

Native American Graves
Protection and Repatriation
Review Committee
2012 Report to Congress

Summary of 2012 Report to Congress

Review Committee Activity during 2012

Two meetings of the Native American Graves Protection and Repatriation Review Committee were held in 2012. The forty-sixth Review Committee meeting was held in Santa Fe, New Mexico on May 9-10, 2012, and the forty-seventh Review Committee meeting was held in Washington, DC on November 28-29, 2012.

The Review Committee was pleased to hear from a wide range of NAGPRA constituents during 2012. Federal agencies, museums, and scientific and tribal representatives all made presentations before the Review Committee. These presentations addressed barriers encountered in the course of implementing the law, as well as the progress achieved. Such testimonies serve the parties affected by NAGPRA by helping to ensure that best practices are used in complying with the law.

Barriers encountered in 2012:

- The regulations at 43 C.F.R. 10.11 do not mandate the disposition of associated funerary objects together with Native American human remains that have been determined to be culturally unidentifiable;
- Consultation with Indian tribes and Native Hawaiian organizations is inconsistent across Federal agencies;
- Compliance with respect to Federal agency collections located in non-Federal repositories is inconsistent across Federal agencies;
- Reburial of Native American human remains on Federal lands is overly difficult;
- The regulations at 43 C.F.R. 10.11 lack a timeframe for publishing notices of inventory completion for Native American human remains determined to be culturally unidentifiable;
- Requests for NAGPRA grants exceed available grant funds;
- Funding allocated to help facilitate consultation and repatriations is insufficient; and
- The Secretary of the Interior does not have a full-time staffer to investigate allegations of museum failure to comply with the requirements of NAGPRA.

Progress Made in 2012:

- 1,418 people participated in NAGPRA-related trainings given by the National NAGPRA Program, and other Federal agencies and private entities have given training;
- Indian tribes have enjoyed some success in collaborating with Federal agencies -- notably the USDA Forest Service -- to rebury Native American human remains on Federal lands;

- Museums and Federal agencies published in the Federal Register 49 notices of inventory completion for Native American human remains determined to be culturally unidentifiable, and the number of museums and agencies doing so increased;
- The Review Committee developed a draft revision of their dispute procedures;
- Museums and Federal agencies published in the Federal Register a total of 131 notices of inventory completion, which included the human remains of 3,974 Native American individuals and 90,867 associated funerary objects;
- Museums and Federal agencies reported that the human remains of, at minimum, 4,208 Native American individuals were transferred to Indian tribes and Native Hawaiian organizations;
- Museums and Federal agencies published in the Federal Register a total of 57 notices of intent to repatriate cultural items, which included 61,668 unassociated funerary objects, 427 sacred objects, 6,771 objects of cultural patrimony, and 118 objects that are both sacred objects and objects of cultural patrimony; and
- Federal agencies reported having published in newspapers a total of 130 notices of intended disposition, which included the human remains of 1,004 Native American individuals that had been discovered and removed from Federal lands and tribal lands.

NAGPRA: An Overview

The Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 – 3013, was enacted in 1990. This landmark legislation addresses past disparate treatment of Native American human remains and cultural items by enabling lineal descendants, Indian tribes, and Native Hawaiian organizations (NHOs)¹ to claim ancestral remains and certain cultural items in the possession or control of museums and Federal agencies. NAGPRA recognizes tribal customs, beliefs and traditions in a way very few other Federal laws have done. Under the Act, tribal religious and oral traditional information are relevant for purposes of determining the identity and cultural affiliation of human remains and other cultural items. To have oral histories recognized on par with academic and scholarly lines of evidence is a positive step forward for the Native American communities across the United States.

The cultural items under the jurisdiction of NAGPRA fall into five categories: human remains, associated funerary objects, unassociated funerary objects, sacred objects and objects of cultural patrimony. These items have either been discovered and removed from Federal or tribal lands after November 16, 1990 (the date of enactment of NAGPRA), or have been located in Federal agency and museum holdings or collections sometime after November 16, 1990. Under NAGPRA, a museum includes any institution that has received Federal funds after November

¹References to tribes throughout this report also include Native Hawaiian organizations.

16, 1990 and, at the time of receipt of those Federal funds or thereafter, has possession or control of cultural items.

NAGPRA marks a pivotal point in an attempt to address the often strained relationships between tribes, museums and Federal agencies. NAGPRA achieves this aim by various means, such as: mandatory consultation regarding human remains and cultural items, repatriation and other disposition requests, and protection of burial sites on Federal lands. Another avenue that museums, tribes and Federal agencies can utilize to help facilitate the resolution of differences is the Native American Graves Protection and Repatriation Review Committee.

The Review Committee consists of seven members appointed by the Secretary of the Interior, six of whom are nominated by NAGPRA constituencies. Three members are chosen from nominations by national museum and scientific organizations, and three members are chosen from nominations by Indian tribes, Native Hawaiian organizations, and Native American traditional religious leaders (two of these members must be traditional Indian religious leaders). These six members develop an agreed-to list of persons from which the Secretary appoints the seventh member. The Review Committee's responsibilities include, but are not limited to: providing an annual report to Congress on the progress made and any barriers encountered in NAGPRA implementation, hearing and facilitating the resolution of disputes, making findings of fact concerning the identity or cultural affiliation of items, and advising the Secretary of the Interior on certain matters, including regulations to implement the Act. Normally, the Review Committee convenes twice a year at various locations across the United States, in order to provide participation from a wide variety of Indian tribes, museums, Federal agencies and the public. Disputes, requests for findings of fact, requests for a recommendation to the Secretary on agreements for the disposition of certain culturally unidentifiable Native American human remains, consultation on the development of regulations and public comment may all occur during a Review Committee meeting.

