE REGIONS



## Tennessee Valley Authority

	SNIR	# NICs and NIDs	Pub'l MNI	Pend. MNI	Other Affil MNI	CUI Unpub	Total MNI
Alabama and Tennessee		0	0	0	337	8031	8368

The **Tennessee Valley Authority** manages 293,000 acres and 11,000 miles of public shoreline in the Tennessee Valley, which fall within the blue area of the map below. A map showing just the individual reservoirs is not available, though the larger ones are visible on the map of Federal Lands and Indian Reservations included with this report. According to the agency Website, TVA Cultural Resources staff consult regularly with 18 federally recognized tribes. No Notices of Inventory Completion and no Notices of Intended Disposition have been submitted to the National NAGPRA office to date. A minimum of 8,368 Native American human 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.



## Summary

Agency	# NICs and NIDs	Pub'l MNI	Pend. MNI	Other Affil MNI	CUI Unpub	Total MNI
Tennessee Valley Authority	0	0	0	337	8031	8368
US Dept. of Agriculture, Forest Service	47	5099	19	51	789	5958
US Dept. of Defense, Air Force	11	79	0	0	3	82
US Dept. of Defense, Army, Corps of Engineers	23	654	17	56	1481	2208
US Dept. of Defense, Army	13	108	2	0	132	242
US Dept. of Defense, Navy and Marine Corps	14	1824	0	2	214	2040
US Dept. of Energy	3	6	1	0	20	27
US Dept. of Homeland Security, Coast Guard	0	0	1	0	0	1
US Dept. of Interior, Bureau of Indian Affairs	21	274	4	0	20	298
US Dept. of Interior, Bureau of Land Management	60	1235	0	0	161	1396
US Dept. of Interior, Bureau of Reclamation	12	524	49	146	134	853
US Dept. of Interior, Fish and Wildlife Service	12	97	95	10	691	893
US Dept. of Interior, National Park Service	85	3714	778	84	1469	6045
<b>Totals</b>	<b>301</b>	<b>13614</b>	<b>966</b>	<b>686</b>	<b>13145</b>	<b>28411</b>

## APPENDIX G

### Two High-Profile Federal-Tribal Case Studies

Since the enactment of the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990, Native Americans have found themselves engaged in a complex set of relations with museums, scientific institutions, and Federal agencies with the outcomes of those relationships ranging from positive cooperation to bitter conflict. A significant source of discord amongst the parties involves the process of determining cultural affiliation. NAGPRA leaves it up to Federal agencies and museums to determine cultural affiliation of human remains and objects in consultation with lineal descendants, Indian tribes, and Native Hawaiian organizations. Although some Federal agencies have followed the spirit and letter of NAGPRA in matters regarding cultural affiliation and repatriation, others have not. The recalcitrant ones, many fear, have sought to retain control and possession of as many human remains and funerary objects as possible by listing them as culturally unaffiliated. Doing so enables avoidance and/or minimization of meaningful consultation with tribes. In the process, Native American oral traditions and traditional and religious beliefs are often devalued.

This section examines two case studies involving the issue of cultural affiliation of human remains and associated funerary objects and the classification by two Federal agencies of the remains and objects as being culturally unidentifiable. Various sources call attention to problems involving Federal NAGPRA compliance, especially regarding the issue of cultural affiliation.

It must be understood that many Native Americans, as defined by the Act, reject the notion that Native American human remains and burial property lack a cultural connection with present-day peoples. This view, which is based on their existence and habitation of America, often puts them at odds with some Federal agency officials in determinations of cultural affiliation.

The first case study examines the Spirit Cave controversy. The second probes the issues surrounding the Ancient One, or the Kennewick Man, disagreement.

Beginning in the 1990s, the Spirit Cave remains dispute pitted the Fallon Paiute-Shoshone Tribe (FPST), who represented the Northern Paiutes in this intense controversy, against the U.S. Bureau of Land Management (BLM) and the Nevada State Museum. The dispute concerns the issue of what constitutes good faith consultation by a Federal agency under NAGPRA. This research examines major aspects of the FPST's efforts to have the BLM change its classification of the Spirit Cave remains and associated funerary objects from culturally unidentifiable to culturally-affiliated for the purpose of repatriation.

Section 5 of NAGPRA requires museums and Federal agencies to complete inventories of human remains and funerary objects in their control or possession. The law directs these entities to identify cultural affiliation by determining if there is a "shared group identity which can be reasonably traced historically and prehistorically between a present-day Indian tribe or individual and an identifiable earlier group." Without a demonstrable relationship, the remains are to be identified as culturally unidentifiable. Culturally affiliated human remains and funerary objects are subjected to repatriation by lineal descendants and culturally affiliated American Indian tribes and Native Hawaiian organizations, pursuant to Section 7(a)(4) of NAGPRA. To claim human remains classified as culturally unidentified, the claimant tribes and Native Hawaiian organizations must demonstrate by a preponderance of evidence that the human remains and funerary objects are culturally affiliated, but they are not required to provide evidence that meets a standard of scientific certainty. Geographical, kinship, biological, archeological, anthropological, linguistic, oral tradition, folklore, historical, expert witness, or other evidence may substantiate cultural affiliation.

The Ancient One case also involves a dispute over the cultural affiliation of an ancient set of human remains stemming from a 1996 inadvertent discovery that occurred six years after NAGPRA became law on lands

managed by the U.S. Army Corps of Engineers (COE). 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.

Before proceeding it is important to establish a context for comprehending disputes arising from the process of determining cultural affiliation and Federal agency compliance and oversight of the Act. Some Federal agencies are attempting to establish a standard that exceeds the preponderance of evidence requirement of NAGPRA. For instance, in the Spirit Cave controversy, BLM rejected a finding of cultural affiliation with the Fallon-Paiute Shoshone Tribe because “[t]here is no evidence showing which language or languages were spoken in the middle Holocene and no evidence suggesting details of social or political organization, territorial boundaries, kinship patterns, religious beliefs, or world view.”<sup>1</sup> Under BLM’s standard, if Native Americans of the distant past made cultural adjustments to accommodate new ecological and climatic conditions, or developed and adopted new technologies, modes of living, and burial practices, their behavior exceeded the ability of some anthropological scientists to understand the process of cultural development by Native Americans. These scientists usually defined the Native American past in accordance with their own sensibilities and failed to understand or acknowledge that their actions disrupted the sanctity of unmarked Native American graves in the name of knowledge.

Grave looting and the warehousing of appropriated burial contents – occurring within the context of a broader history involving the subjugation of Indian lands, resources and cultures – began in earnest as the nineteenth century went forward. In 1867, the U.S. Surgeon General issued the first of several memoranda directing Army field surgeons to take the heads of Indians killed in battle and to take bodies from Indian cemeteries. Western law, beginning with the Antiquities Act of 1906, placed Native Americans in an inferior position under a system of hegemonic control and domination that defined the contents of Native burials as the cultural resources and the property of the United States. The Archaeological Resources Protection Act (ARPA) follows this same line of reasoning regarding Congress’s classification of Indian human remains as being cultural resources.<sup>2</sup>

This history of grave looting has had profound consequences on Native American life, and it gave rise to a human rights movement dedicated to graves protection and repatriation that led to the enactment of NAGPRA. Religious and ceremonial traditions also underscored the movement’s purposes. Many Native Americans have refused to forfeit their traditional values, beliefs, languages, and customs even though they suffered through forced removal from their traditional homelands, coercive assimilation, and political subjugation. Oral histories, traditional teachings and instructions, and spiritual values and ceremonies form the tenets of their opposition to the sacrilege of grave looting that has been and continues to be conducted in the name of science, as well as unwanted studies on human remains.

## **A. METHODOLOGY**

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 also references legal briefs, legal cases, newspapers, and other websites.

### **i. Federal Compliance and the Spirit Cave Remains Dispute**

NAGPRA requires Federal agencies in control or possession of Native American human remains and funerary objects to determine if those remains and objects have a shared group identity with any present-day Indian tribe(s) and Native Hawaiian organization(s). The lack of good faith consultation over the cultural affiliation of the

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<sup>1</sup> Pat Barker, Cynthia Ellis, and Stephanie Damadio, “Determination of Cultural Affiliation of Ancient Human Remains from Spirit Cave, Nevada,” Bureau of Land Management, Nevada State Office, July 26, 2000, 62.

