

Native American Graves Protection and Repatriation Review Committee

Report to the Congress for 2007

Introduction

Passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) marked a watershed in the long and often troubled relationship between Native Americans and many of this country's educational institutions, museums, and public agencies. NAGPRA provides for the disposition of Native American cultural items -- human remains, funerary objects, sacred objects, and objects of cultural patrimony -- removed from Federal or tribal lands to lineal descendants or Indian tribes or Native Hawaiian organizations based on geographic or cultural affiliation. NAGPRA also prohibits trafficking of Native American cultural items. Lastly, NAGPRA provides for the repatriation of Native American cultural items in museum and Federal agency collections to lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations.

NAGPRA directs the Secretary of the Interior to establish and maintain the Native American Graves Protection and Repatriation Review Committee to monitor and review the summary, inventory, and repatriation requirements of the Act. The Review Committee operates in accordance with the Federal Advisory Committee Act and a charter issued by the Secretary of the Interior. The Review Committee's actions and findings are advisory, although they may be admissible in court proceedings.

This report is prepared and submitted to Congress, as required by NAGPRA, to identify progress made and barriers encountered in implementing the summary, inventory, and repatriation requirements of the Act.

Review Committee Activities

This report summarizes the Review Committee's activities for calendar year 2007. The Review Committee convened twice during the reporting period: April 19-20 in Washington, DC; and October 15-16 in Phoenix, AZ.

Six of the seven members continued to serve on the Review Committee during calendar year 2007. Members appointed from nominations received from national museum organizations and scientific organizations were Dan Monroe and Vincas Steponaitis, and the expired term held by Garrick Bailey was filled by Alan Goodman in March. Members appointed from nominations received from Indian tribes, Native Hawaiian organizations, or traditional religious leaders were Donna Augustine, Willie Jones and Rosita Worl. The seventh member, appointed from a list of persons developed and consented to by all of the other members of the Review Committee, was Colin Kippen.

The Review Committee's activities are prescribed by the Review Committee's charter and the Act. During calendar year 2007 the Review Committee –

- Monitored the inventory and identification process conducted by museums and Federal agencies;
- Made recommendations regarding the disposition of culturally unidentifiable human remains from Colorado, Florida, Iowa, Michigan, Nebraska, and New York;
- Consulted with representatives of the Secretary of the Interior regarding proposed regulations for the disposition of unclaimed cultural items (43 CFR 10.7); and
- Consulted with Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on inventory, identification, and repatriation activities.

Progress Made

Most museums and Federal agencies appear to have carried out the provisions of NAGPRA in good faith.

Section 5 of the Act requires all museums and Federal agencies that have possession or control over Native American human remains and associated funerary objects to compile inventories of such items in consultation with Indian tribes and Native Hawaiian organizations. As of December 31, 2007, inventories had been completed by 581 museums and 266 Federal agencies.

Section 6 of the Act requires all museums and Federal agencies that have possession or control over collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony to complete summaries of such collections. As of December 31, 2007, summaries had been completed by 774 museums and 287 Federal agencies.

Section 7 of the Act requires all museums and Federal agencies to repatriate human remains, funerary objects, sacred objects, and objects of cultural patrimony upon the request of known lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations. While the number of actual repatriations is not monitored, notices published in the Federal Register provide a measure of museums and Federal agencies that have agreed to repatriate cultural items. As of December 31, 2007, museums and Federal agencies had published 1,029 notices of inventory completion accounting for the remains of 32,875 individuals and 685,457 associated funerary objects. Museums and Federal agencies had also published 386 notices of intent to repatriate accounting for 130,579 unassociated funerary objects, 3,741 sacred objects, 364 objects of cultural patrimony, 779 cultural items that fit both the sacred and cultural patrimony categories, and 215 unspecified cultural items.