<sup>2</sup> For information about the history of looting Indian graves, generally see, James Riding In, “Without Ethics and Morality: A Historical Overview of Imperial Archaeology and American Indians,” *Arizona State Law Journal* 24 (Spring 1992): 11-34. For detailed accounts regarding the history leading to the enactment of NAGPRA and other related laws, also see, *American Indian Culture and Research Journal* 16, no. 2 (1992).

Spirit Cave remains and associated funerary objects touched off a dispute that has yet to be resolved involving the Fallon Paiute Shoshone Tribe and the BLM. Since 1996 the members of the Fallon Paiute Shoshone Tribe (FPST), along with their Northern Paiute relatives, have been engaged in a bitter clash with the BLM over a set of human remains estimated to be 9,400 years old which were taken from Spirit Cave, a small cave situated within the boundaries of the Northern Paiute's traditional homeland, now under BLM control. The FPST has always considered the cave, located a short distance from their reservation, to be sacred and the surrounding area as the place of their origin, an event that reaches back in time thousands of years.<sup>3</sup>

The physical remains found in Spirit Cave, along with his associated funerary objects, lay undisturbed for more than 9,000 years in a shallow grave partially protected by the cave's dry air. At the time of his death, someone had taken great care to dress him in a rabbit fur robe and moccasins, wrapped him with two finely woven reed mats, and placed him in a shallow grave.

During a 1940 salvage excavation on BLM land near Fallon, Nevada, a pair of contract archaeologists disrupted the sanctity of the Spirit Cave grave, taking the partially mummified body of the black-haired man and associated burial property. Believing the mummified human remains to be about two thousand years old, the archaeologists took their find to the Nevada State Museum, where it has remained under BLM control.<sup>4</sup>

The Spirit Cave remains aroused scant scholarly interest until radiocarbon testing conducted in 1994 or 1995 set the body's age at 9,400 years old, making him one of the oldest sets of human remains ever disinterred in North America. Within a relatively short period of time, the Spirit Cave remains became a central figure in the Native American burial disputes and the object of extensive news coverage. The scientific community, as well as the national press, considered the news of his age as a potentially significant revelation for the propagation of the latest theories about the distant past associated with the peopling of the Americas. NOVA, the Discovery Channel, the New York Times, and the Washington Post joined the local press in carrying special features about the news.<sup>5</sup> A 1997 account speculated, "... preliminary research suggests Spirit Cave Man may have no connection to the American Indian tribes who have lived in western Nevada for the past several hundred years. Instead, he may represent a completely different migration to North America and could be genetically linked to ancient Japanese or the Norse of northern Europe."<sup>6</sup> Contributing to the frenzy were reports coming from the State of Washington in late July 1996 about the discovery of the Ancient One along the banks of the Columbia River.

As television and newspapers carried sensationalized stories about the Spirit Cave remains and the Ancient One, BLM and Nevada State Museum staff looked for ways to minimize the effects of NAGPRA on their collections. NAGPRA requires Federal agencies and museums to complete inventories of culturally-affiliated human remains and associated funerary objects and a listing of all culturally-unidentifiable human remains in their collections within five years of the Act's passage in 1990. As this deadline approached, BLM and Nevada State Museum employees began to fear the consequences of repatriation.

In 1994 Pat Barker, BLM's Nevada state archaeologist, coauthored an article entitled, "Legal and Ethical Implications of the Numic Expansionism," that criticized NAGPRA for weakening the archaeologists' control over the archaeological record.<sup>7</sup> The authors also warned readers about the pitfalls of establishing tribal cultural affiliation with items in museums, stating:

Control over cultural items is removed from federal agencies, museums and universities, and placed in the hands of the descendants. This means that the group or individual can manage and dispose of these items as if they are private property.<sup>8</sup>

<sup>3</sup> Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management, 03:04-CV-0466-LRH (RAM), 1.

<sup>4</sup> Ibid., 2.

<sup>5</sup> Ibid., 3.

<sup>6</sup> Las Vegas Review-Journal, Donrey Newspapers Review-Journal Online, September 1, 1997.

<sup>7</sup> "Fallon Tribe's Motion for Summary Judgment and Memorandum of Points and Authorities in Support Thereof," Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management, 12.

<sup>8</sup> Quoted in, Linda Bowman, et al, "Motion for Leave to File Amici Curiae Brief in Opposition to the United States Bureau of Land Management's Cross-Motion for Summary Judgment; and Supporting Memorandum of Points and Authorities," Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management.

By virtue of his position as the BLM's leading archaeologist in Nevada, Barker functioned as a key figure in the BLM's NAGPRA compliance responsibilities, including the process of inventory completion and tribal consultation with the FPST and other Indian tribes. He would participate in making the determination about the cultural affiliation of the remains found at Spirit Cave. He apparently was not alone, however. Many members of the anthropological science community shared his view about NAGPRA being an anti-science statute that empowered Native Americans to strip museum collections of Native human remains and irreplaceable cultural items.

In December 13, 1994, BLM and Nevada State Museum personnel met to discuss NAGPRA compliance issues. Amy Dansie's candid report of the meeting's dialogue provides a rare glimpse into the mindset of a cadre of scientists and museum personnel whose beliefs in the privileges of science would put them at odds with Native Americans seeking to rebury their deceased ancestors with respect and dignity. The report openly reflects the choices the participants made regarding their NAGPRA compliance responsibilities. Expressing the meeting's purpose, Dansie wrote:

Some of the most important prehistoric artifacts in our collections are human grave goods, so it is important to coordinate carefully with the BLM to do all we can to preserve information from these burials before repatriation destroys their scientific value forever. Barker and I arranged a meeting to discuss these issues.<sup>9</sup>

During the meeting, Barker suggested that the burial property and all other items over 3,000 years old could be protected from repatriation by being classified as culturally unaffiliated. According to a body of theoretical thought, that cutoff date was when Numic speakers, ancestors of the present-day Paiutes and Shoshones, had, presumably, entered the Great Basin. Regarding the issue of notifying tribes with a possible connection to NAGPRA items at the museum, Barker wanted surrounding tribes who had no connection to the Great Basin contacted so as to encourage competing claims. He reasoned that tribal disputes would take time to resolve. Expecting litigation to arise from the projected clashes he assumed that courts "will need hard facts to make a determination, and that is where science will come in, additional studies may be authorized, and in the process, we will have more time to study the burials."<sup>10</sup>

Concerning the structure and content of the inventories under development as required by NAGPRA, Barker wanted a list "not organized by tribe or geography, divided into affiliated and unaffiliated burials." This approach would "let the Indians sort the list according to their own beliefs."<sup>11</sup> Fearing that the museum would have to eventually repatriate the "mummies," Barker stated, "it could be several years before we lose them. This should give us time to study them thoroughly, if we start now."<sup>12</sup> Barker proposed using Section 7(b) of NAGPRA that allows museums and Federal agencies to delay the repatriation of items that "are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States."<sup>13</sup> He advised the group that all studies should be completed before May 1996, when the inventories would be sent to the tribes, so as to avoid time-consuming consultations and research approval requirements. He added that the examinations should be conducted without fanfare, even if the ongoing research is "within our legal rights." To make the proposed research seem as if it was ongoing, he recommended that the new studies would be combined with the Pyramid Lake project."<sup>14</sup>

Given this attitude regarding science as having rights that preempted the law protecting the Spirit Cave remains, the BLM allowed extensive study on the remains by at least fifteen (15) researchers who performed a variety of procedures, including scientific tests and examinations of the Spirit Cave gravesite. Much of the research was conducted in accordance with the opinions and recommendations expressed in the December meeting by

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<sup>9</sup> Amy Dansie, "NAGPRA Meeting Report," Carson City, Nevada, December 19, 1994.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

Barker and others. In March 1996, the BLM granted a request made by University of California-Davis physical anthropologists to initiate a collaborative study with forty-one (41) sets of Native human remains, including the remains from Spirit Cave. Alvin Moyle, a FPST leader, would later declare that these studies had begun well before the BLM notified his tribe about its holdings regarding the Spirit Cave remains.<sup>15</sup>

In May, with BLM plans on the table for additional study with the Spirit Cave remains, the BLM held its first consultation with the Northern Paiute tribes. The tribal representatives shared the creation accounts of their people, stating that they had lived in the Great Basin since time immemorial. Declaring their cultural affiliation with the human remains proposed for study, the tribal delegates demanded the immediate repatriation of their ancestor's physical remains and funerary objects and the discontinuance of research on the religious grounds. Tribal elders (traditional cultural authorities) presented geographic, textile, and other evidence to support their claim without effect. When the BLM denied the repatriation request, the Fallon Paiute-Shoshone, a small tribe with limited fiscal resources, became the lead tribe in the controversy with the BLM regarding the Spirit Cave remains and grave offerings.<sup>16</sup>

In keeping with the principles expressed in the December 1994 meeting, BLM and museum personnel took extraordinary measures to discourage FPST's repatriation efforts while allowing continuing and new studies of the Spirit Cave remains. Consequently, although FPST representatives spoke loud and clear to the BLM and museum staff, they were met with a series of frustrations in their attempts to protect the human remains ancestral to them from offensive forms of study and to establish a process of meaningful consultation and cooperative interaction with the BLM regarding matters essentially involving Federal compliance with NAGPRA issues.

Significant developments contrary to the FPST's beliefs and values occurred in the spring and summer of 1996. In May, the BLM denied FPST requests to have the Spirit Cave remains placed in a temporary burial vault and to stop scientific testing. A BLM summary of that meeting clearly captured some important Paiute concerns. The tribal representatives stated that the BLM's treatment of Spirit Cave remains violated the teachings of their grandparents, who said, "the dead are not to be bothered, dug up, studied, or molested in any way." Those Paiutes present noted they were "the caretakers of all the 'old ones' and requested that they be allowed to rebury the mummy as soon as possible." They also declared that the disruptions of burials could bring harm to the living. Two spokespersons disclosed that "[t]ribal members [of all ages] were receiving 'visitations' from the spirits of the dead." The spirits' visits were signs of impending death.<sup>17</sup>

In another twist, BLM state archaeologist Pat Barker apparently misled the Paiutes by telling them that the BLM had not authorized any scientific studies on the remains and "had not allowed any photographs, or public viewings of any of the remains based on the concerns of Native Americans." (The following September, Barker would approve invasive testing of textiles from among the associated funerary objects found with the Spirit Cave remains.<sup>18</sup>)

In July, the museum completed its NAGPRA inventory. Of the 120 remains considered, 117 -- including the remains from Spirit Cave -- were listed as unaffiliated. The BLM accepted the museum's determinations of affiliation but declined to allow a period of time for tribal responses. It also violated the Paiutes' religious beliefs and human rights by approving requests for non-destructive studies of the contested remains and non-destructive and destructive analysis of the associated burial property.<sup>19</sup>

In early 1997, the tribe learned about the sacrilegious studies involving their ancestors. In May the tribe made another unsuccessful NAGPRA claim for the repatriation of those human remains and funerary objects. A Northern Paiute tribal representative reportedly heard Dr. Pat Barker comment during a November 1997 meeting that he opposed NAGPRA.<sup>20</sup>

<sup>15</sup> Minutes, NAGPRA Act Committee, Sixteenth Meeting, May 3-5, 1999.

<sup>16</sup> Pat Barker, Cynthia Ellis, and Stephanie Damadio, "Determination of Cultural Affiliation of Ancient Human Remains from Spirit Cave, Nevada," Bureau of Land Management, Nevada State Office, July 26, 2000, 7.

<sup>17</sup> "Fallon Tribe's Motion for Summary Judgment and Memorandum of Points and Authorities in Support Thereof."

<sup>18</sup> *Ibid.*, 16-17.

<sup>19</sup> Fallon Paiute-Shoshone v. United States Bureau of Land Management, 3: "Fallon Tribe's Motion for Summary Judgment and Memorandum of Points and Authorities in Support Thereof," 18.

<sup>20</sup> Barker denied making this statement.

In January 1998, the BLM contacted the FPST regarding a preliminary decision – made the previous fall – that the Spirit Cave remains were Native American but were not culturally linked to a present-day tribe. On May 22 of that year the tribe submitted another NAGPRA claim seeking to repatriate the Spirit Cave items. Four months later the BLM responded that the tribe would have to submit evidence to support its claim.

Tensions erupted again in early 1998 when the Nevada State Museum allowed Dr. Sharon Long to make facial reconstructions of the contested human remains in opposition to the tribe's objections. Photographic images of the offensive facial reconstructions also appeared on the cover of Newsweek and in newspapers.<sup>21</sup> Although the museum subsequently agreed not to display the items, Long had made a second set of busts without permission, copyrighted them, and displayed them at a conference in Santa Fe, New Mexico.<sup>22</sup>

Seeking a forum in which to air their grievances, the Northern Paiutes turned to the NAGPR Review Committee. In March 1997, a Pyramid Lake Paiute representative related problems his people were having with the BLM, stating that the BLM had allowed sacrilegious destructive analysis of human remains in its collections. He asked the Interior Department to implement a policy that would treat Native Americans fairly.<sup>23</sup> In its January 1998 meeting at Washington, DC, the Review Committee heard testimony from a number of Federal agencies regarding Federal compliance with NAGPRA, including the Nevada BLM. During the public comment part of the agenda, a Pyramid Lake Paiute tribal councilman responded negatively to the BLM's testimony suggesting it would take twenty years for that agency to comply with NAGPRA. Stating that Federal compliance with the law must be enforced, he declared that his people knew the identity of the Spirit Cave ancestor and another set of contested remains. Archaeology, he asserted, lacked effective methods for determining cultural affiliation of old human remains.<sup>24</sup>

In December, several Fallon Paiute-Shoshones and Pyramid Lake Paiutes addressed the Review Committee regarding the BLM's treatment of human remains, including those from Spirit Cave. They denounced the BLM's refusal to repatriate the remains from Spirit Cave, stating the sacrilege harmed the living by bringing bad dreams to people, a sign of impending death. They also charged that the BLM had not only shown disrespect for Indian oral traditions, values and beliefs but that it had also demonstrated indifference for NAGPRA's consultation requirements. One of the tribal representatives testified that the BLM refused to culturally affiliate any human remains over 600 years old although tribal history in the region stemmed as far back in time as 9,000 to 33,000 years.<sup>25</sup> Review Committee members also asked the NAGPRA staff to send the BLM a letter "stating that serious concerns have been raised regarding this situation, urging the BLM to make an expeditious determination regarding the human remains, and asking the BLM to provide a record of their consultation history with the Indian tribes."<sup>26</sup>

In January 1999, apparently reacting to the Review Committee's concerns, BLM announced that it would make its final affiliation determination within 45 days. The FPST, however, requested and received an extension from the BLM, with a deadline set in June for the tribe's submission of materials to support its claim of affiliation to the Spirit Cave remains. It would submit its evidence to the BLM in December of that year.

In May and June meetings with the BLM's state director, FPST representatives discussed five controversial matters. First, the BLM director granted the tribe's request for an extension of time to amass additional evidence supporting its affiliation request. A new deadline was set for December. Second, the director indicated that he would address the tribe's charges that museum employees were culturally insensitive. Third, the director denied a tribal request to place the contested human remains in a U.S. Fish and Wildlife vault as a means to temporarily protect the Spirit Cave remains. The BLM later rejected the plea on the grounds that the vault did not meet storage specifications. Fourth, the director responded positively to a tribal request for relevant BLM documentation so the tribe and its experts could evaluate the materials. Finally, the director rejected the tribe's

<sup>21</sup> *Ibid.* Also see, Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management, 4.

<sup>22</sup> Minutes, NAGPR Review Committee, Nineteenth Meeting, June 2-4, 2000.

<sup>23</sup> Minutes, NAGPR Review Committee, Thirteenth Meeting, March 25-27, 1997.

<sup>24</sup> Minutes, NAGPR Review Committee, Fourteenth Meeting, December 10-12, 1998.

<sup>25</sup> Minutes, NAGPR Review Committee, Sixteenth Meeting, December 10-12, 1998.