Barriers Encountered

The Review Committee is very concerned about the costs of compliance. These costs include documentation, consultation, travel, and the transfer of cultural items. Most of these costs are borne by museums, Federal agencies, and tribes. The National NAGPRA Program administers a competitive grant program to assist in funding some of these activities, and the funding for this program has not increased since FY1996. The National NAGPRA Program anticipates awarding grants in FY2008 totaling approximately \$1.8 million. The Review Committee strongly endorses the effectiveness of NAGPRA grants. Also, the Review Committee continues to be concerned that annual shortfalls in overall program funding are made up at the expense of grant awards. This shortfall totaled \$464,000 in FY2007. With the advent of the culturally unidentifiable database placing information in the inventories on-line and accessible to tribes, it is anticipated that there will be a resurgence of consultation activity on a large scale, putting additional pressure on the grants program.

More than 15 years after NAGPRA's passage, three key sections of the implementing regulations are still pending. Currently, a proposed rule for disposition of culturally unidentifiable human remains (43 CFR 10.11) has been published and public comment has been received. In addition, rules on the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony (43 CFR 10.7) are still in development, with ongoing consultations. Work on 43 CFR 10.15(b), failure to claim where no repatriation or disposition has occurred, has not yet begun, pending completion of the other rules. The Review Committee believes it is of utmost importance that these rules be completed and implemented as soon as possible. The Review Committee considered the proposed rule for 43 CFR 10.11 at its meeting of January 8, 2008 and unanimously passed the resolution recommending that a new proposed rule be published for public comment before a final rule is enacted.

The Review Committee is concerned that overall Federal agency compliance with NAGPRA has been uneven, difficult to measure, and lacking in transparency despite the huge role Federal agencies play in implementing the terms of the Act. This lack of accurate information about the status of Federal agency compliance makes it difficult to know whether these Federal agencies are meeting their responsibilities to the stakeholders under the Act and impedes the oversight functions envisioned for the Review Committee when the Act was created. This lack of data also makes it impossible to meaningfully evaluate whether the requisite constitutionally mandated government-to-government relationship between Federal agencies and Indian tribes is occurring through the consultation provisions contained within the Act and its related administrative rules.

The committee is encouraged by the organized manner in which civil penalties investigations are proceeding since publication of the final rule on civil penalties (43 CFR 10.12). The committee is concerned; however, that there is a substantial backlog of cases in need of investigation, substantiation, and disposition, and that the present investigator is assigned at the rate of only 10 hours per week. The committee believes that this investigator should be assigned full-time to NAGPRA cases while not decreasing existing funding for enforcement of the Archaeological Resources Protection Act (ARPA).

The ability to rebury as close to the original interment site as possible is an issue of great importance to many Native Americans. Since many of the human remains subject to NAGPRA originate from burials on Federal lands, agencies' reburial policies often determine whether a repatriation can be fully satisfactory. Unfortunately, there is no uniform Federal policy on reburial. The Review Committee recommends that a uniform reburial policy on Federal lands be developed in consultation between Federal agencies and Indian tribes and Native Hawaiian organizations, and adopted.

As a key piece of human-rights legislation, NAGPRA has played an essential role in empowering Native American communities to recover culturally important items from Federal agencies and museums. In so doing it has helped to right past wrongs, and has also fostered new, more productive relationships between Native communities and these agencies and museums. NAGPRA has led to many successes, but its future success depends on continued support from Congress, particularly in overcoming some of the barriers identified above.

Recommendations

Authorized by the Native American Graves Protection and Repatriation Act [25 U.S.C. 3006], the Native American Graves Protection and Repatriation Review Committee has served since 1992 to monitor and review implementation of the Act. At its May 15-16, 2008 meeting, the Review Committee made the following recommendations:

- 1. Costs to Comply with NAGPRA.** The Review Committee recommends that Congress appropriate the following amounts for FY2009 to ensure continued implementation of the Act:
 - At least \$4.1 million in grants to Indian tribes, Native Hawaiian organizations, and museums;
 - The amount requested by the administration that is targeted for each Federal agency's compliance efforts.