<sup>26</sup> *Ibid.*

request as “not prudent” for the BLM to participate in three consultation meetings with the tribe before the Federal agency rendered its decision regarding the cultural affiliation of the Spirit Cave remains and associated funerary objects. The director indicated that the BLM might be willing to participate in further consultation if the tribe found additional research.<sup>27</sup> Meanwhile, with tensions continuing to run high and experts retained by the FPST pursuing their research, Northern Paiute representatives appeared at two Review Committee meetings in 1999 and spoke out about the Spirit Cave remains controversy and how archaeology was infringing on their religious beliefs and human rights. In early May, Alvin Moyle charged that the Nevada State Museum had exhibited “antagonism toward and disregard for NAGPRA” while denying a link between Spirit Cave remains and his tribe. The museum’s disparaging actions, he declared, undermined his people’s “free exercise of tribal religion and rights to repatriation.”<sup>28</sup> In December, the Review Committee responded to Northern Paiute concerns by directing the National Park Service to send a letter to the BLM’s Nevada state director detailing three issues. First, the letter declared the Committee’s support of the tribe’s claim to cultural affiliation with the Spirit Cave human remains and funerary objects. Second, it recommended that when determining cultural affiliation the BLM should fully consider those materials submitted by the tribe. Finally, it suggested that the BLM must continue its consultation with the FPST and other interested Indian tribes regarding the cultural affinity of the Spirit Cave remains.<sup>29</sup>

With the BLM claiming it had not yet made a final determination of cultural affiliation, the tribe, in December of 1999, submitted eight expert opinion reports with scientific interpretations that affiliated the Northern Paiutes’ with the Spirit Cave items by a preponderance of relevant evidence. Supporting tribal oral history, the information asserted that Spirit Cave is located within the Northern Paiutes’ aboriginal homelands, that the remains found there shared biological features with contemporary Indians, and that “prehistoric” and historic Great Basin people shared common burial customs and patterns. An analysis of the Paiutes’ origin stories found that Uto-Aztecan people may have originated in the Great Basin thousands of years ago. Another held that the theory about Numic speakers had replaced another culture in the area lacked scientific merit. Another pointed out that while DNA and serum albumin studies were of questionable use in this situation, the results of these tests nonetheless supported the Northern Paiutes’ claim of cultural affiliation with the Spirit Cave remains.<sup>30</sup>

During a March 17, 2000, meeting, the BLM state director stated that his agency felt that the human remains were Native American, that there were no active requests for scientific testing of the human remains, and that the BLM was no longer considering scientific testing.<sup>31</sup> Following the process established by NAGPRA to resolve disputes, FPST took steps to present the issue to the NAGPR Review Committee. Despite the cost and time the FPST expended to produce its expert reports and carry out other activities involving the controversy, the BLM and the museum, according to the FPST, had already decided against the tribe. They asserted that the FPST’s expert reports and tribal testimony was never assessed in a fair and impartial manner. FPST provided the BLM and members of the NAGPR Review Committee eight reports from experts in the fields of anthropology, biology, burial practices, ethnography, folklore, linguistics, archaeology, and DNA.

Later, in early June of that year in Juneau, Alaska, Moyle addressed the Review Committee with a note of optimism in his voice. He stated the Nevada State Museum had recently seemed to move away from its ardent anti-repatriation stance to a more positive position. “The Fallon Paiute-Shoshone Tribe,” Moyle continued, “is pleased with the progress made to prove cultural affiliation with the Spirit Cave remains and hope that a decision to repatriate the human remains is made promptly so the human remains can be returned.” He added that the BLM, National Park Service, Bureau of Indian Affairs, and the Department of Interior’s Solicitor’s Office in Washington, DC, were reviewing his tribe’s repatriation request. He noted that the director of the Department of Museums, Library and Arts of the State of Nevada had sent a letter asking his staff to seriously consider and respect the reports’ opinions.<sup>32</sup>

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<sup>27</sup> Testimony of Alvin Moyle, Minutes, NAGPR Review Committee, Eighteenth Meeting, November 18-20, 1999.

<sup>28</sup> Minutes, NAGPR Review Committee, Eighteenth Meeting, May 3-5, 1999.

<sup>29</sup> *Ibid.*

<sup>30</sup> “Fallon Tribe’s Motion for Summary Judgment and Memorandum of Points and Authorities in Support Thereof,” 27.

<sup>31</sup> Linda Bowman, et al, “Motion for Leave to File Amici Curiae Brief in Opposition to the United States Bureau of Land Management’s Cross-Motion for Summary Judgment; and supporting Memorandum of Points and Authorities, January 30, 2006, 21-24.

<sup>32</sup> Minutes, NAGPR Review Committee, Nineteenth Meeting, June 2-4, 2000.

Moyle also noted problems involving the repatriation process. He indicated that the ordeal had placed a heavy financial burden on his small tribe as it struggled against a Federal agency supported by Federal funds.

As these events unfolded, on January 24, 2000, the Nevada State Museum notified the BLM that it had opted to withdraw as the lead entity for scientific investigations. On April 6, the museum dropped its request for DNA analysis of the Spirit Cave ancestor and forty (40) other remains.<sup>33</sup>

On July 26, the BLM issued its preliminary determination regarding the cultural affiliation matter. A report entitled, "Determination of Cultural Affiliation of Ancient Humans from Spirit Cave, Nevada," discussed cultural history, textiles, burial practices, biological, kinship/genealogy, descriptive linguistics, anthropology, historic and expert testimony evidence. The report's authors, including Pat Barker, determined that the preponderance of the available evidence demonstrates that the human remains from Spirit Cave are appropriately considered to be unaffiliated with the Northern Paiutes, i.e., the remains predate contemporary Northern Paiute tribes and cannot reasonably be culturally affiliated with any of them. Thus, the BLM has determined that the remains from Spirit Cave are unaffiliated with any modern individual, tribe, or other group and are therefore culturally unidentifiable.<sup>34</sup>

On August 15, the BLM Nevada state director Robert V. Abbey forwarded the report to the FPST. The cover letter stated that the preponderance of the evidence did not establish the Northern Paiutes' cultural affiliation with the Spirit Cave remains because "[t]he remains predate contemporary Northern Paiute Tribes and cannot reasonably be culturally affiliated with any of them." He gave the FPST a time period not supported by the Act (six weeks, ending on October 2), in which to respond in writing with any new evidence. He also wrote that he would "not approve of any research that involves invasive testing of human remains from Spirit Cave while the Secretary of Interior is considering recommendations from the NAGPR Review Committee on the disposition of culturally unidentifiable human remains." In closing, he declared his commitment to continuing his agency's NAGPRA consultation responsibilities.<sup>35</sup>

On that same day, the BLM also issued a press release with information concerning its preliminary decision that the "ancient human remains from Spirit Cave . . . could not be affiliated with the Fallon Paiute-Shoshone Tribe or any other contemporary group . . . the remains, including Spirit Cave Man, will remain in federal ownership." Justifying the decision, Abbey stated that "[a]fter more than four years of consultation with the tribe, analyzing the evidence and reviewing policy, I feel that it is time to make this determination . . . Although this information is disappointing to the tribes, I am committed to continue to determine the affiliation of human remains from BLM-managed lands."<sup>36</sup> The BLM reasoned that an analysis of the evidence showed no demonstrable cultural, linguistic, textile, burial traditions, biological, expert testimony, or other connection between the Spirit Cave remains and any present-day Indian tribe or individual.<sup>37</sup>

On October 17, the BLM handed down its final decision, repeating its conclusion that the Spirit Cave remains were not culturally affiliated with contemporary Indian tribes. Once again, the BLM rejected the FPST's request for adequate time to submit additional materials pertaining to its preliminary determination. The BLM also advised that the tribe could challenge the decision before the NAGPR Review Committee.<sup>38</sup>

FPST officials sought relief by taking the issue to the NAGPR Review Committee as a dispute at the November 2001 meeting. Rejecting the BLM's written contention that the Review Committee lacked authority to hear the dispute, Committee members listened as a spiritual leader, tribal representatives, expert witnesses, and legal counsel presented oral, historical, and other evidence to support the tribe's position regarding its cultural affiliation with the Spirit Cave remains and funerary objects.<sup>39</sup> They heard testimony calling into question the fairness and impartiality of the BLM's decision-making procedures. After weighing the body of relevant oral

<sup>33</sup> Pat Barker, Cynthia Ellis, and Stephanie Damadio, "Summary of the Determination of Cultural Affiliation of Ancient Human Remains from Spirit Cave, Nevada," Bureau of Land Management, Nevada State Office, July 26, 2000, 2.

<sup>34</sup> *Ibid.*, 8.

<sup>35</sup> Robert V. Abbey to Alvin Moyle, Chairman, Fallon Colony and Reservation, August 15, 2000.

<sup>36</sup> "BLM Makes Spirit Cave Man Cultural Determination," BLM Press Release, August 15, 2000.

<sup>37</sup> *Ibid.*

<sup>38</sup> Fallon Paiute-Shoshone Tribe, "Brief Chronology of Human Remains and Associated Objects Removed from Spirit Cave," n.d.

<sup>39</sup> Federal Register 67, no. 69 (April 10, 2002): 17463.

and written evidence, the Committee, by a 6-to-1 vote, determined that the “preponderance of the evidence indicates a relationship of shared group identity which can be reasonably traced between the present-day Fallon Paiute-Shoshone Tribe and the human remains and associated funerary objects from Spirit Cave in Nevada.”<sup>40</sup> The Committee’s majority stressed that the BLM’s Nevada State Office had failed to give a “fair and objective consideration and assessment of all the available information and the evidence in this case.”<sup>41</sup> Dr. John O’Shea, a Committee member representing scientific institutions and museums, cast the dissenting vote on the grounds that the BLM had engaged in good faith consultation. O’Shea subsequently sent letters to the BLM and the FPST claiming that the Review Committee had undermined its credibility and its longstanding policy by issuing a finding without a consensus decision.<sup>42</sup>

BLM personnel, however, simply dismissed the Review Committee’s findings as advisory without seriously considering the FPST’s repatriation petition. Concerning the BLM’s refusal to participate in the NAGPRA dispute process and its willingness to reject the tribe’s evidence, FPST officials sought redress by writing a letter to the Secretary of the Interior and others.<sup>43</sup> The Secretary of the Interior assigned the Spirit Cave dispute to the BLM’s national director, Kathleen B. Clarke. In mid July 2003, Clarke met with the FPST representatives regarding the tribe’s appeal of the BLM’s decision. On February 27, 2004, she upheld the determination of cultural affiliation made by BLM’s Nevada State Office regarding the Spirit Cave remains in a very brief letter devoid of any explanation about how she reached that conclusion. “As I promised,” she wrote, “in our meeting . . . I have reviewed all of the options to address your concerns and there is no additional course of action appropriate to pursue at this time.”<sup>44</sup>

Responding to the BLM’s refusal to follow the Review Committee’s recommendation, the FPST opted to take the litigation route. The tribe initiated a lawsuit in a Federal district court in Reno, Nevada, requesting a motion for summary judgment. On September 21, 2006, in Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management, Judge Larry R. Hicks granted the tribe’s motion determining that BLM had violated NAGPRA and the Administrative Procedures Act. Hicks reasoned that the BLM had failed to weigh cultural, historical, scientific, and other evidence presented by the plaintiffs and to address the NAGPRA Review Committee’s findings regarding the BLM’s initial determination.<sup>45</sup> NAGPRA, he wrote, “requires BLM to fully and fairly consider this evidence and to uphold or reverse its determination based on reasoned and coherent discussion of the evidence and BLM’s reasons for believing it or disbelieving it. “This discussion,” Hicks wrote, “never occurred, necessitating a finding that BLM’s determination was arbitrary and capricious.” Hicks directed BLM to compare its initial determination with the tribe’s evidence and the Review Committee’s findings, and to “explain why its determination is, or is not, still the most correct finding available.”<sup>46</sup>

The United States appealed the decision to the 9th Circuit Court of Appeals on November 21, 2006. On December 4 the FPST filed a cross-appeal to the same court. On April 5, 2007, the United States government dismissed its appeal and the tribe followed suit soon thereafter, leaving the final determination up to the district court’s process on remand.<sup>47</sup>

To date (October 2007), the FPST’s dispute with the BLM is still unresolved. The Review Committee has continued to follow this issue. A Fallon Paiute-Shoshone representative updated the Committee at its November 2006 meeting in Denver, Colorado, about the Federal district court’s decision without any BLM representatives present.<sup>48</sup>

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<sup>40</sup> Federal Register 67, no. 69 (April 10, 2002): 17463. John O’Shea, a Review Committee member representing the scientific/museum community, opposed the majority perspective.

<sup>41</sup> *Ibid.*

<sup>42</sup> John M. O’Shea to Robert Abbey, State Director, Bureau of Land Management, May 9, 2002.

<sup>43</sup> Minutes, NAGPR Review Committee, Thirty-Third Meeting, November 3-4, 2006, Denver, Colorado; Donna Cossette, Chairperson, Fallon-Paiute Chairperson, Fall Paiute-Shoshone Tribe, to Aaron Horton, Acting Assistant Director, Renewable Resources and Planning, Bureau of Land Management, Washington, D.C., January 6, 2002.

<sup>44</sup> Kathleen B. Clarke to Alvin Moyle, February 27, 2004.

<sup>45</sup> Fallon Paiute-Shoshone Tribe v. United States Bureau of Land Management.

<sup>46</sup> Walter Echo-Hawk and David Gover, “Spirit Cave Repatriation Litigation,” Native American Rights Fund. [www.narf.org/cases/spiritcave.html](http://www.narf.org/cases/spiritcave.html).

<sup>47</sup> *Ibid.*

<sup>48</sup> Minutes, NAGPR Review Committee Meeting, Thirty-Third Meeting, November 3-4, 2006.

## ii. Federal Compliance Issues and The Ancient One

The controversy over a 9,000 year old set of well-preserved human remains known as the Ancient One erupted in 1996 shortly after two young men discovered his physical remains along the banks of the Columbia River near Kennewick, Washington, on lands managed by the U.S. Army Corps of Engineers (COE). The representation of the remains as having Caucasoid features in the shape of its face and skull and the length of its extremities set in motion a press sensation when the estimated age of the individual became known.<sup>49</sup> The ensuing struggle between four Indian tribes and a non-federally recognized band, and scientists over the Ancient One resulted in one of the most highly publicized and contentious NAGPRA issues to date. In addition to being waged at high levels of the U.S. government, this clash was played out in the Federal court system with differing results in each arena.

At issue in this inadvertent discovery of human remains were several legal, political, and social questions. First, would the interested Federal parties comply with NAGPRA? Second, did those human remains fit the definition of Native American under NAGPRA? Third, if those remains were Native American, what was the appropriate disposition for them under this law? Fourth, how much weight would oral history carry in decisions involving cultural affiliation? Fifth, would the Federal courts interpret NAGPRA in such a way as to enable scientists to have their way?<sup>50</sup> The answers to these questions would appear as the struggle for the Ancient One unfolded.

Not long after his remains were taken from his grave, county coroner Floyd Johnson requested the assistance of James Chatters, a self-employed forensic anthropologist. Together, with the police present, they removed many of the Ancient One's bones, an activity that clearly violated both NAGPRA and the Archeological Resources Protection Act (ARPA), both of which laws established procedures for inadvertent discoveries of unmarked Native burials found on Federal lands. Chatters gathered other bones of the Ancient One during subsequent trips. The discoloration of and soil clinging to the bones informed Chatters that the remains were older than a recently deceased individual. Although he found nineteenth century artifacts lying near the remains, he applied for an ARPA permit from the COE on July 31, which was illegally made retroactive to the 28th. Interestingly, neither Chatters nor Johnson, the county coroner, complied with Federal laws or regulations regarding inadvertent discoveries of Native human remains. Had they done so, they would have been required to notify the Federal agency with jurisdiction over the land where the remains had been found. The COE, in turn, would have had to fulfill its legal responsibilities to the affected Indian tribe(s) by notifying them that human remains had been discovered, triggering the required consultation process with affected Indian tribe(s). In the advent of inadvertent discoveries or planned excavation, the purpose of NAGPRA is to determine "the ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990," and to make possible disposition to the owners.<sup>51</sup> Conversely, the purpose of ARPA is "to secure, for the present and future benefit of the American people, the archaeological resources and sites which are on public lands and Indian lands . . ."<sup>52</sup> In this case of inadvertent discovery, the COE should have initiated a consultation process with surrounding tribes, a process that should have occurred before it issued an ARPA permit to Chatters.