The Review Committee also recommends that the President request the same amounts listed above in the FY2010 budget proposal. With the recent promulgation of 43 CFR 10.13 (Future Applicability) and the pending promulgation of 43 CFR 10.7 (Disposition of Unclaimed Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony) and 43 CFR 10.11 (Disposition of Culturally Unidentifiable Human Remains), we expect consultation activity to increase in coming years, which will regenerate an increasing volume of NAGPRA grant requests.

- 2. Definition of Native American.** The Review Committee recommends strongly that Congress amend the definition of "Native American" at 25 U.S.C. 3001 (9) by adding the words "or was" so that it reads: "'Native American' means of, or relating to, a tribe, people, or culture that is, or was indigenous to the United States."

- 3. Government Accountability Office (GAO) Study and Congressional Oversight Hearings.** The Review Committee recommends that the Congress immediately call for a GAO study to assess and evaluate the compliance of each and every Federal agency with the provisions of NAGPRA and for Congressional oversight hearings on this subject. The Review Committee also recommends that the GAO consult with the Review Committee and the National NAGPRA Program staff before designing and implementing this study.

The Review Committee respectfully submits these recommendations with the full and unanimous support of all members.

Native American Graves Protection and Repatriation Review Committee Members

Donna Augustine (traditional religious leader)

term 2006-2010

nominated by Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Passamaquoddy Tribe of Maine, and Penobscot Tribe of Maine

Alan Goodman

term 2007-2011

nominated by American Anthropological Association

Willie Jones (traditional religious leader)

term 2004-2008

nominated by Lummi Tribe of the Lummi Reservation, Washington

Colin Kippen

term 2005-2009

nominated by concurrence of other committee members

Dan Monroe

term 1992-1997

nominated by American Association of Museums and Museum Trustees Association

term 2004-2008

nominated by American Association of Museums

Vincas Steponaitis

term 2004-2008

nominated by Society for American Archaeology

Rosita Worl

term 2001-2006

nominated by Huna Heritage Foundation on behalf of Huna Totem Corporation

term 2007-2009

nominated by Huna Heritage Foundation on behalf of Huna Totem Corporation

chair 2004-present

Charter

November 16, 2006 — November 16, 2008

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE

A. OFFICIAL DESIGNATION.

The official designation of the Committee is the Native American Graves Protection and Repatriation Review Committee (Committee).

B. PURPOSE.

The purpose of the Committee is to monitor and review the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601.

C. DUTIES AND RESPONSIBILITIES.

The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
4. 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 disposition of such human remains;
5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
6. Consulting with the Secretary in the development of regulations to carry out Public Law 101-601;
7. Performing such other related functions as the Secretary may assign to the Committee;
8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year.

D. MEMBERSHIP.

1. The Committee will be composed of seven members appointed by the Secretary as follows:
 - (a) Three members appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders, with at least two of such persons being traditional Native American religious leaders;
 - (b) Three members appointed from nominations submitted by national museum organizations and scientific organizations; and
 - (c) One member appointed from nominations developed and consented to by the other members of the committee.
2. Members are appointed as Special Government Employees.
3. Terms of appointment will be for 4 years. Reappointment of current members will be for a term of 2 years. All appointments will terminate upon the termination of the Committee. Any vacancy on the Committee will be filled in the same manner in which the original appointment was made within 90 days of the occurrence of such vacancy. If no successor is appointed prior to the expiration of a member's term, then the incumbent may continue to serve until the new appointment is made, provided that a charter under provisions of the Federal Advisory Committee Act is in effect.
4. Any member who fails to attend two successive meetings of the Committee, or who otherwise fails to substantively participate in the work of the Committee, may be removed from the Committee by the Secretary and a replacement named.
5. Members of the Committee will serve without pay, but will be reimbursed at a rate equal to the daily rate for Level IV of the Executive Schedule for each day (including travel time) for which the member is actually engaged in Committee business. While away from their homes or regular places of business in the performance of services of the Committee, members will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service are allowed such expenses in accordance with Sections 5703 of Title 5 of the United States Code.
6. The Secretary will establish such rules and regulations for the Committee as are necessary. The Secretary may not appoint Federal Officers or employees to the Committee.