Within a few days, the coroner's office transferred the Ancient One's remains and burial property to the custody of Chatters for examination. Throughout most of August, Chatters and others studied the remains. Noting that the skull and extremities did not resemble those of the local Indians, Chatters speculated that the set of human remains was that of a Caucasian, suggesting that Europeans may have predated the presence of Indians in the Americas. After X-Rays and CT scans revealed an ancient spear projectile lodged in the Ancient One's hip, a consumptive (destructive) test called radiocarbon dating with a metacarpal bone placed the age of the bone to be from 8,340 to 9,200 years old.<sup>53</sup> The announcement of these findings by Chatters set off a news frenzy that usually cast the matter not in terms of a human rights issue but as a conflict between science and religion.

<sup>49</sup> "Kennewick Man," HistoryLink.org: The Online Encyclopedia of Washington State History, <http://www.historylink.org/>; Essay 5664.

<sup>50</sup> Bruce Babbitt, Secretary of the Interior, to Louis Caldera, Secretary of the Army, September 21, 2000.

<sup>51</sup> 25 U.S.C. 3002 (a).

<sup>52</sup> 16 U.S.C. 470cc (a).

<sup>53</sup> *Bonnichsen et al v. United States*, 367 F.3d 864, 869.

During an August 27 press conference, Chatters speculated that the unusual shape of the Ancient One's facial features indicated a non-Indian affiliation. Latching on to the suggestion that the remains might be Caucasoid, the media immediately took this to mean that the remains were Caucasian, meaning white (rather than meaning Caucasoid -- having a long, narrow skull). The matter turned into a national and international sensation. As with the Spirit Cave remains, scientists viewed the remains as a significant piece of evidence for telling their speculative version of the peopling of the Americas. In their eyes, burying the remains was tantamount to book burning. They showed scant concern for Native American beliefs and human rights.

As scientists became keenly interested in studying the ancient remains, representatives from Indian tribes from the surrounding Columbia River region stepped forward to carry out a tribal obligation of putting their ancestor back in the ground. Tribal representatives opposed additional studies on religious, historical, social and legal grounds. To them, it was a reenactment of the years of abuse they had suffered at the hands of scientific grave robbers who had taken many Indian bodies to museums. They categorically rejected such theories as the Europeans first entering the Americas as an affront to their knowledge, spirituality, and the longstanding presence in their homelands. Criticizing the proposed research in the context of sacrilege, a human rights violation, and disrespect, one tribal leader expressed a deeply rooted cultural view, stating that "[w]hen a body goes into the ground, it is meant to stay there until the end of time. When remains are disturbed and remain above the ground, their spirits are not at rest . . . To put these spirits at ease, the remains must be returned to the ground as soon as possible."<sup>54</sup>

The COE, itself responsible for appropriating the contents of thousands of Indian burials throughout the West, sided with the tribes. As Chatters prepared to ship the Ancient One's remains to the Smithsonian Institution in Washington, D.C., on September 10 for additional studies planned by Douglas Owsley, a physical anthropologist employed by the Smithsonian and an outspoken opponent of repatriation, the COE seized the Ancient One's remains. The Corps prohibited further examination of the remains, including DNA testing.<sup>55</sup>

Local tribes expressed concern about the matter soon after a newspaper article published on July 30 noted that a set of remains had been found near Kennewick. Shortly after the COE took custody of the Ancient One's remains, the Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe of Idaho, and the Wanapum Band made a NAGPRA claim of a shared-group relationship with the Ancient One on the basis of their oral histories. At this point, COE officials recognized the tribes' claim. Soon thereafter, on September 17 and September 24, 1996, the COE published a notice of the agency's intent to repatriate in a local newspaper. Under the law, competing claims could be made within thirty days of such publications.

After issuing the NAGPRA notices, the COE faced growing pressure from some scientists. Failing to convince the COE to allow additional testing, eight scientists filed suit on October 16 against the United States in Federal district court. After hearing the evidence, U.S. Magistrate Judge John Jelderks of Oregon issued his opinion on June 27, 1997, holding that the COE had acted too hastily and had failed to "fully consider or resolve certain difficult legal questions." The judge went on to vacate the COE repatriation decision and ordered the COE to reconsider the study request matter, although he declined to order the COE to take this action. Under the decision, the COE had to determine if NAGPRA applied in this matter.<sup>56</sup>

When the COE allowed the claimant Indian tribes to conduct religious ceremonies at Richland laboratory where the remains were held, Chatters and other scientists expressed indignation that the tribal representatives had placed ceremonial items with the remains, stating that such acts of contamination might destroy the bones' usefulness for scientific study.<sup>57</sup> In addition, the scientists formed an alliance with Asatru Folk Assembly, which according to one source, had ties with White supremacist organizations. Claiming that the Ancient One was their ancestor, the Assembly filed a lawsuit seeking further testing to prove that the remains had a "European origin."<sup>58</sup> This suit was subsequently dropped.

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<sup>54</sup> Quoted in *Bonnichsen et al v. United States*, 870, FN 8.

<sup>55</sup> *Bonnichsen v. United States*, 870.

<sup>56</sup> Quoted in *Bonnichsen et al v. United States*, 871.

<sup>57</sup> "Kennewick Man," *HistoryLink.org: The Online Encyclopedia of Washington State History*, <http://www.historylink.org/>; Essay 5664.

<sup>58</sup> *Ibid.*

Seeking to undermine the tribes' position of cultural affinity with the contested remains, some involved scientists, along with their supporters, blamed the tribes for attempting to undo the pursuit of scientific knowledge and for using NAGPRA as a weapon against those whose professions relied on the study of Native remains. They sought to portray the controversy as that between religion and science. However, not all scientists ascribed to this view. Those in this opposing camp feared that the research objectives of their colleagues who wanted to study the Ancient One might reach the conclusion and overarching similarities with those of discredited racial studies dating back to the nineteenth century. In other words, the plaintiffs risked "...resurrecting the outmoded concepts of race that had tainted early anthropological and archaeological studies."<sup>59</sup> Conversely, others viewed the controversy as a human rights issue, with burial rights of Indian tribes at stake.<sup>60</sup>

Through an agreement reached on March 24, 1998, with the COE, the Secretary of Interior assumed responsibility for deciding whether the Ancient One's remains met the definition of Native American under NAGPRA and for determining the disposition of the remains.<sup>61</sup> Subsequent non-invasive examinations began about two years later. These studies had similarities with those proposed by the scientists who wanted to study the Ancient One, conducted at the request of the Interior Secretary, and was followed with the examinations comparing teeth, skull, and bone measurements with those from other human remains. Although failing to find a physical resemblance between the Ancient One and contemporary Indians, Europeans, or any other contemporary people, these studies concluded that their findings did not eliminate a biological link between the Ancient One and the claimant tribes.<sup>62</sup>

Meanwhile, tension continued to grow. On March 28, 1998, a COE inventory revealed that parts of both femurs, the long leg bones, were missing. While tribal officials expressed outrage after hearing this news, Chatters held the COE responsible for the loss. The FBI launched an investigation into the missing bones affair, which reportedly focused on Chatters and Johnson, who had handled the physical remains of the Ancient One more than anyone else up to this time.<sup>63</sup> Johnson found the missing bones in his office in 2001.

Out-of-court mediation began on June 17, 1998, but the parties failed to reach an agreement. On September 3, a Federal court ordered the Ancient One's transfer to the University of Washington's Burke Museum in Seattle. Nearly two months later, the remains reached the museum.<sup>64</sup>

In the year 2000, Secretary of Interior Bruce Babbitt issued two determinations regarding the Ancient One's standing under the law and cultural affiliation that propelled the matter towards further litigation. Under the meaning of NAGPRA, Babbitt wrote on January 13, 2000, the Ancient One was Native American. On September 25, Babbitt determined that the preponderance of the evidence, mostly the Ancient One's antiquity, the location of his burial, and tribal oral traditions, showed that the claimant Indian tribes shared a cultural affiliation with the Ancient One. Seeking to clarify the intent of NAGPRA, Babbitt wrote:

Section 12 of NAGPRA recognized the unique legal relationship between the United States and Indian tribes. Given its purpose and this recognition, DOI construes the statute as Indian legislation. Therefore, any ambiguities in the language of the statute must be resolved liberally in favor of Indian interests.<sup>65</sup>

Babbitt's decision sparked intense outbursts from those who advocated scientific study of the Ancient One. The American Association of Physical Anthropologists decried the Secretary's determination as "a lack of adherence to the statutory definition of cultural affiliation . . . and an apparent lack of appreciation for the delicately balanced compromise that is at the heart of NAGPRA."<sup>66</sup> The following individuals filed suit<sup>67</sup> in a Federal district court

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Bonnichsen et al v. United States, 871.

<sup>62</sup> Letter from Secretary of the Interior Bruce Babbitt to Secretary of the Army Louis Caldera Regarding Disposition of the Kennewick Human Remains (hereinafter Interior Letter), September 21, 2000, available on-line at [http://www.nps.gov/archeology/kennewick/babb\\_letter.htm](http://www.nps.gov/archeology/kennewick/babb_letter.htm)

<sup>63</sup> "Kennewick Man," HistoryLink.org: The Online Encyclopedia of Washington State History, <http://www.historylink.org/>; Essay 5664.

<sup>64</sup> "Kennewick Man on Trial," The Burke Museum of Natural History and Culture, <http://www.washington.edu/burkemuseum/kman/chronology.php>.

<sup>65</sup> Interior Letter, see footnote 62.

<sup>66</sup> Patricia M. Lambert, "Statement of the American Association of Physical Anthropologists," United States Senate Committee on Indian Affairs Oversight Hearing on the Native American Graves Protection and Repatriation Act, July 28, 2005.

<sup>67</sup> Bonnichsen et al v. United States, 969 F.Supp. 614 (D.Or.,1997).

in Portland, Oregon, to block the Ancient One's repatriation and to secure approval for research: Robson Bonnichsen, C. Loring Brace, George W. Gill, C. Vance Haynes, Jr., Richard L. Jantz, Douglas W. Owsley, Dennis J. Stanford, and D. Gentry Steele. Owsley and Stanford were at the Smithsonian Institution and the others held university positions.

On August 20, 2002, Jelderks held in favor of the plaintiffs by constructing a pro-science argument that privileged scientific research over the Indians' human and religious rights. Forcefully condemning Babbitt's cultural affiliation decision, Jelderks declared that the Federal government had "failed to consider all the relevant factors, acted before it had all the evidence, had failed to fully consider legal questions, had assumed facts that proved to be erroneous, had failed to articulate a satisfactory explanation for its action, and had followed a 'flawed' procedure and had prematurely decided the issue."<sup>68</sup> "Allowing study," he opined, "is fully consistent with applicable statutes and regulations, which are clearly intended to make archaeological information available to the public through scientific research."<sup>69</sup> The judge went on to give a restrictive interpretation of Indian rights under NAGPRA, holding that the tribes could not repatriate the Ancient One, even if NAGPRA applied, for three reasons. First, they did not present evidence showing cultural affiliation. Second, "only an individual Indian tribe – not a coalition of tribes – could be a proper claimant." Finally, "the Tribal Claimants alleged 'aboriginal occupation' of the discovery site was not a proper reason to give the Tribal Claimants the remains." Jelderk's opinion concluded that because the tribes lacked cultural affiliation with the remains, the ARPA applied and this statute allowed scientific study.<sup>70</sup>

Soon after receiving news about the decision, Alan Schneider, a lawyer for the scientists, contextualized the opinion's significance with an expansive interpretation. He declared that it "is going to encourage federal agencies to be more deliberate and fair when they make decisions concerning the study of ancient skeletal remains."<sup>71</sup>

The four claimant tribes, joined by the U.S. Justice Department, filed notice that they would appeal Jelderk's decision. In *Bonnichsen et al v. United States*, the 9th Circuit Court of Appeals upheld the lower court's pro-science decision in an April 2004 holding. Writing the court's unanimous decision, Judge Ronald M. Gould declared that the Ancient One was not Native American and that the administrative record did not establish a cultural or genetic relationship between the Ancient One and the claimant tribes. Under NAGPRA, he stated, Native American means "of, or related to, a tribe, people, or culture that is indigenous to the United States." Giving a dubious interpretation of congressional intent, he declared, "The statute unambiguously requires that human remains bear some relationship to a presently existing tribe, people, or culture to be considered Native American."<sup>72</sup> Further, the court expanded the required showing under NAGPRA for remains to be considered Native American by mandating that remains must "share[] special and significant genetic or cultural features with presently existing indigenous tribes, peoples or cultures."<sup>73</sup> The record, he deduced, contained no evidence linking the Ancient One with any present-day Indian tribe. Thus, the Secretary of Interior, in 2000, had erred by making an arbitrary and capricious decision that the Ancient One was Native American and was culturally linked to the claimant tribes.

Gould supported the court's rationale by articulating an argument based on the notion that tribal cultures change over time as a grounds for disallowing the establishment of cultural affiliation under NAGPRA. Geography, the site where the Ancient One was found, is not a basis for affinity, he found. Gould stated the evidence showed that "substantial changes had occurred in settlement, housing, diet, trade, subsistence patterns, technology, projectile point styles, raw materials, and mortuary rituals at various times between the estimated date when Kennewick Man lived and the beginning of the 'Plateau Culture' some 2000 to 3000 years ago."<sup>74</sup> Gould set out to destroy

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<sup>68</sup> "Kennewick Man is Awarded to Scientist," *Seattle Times*, August 31, 2002.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Bonnichsen et al v. United States*, 872.

<sup>71</sup> "Kennewick Man is Awarded to Scientist," *Seattle Times*, August 31, 2002.

<sup>72</sup> *Bonnichsen et al v. United States*, 875.

<sup>73</sup> *Ibid.*, 882.

<sup>74</sup> *Ibid.*, 881.

the viability of tribal oral history as a reliable source of information regarding the cultural affiliation of the Ancient One. He declared that “evidence in the record demonstrates that oral histories change relatively quickly, that oral histories may be based on later observations of geological features and deduction (rather than on the first teller’s witnessing ancient events) and that these oral histories might be from a culture or group other than that to which Kennewick Man belonged.”<sup>75</sup> Tribal accounts, he continued, “are just not specific enough or reliable enough or relevant enough to show a significant relationship of the Tribal Claimants with Kennewick Man.”<sup>76</sup> He supported the finding of the lower court that “8340 to 9200 years between the life of Kennewick Man and the present is too long a time to bridge merely with evidence of oral traditions.”<sup>77</sup>

The Gould decision effectively ended the claimants’ hope of repatriating the Ancient One for reburial and of protecting their cultural property from scientific attacks. The 9th Circuit Court subsequently rejected the tribes’ petition for a rehearing. In July 2004, the claimant tribes and the Justice Department decided not to appeal the case to the U.S. Supreme Court.

The decision to not appeal the circuit court’s decision enabled scientists to subject the Ancient One to new studies with the approval of the COE. With only the physical remains and spear point to study, the researchers, headed by Owsley, set out to learn where he came from, what he ate, and how he lived. On February 23, 2006, a delegation of six Yakamas attended an American Academy of Forensic Scientists meeting in Seattle in which Owsley provided a theory, based on hundreds of hours of analysis by a number of scientists, about the positioning of the Ancient One in his grave. LaRena Sohapp, the chairperson of her tribe’s culture committee, reflected the outrage of the delegation, declaring, “Scientists have no respect for anything. I had to shut my eyes. It is not a comfortable feeling.”<sup>78</sup>

In addition to allowing scientific examination of the Ancient One, the court essentially redefined NAGPRA consultation compliance requirements in matters of inadvertent discoveries. According to a 2005 National Congress of American Indian (NCAI) resolution, the decision “created a loop-hole whereby museums and agencies can, unilaterally, and without consultation, determine remains not to be Native American and therefore not start the NAGPRA process for repatriation.”<sup>79</sup> Facing the specter of other judges misinterpreting the intent of Congress, Indian tribes, joined by many supporters, pursued a political solution aimed at resolving the potential problems created by Gould’s decision. In 2004, Senator Ben Campbell introduced a bill designed to amend NAGPRA. Facing opposition from some scientists and their supporters, the proposed amendment called for adding two words, “or was,” to the Act. Had the amendment reached the floor of Congress for a vote, the term Native American would have been defined as the “means of, or relating to, a tribe, people, or culture that is or was indigenous to the United States.”<sup>80</sup> The NCAI, an organization composed of Indian tribes, and others supported the bill.