E. ETHICS RESPONSIBILITIES OF MEMBERS.

All members will comply with applicable ethics rules and regulations. The Department of the Interior will provide materials to those members appointed as Special Government Employees, explaining their ethical obligations and with which the members should be familiar. Consistent with the ethics requirements, members will endeavor to avoid any actions that would cause the public to question the integrity of the Committee's operations, activities, or advice. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

F. ADMINISTRATION.

1. CHARTER. The Committee is subject to the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994). The Committee will take no action unless the charter filing requirements of sections 9 and 14(b) of FACA have been complied with. This charter is for the period November 16, 2006, to November 16, 2008.
2. DESIGNATED FEDERAL OFFICIAL. The Committee reports to the Secretary of the Interior, United

States Department of the Interior, 1849 C Street, NW, Washington, DC 20240. The Manager, National NAGPRA program, National Park Service, or a designee, will serve as the Designated Federal Official (DFO) required by section 10 of FACA to oversee the management of the Committee.

3. CHAIRPERSON. The Committee will designate one member to be Chairperson.
4. SUPPORT AND COST. Support for the Committee is provided by the U.S. Department of the Interior, National Park Service, Office of the Director. The estimated annual operating cost of the Committee is \$163,000, which includes the cost of 0.5 work-years of staff support.
5. MEETINGS. The Committee will meet approximately three times a year, although it may convene more often if there is an immediate need for consultation, advice and review. All meetings of the Committee will be subject to the provisions FACA, 5 U.S.C. Appendix (1994). No Advisory Committee member, and no member of any subgroup of this Committee, shall participate in any matter in which the member has a financial interest.
6. SUBCOMMITTEES. The Committee may create subcommittees from among its membership supplemented when appropriate by members of the public, provided that the role of such subcommittees will be solely to gather information or conduct research for the Committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the Committee. Membership on all subcommittees will be determined by the Chairperson, subject to the concurrence of the DFO. Subcommittees will meet as necessary, subject to the approval of the DFO.
7. QUORUM. A quorum is a simple majority of the Review Committee members, provided that the quorum includes at least one member who was nominated for Committee membership by an Indian tribe or Native Hawaiian organizations and one member who was nominated for Committee membership by a national museum or scientific organizations. A quorum is required at all times during a meeting. When less than a quorum is present, the DFO will terminate the meeting, and the meeting may resume only when a quorum is present and the chair and the DFO agree to resume the meeting.

G. DURATION AND DATE OF TERMINATION.

In view of the objectives, scope and purposes of the Committee, it is expected to continue into the foreseeable future. The Committee will terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the Committee has been completed.

H. AUTHORITY.

The Native American Graves Protection and Repatriation Review Committee is established by authority of Section 8 of Public Law 101-601, November 16, 1990.

/s/ Dirk Kempthorne
Secretary of the Interior

November 6, 2006
Date Signed

DATE CHARTER FILED November 16, 2006



National NAGPRA

This report was prepared by the Native American Graves Protection and Repatriation Review Committee and edited and produced by the National Park Service's National NAGPRA Program.

National NAGPRA carries out certain responsibilities for the Secretary of the Interior and Assistant Secretary for Fish and Wildlife and Parks related to implementation of NAGPRA. One of these duties is to provide administrative and staff support to the Review Committee.

Statements, views, and recommendations in this report are those of the Review Committee and should not be interpreted as representing the opinions of the U.S. Government.

Send inquiries about this report to:

C. Timothy McKeown, Ph.D.
Designated Federal Officer to the
Native American Graves Protection and Repatriation Review Committee
National NAGPRA Program
1201 Eye Street NW (8th floor)
Washington, DC 20240
Tel: (202) 354-2206
Fax: (202) 371-5197

May, 2008