Friends of America’s Past, an organization formed in 1998 to support the fundraising and public information agendas of the anthropologists engaged in the Ancient One struggle, viewed the proposal as giving Indian tribes too much power over determinations involving cultural affiliation. Indians, the bill’s opponents declared, would be able to claim remains not affiliated with them. Other organizations, however, such as the Society of American Archaeology (SAA) saw the amendment as a simple clarification of Congressional intent, but it “strongly opposed the process through which this amendment is being put forward.” The SAA wanted any amendments to undergo an open hearing process.<sup>81</sup> It should be noted that SAA opposed the repatriation of the Ancient One on the grounds that the available information did not meet the standard for establishing cultural affiliation. The

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<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, 882.

<sup>78</sup> “Kennewick Man Was Buried When He Died,” Tri-City Herald’s Kennewick Man Virtual Interpretive Center News.

<sup>79</sup> National Congress of American Indians, Resolution TUL-05-029.

<sup>80</sup> Jackson Kuhl, “The Politics of Dead ‘Native Americans,’” <http://www.techcentralstation.com/112304E.html>.

<sup>81</sup> “SAA Statement on Proposed NAGPRA Amendment,” Society for American Archaeology, October 5, 2004; Jackson Kuhl, “The Politics of Dead ‘Native Americans,’” <http://www.techcentralstation.com/112304E.html>.

amendment was not enacted. The following year, Senator John McCain, an Arizona Republican, reintroduced the bill, which was approved by the U.S. Senate Indian Affairs Committee with opposition from some scientists and their supporters. As had happened during the previous year, the SAA endorsed the proposal.<sup>82</sup> The American Association of Physical Anthropologists, however, supported the “spirit of the proposed amendment and [withheld] its full support only because the legal ramifications of this change in the statute cannot be fully assessed in the absence of regulations dealing with the disposition of culturally unidentifiable human remains.”<sup>83</sup>

On September 7, 2006, Dennis “Doc” Hastings, a Republican congressman from Washington, introduced a bill to the Committee on Resources aimed at amending NAGPRA “so that it will be interpreted in accordance with the original intent of Congress to require a significant relationship be found between remains discovered on federal lands and presently existing Indian tribes.”<sup>84</sup> The amendment proposed changing the meaning of ‘Native American’ to mean that “cultural items had to have a significant and substantial genetic or cultural relationship, based on factors other than geography alone, to a presently existing tribe, people, or culture that is now indigenous to the United States.”<sup>85</sup> The bill also proposed a section allowing for the provision of “excavation, examination, investigation or scientific study under the Archaeological Resources Protection Act of 1979 of any cultural item found on federal land that has not been determined to be the property of an Indian tribe or a Native Hawaiian organization.”<sup>86</sup> This measure was not enacted.

In September 2007, another proposal to amend NAGPRA was referred to the U.S. Senate Committee on Indian Affairs. Backed by Indian tribes and organizations, along with their supporters, this bill seeks to refine the definition of ‘Native American’ by adding a few words to the proposed amendment. If enacted, the definition of ‘Native American’ will read: “Section 2 (9): ‘Native American’ means of, or relating to, a tribe, people, or culture that is or was indigenous to any geographic area that is now located within the boundaries of the United States.”<sup>87</sup>

## **B. CONCLUSIONS**

These case studies illustrate two examples of Federal agencies in conflict with Indian tribes in the implementation and compliance with NAGPRA. The record indicates that the BLM, joined by the Nevada State Museum, sought to control the process of determining cultural affiliation so as to reach a predetermined outcome. In doing so, the agency is manipulating basic compliance responsibilities. The Paiutes have endured a time-consuming and expensive process that has failed, to date, to establish cultural affiliation and subsequent repatriation of one of their ancestors. BLM’s maneuvering has allowed scientific studies on human remains and funerary objects that ran contrary to the beliefs of the Paiutes. The Federal district court’s decision, which found BLM’s behavior to be arbitrary and capricious, may yet result in that agency’s fair and impartial weighing of the FPST’s evidence.

The struggle over the Ancient One was decided by a Federal appellate court’s upholding of a lower court’s decision that vacated a Secretary of the Interior’s decision regarding cultural affiliation based on geography and oral history. The Secretary interpreted NAGPRA as Indian law, concluding that its ambiguities must be interpreted liberally and in the favor of Indian interests. This court’s decision could conceivably embolden institutions with anti-NAGPRA biases to place less reliance on oral evidence than information generated by other forms of evidence. Further, the narrow reading of definition of Native American might give those archaeologists and anthropologists who oppose NAGPRA a convenient loophole to claim that the human remains they encounter are not certain to be of or relating to a tribe, people or culture that shares special and significant genetic or cultural features with presently existing indigenous tribes, peoples or cultures.

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<sup>82</sup> “Scientists Again Protest Senate Bill To Change Indian Graves Law,” *Corvallis Gazette-Times*, April 8, 2005. [http://www.gazettetimes.com/article/2005/04/08/news/the\\_west/friwes02.txt](http://www.gazettetimes.com/article/2005/04/08/news/the_west/friwes02.txt); Keith W. Kintigh, “Statement of the Society for American Archaeology,” Senate Committee on Indian Affairs, Oversight Hearings on the Native American Graves Protection and Repatriation Act, July 28, 2005.

<sup>83</sup> Lambert, “Statement of the American Association of Physical Anthropologists.”

<sup>84</sup> “H.R. 6043 [109th], To Amend the Native American Graves Protection and Repatriation Act,” 1. This bill may be accessed at <http://www.govtrack.us/congress/bill.xpd?bill=h109-6043>.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*, 4.

<sup>87</sup> S. 2087, The Native American Omnibus Technical Corrections Act of 2007. Senators Byron Dorgan, a North Dakota Democrat, and John McCain, an Arizona Republican, introduced this bill on September 25, 2007, [indian.senate.gov/public/\\_files/0927Agenda.pdf](http://indian.senate.gov/public/_files/0927Agenda.pdf).

What these case studies point out is internal and external conflicts that have been created by some Federal agency officials and the lack of a process to ensure timely oversight of Federal NAGPRA responsibilities. The Federal government must assign that responsibility to an agency and empower it with the tools in which to take effective actions in matters of non-compliance. In the case of inadvertent discoveries, it must ensure that the consultation process with Native Americans begins before any scientific tests are allowed on the human remains and funerary objects in Federal agency possession or control. It must insist that those Federal agencies that have not yet completed summaries and inventories be held accountable until they come into compliance.



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**Cindy Darcy** served on the U.S. Senate Indian Affairs Committee from 2005 until recently, first as Senior Policy Advisor and later as Deputy Staff Director under Chairman Byron L. Dorgan. Prior to her service on the Committee, she represented Indian and Alaska Native tribal governments on a broad range of public policy legislative issues and federal appropriations in private practice for a number of years.

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**Pemina Yellowbird** (Arikara-Hidatsa) has been working on issues related to the repatriation and reburial of Native dead and the protection and preservation of Native sacred and cultural places for nearly 25 years. She is the mother of four sons and grandmother to nine and is currently working to protect traditional cultural properties at home on the Ft. Berthold Reservation.

**Patricia Zell** served as the Staff Director/Chief Counsel of the U.S. Senate Committee on Indian Affairs for the last 19 years of her 25 years of service on the Committee. She is now engaged in the private practice of Federal Indian law as it affects Indian tribal governments, Alaska Natives and Native Hawaiians.

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