The Review Committee submits this report to Congress to fulfill its obligations under the Act (25 U.S.C. 3006(h)). This report updates Congress regarding the barriers and successes encountered by Indian tribes, Native Hawaiian organizations, museums and Federal agencies in implementing NAGPRA during 2012. In addition, this report provides recommendations to improve NAGPRA compliance.

Review Committee Activity Summary 2012

During 2012, the following members served on the Review Committee: Rosita Worl – Chair, Sonya Atalay, Alex Barker, LindaLee Kuuleilani Farm, Eric Hemenway, Adrian John and Mervin Wright, Jr.

The spring meeting, on May 9-10, 2012, was held in Santa Fe, New Mexico. Over 100 people were in attendance for this meeting, with a strong showing by tribal representatives in addition to Federal agency staff. The day prior to the meeting, the National Park Service Intermountain Region Office held a reception for the Review Committee, National NAGPRA Program staff and all who participated in the NAGPRA training given by the National NAGPRA Program.

The fall meeting, on November 28-29, 2012, was held at the National Museum of the American Indian (NMAI), in Washington, DC. There were over 75 people in attendance representing tribes, Federal agencies, museums, as well as members of the general public. The day prior to the meeting, the National NAGPRA Program conducted a public training program. During the meeting, presentations were given by Federal agencies on their NAGPRA efforts. The NMAI held a reception for the Review Committee, National NAGPRA staff and all who participated in the meeting.

The two annual, in-person Review Committee meetings are a unique opportunity for museums, tribes and Federal agencies to express their concerns about NAGPRA implementation, showcase their accomplishments, bring disputes, make public comments and make recommendations regarding the law. The Review Committee learns a great deal by these face-to-face interactions with the public and strongly urges that at least two face-to-face meetings be held each year. The meetings are held at various locations across the United States to provide the opportunity for a wide range of people to attend and actively participate.

The Forty-Sixth Review Committee Meeting, Santa Fe, New Mexico, May 9-10, 2012

The Review Committee saw a change in the Designated Federal Officer (DFO) during this meeting. Sherry Hutt, Program Manager, replaced David Tarler as DFO. Mr. Tarler's duties shifted to reviewing the NAGPRA regulations (43 C.F.R. 10). The new notice coordinator for the National NAGPRA Program, Melanie O'Brien, was introduced at this meeting. Legal counsel to the National NAGPRA Program, Stephen Simpson and Carla Mattix, were also present.

Sherry Hutt presented the Midyear FY 2012 report to the Review Committee on the activities that had taken place during that time period. Web development and data management were discussed. Shannon Keller O'Loughlin was hired as a civil penalties analyst-contractor to help address and manage previous civil penalty allegations. The Review Committee was informed of the number of notices published, as well as the number of participants at National NAGPRA Program-sponsored training.

Tribal, Museum, and Federal Agency Presentations

Colorado Lands Reinterment and Repatriation Workgroup: Representatives from the Colorado Lands Reinterment and Repatriation Workgroup made a presentation to the Review Committee. This workgroup consisted of members of the Ute Mountain Ute Tribe and Southern Ute Tribe, as

well as the Colorado Commission on Indian Affairs. The group expressed the importance of having ancestral remains repatriated and reburied in order to fulfill cultural and spiritual requirements, and described the barriers they have encountered in gaining access to state and Federal lands for reburials. Many collections of human remains have no provenience or available reburial locations. These issues create obstacles to achieving repatriation for tribes.

National Park Service Intermountain Region: The National Park Service Intermountain Region (IMR) made a presentation on its process of performing NAGPRA successfully with the Indian tribes in its vicinity. Many of the remains and funerary objects repatriated from the IMR collections were reburied on National Park Service lands. The IMR stated it is working closely with tribal groups on over 400 sets of human remains deemed culturally affiliated. Completion of this repatriation is set to take place in 2013. Consistent and robust consultation with tribes was crucial to the success the IMR had with NAGPRA compliance. One of the obstacles encountered by the IMR was its limited ability to rebury on Federal lands.

USDA Forest Service: The USDA Forest Service presented an update on its NAGPRA compliance. The USDA Forest Service is currently working with the Hopi tribe on a very large repatriation accounting for 75% of its collection of human remains. The USDA Forest Service is utilizing provisions under the 2008 Farm Bill to help fund the reburial and utilize Federal lands to rebury the remains. Finding secure locations on Federal lands was a concern expressed by tribal participants working with the USDA Forest Service, as was finding adequate land for reburial. Extensive consultation with the appropriate tribes in its service region has contributed to the USDA Forest Service's success.

Bureau of Indian Affairs: The Bureau of Indian Affairs (BIA) gave an update on its NAGPRA activities. The BIA has gone through a fairly recent reorganization. In 2004, the BIA's NAGPRA work shifted from the Division of Acquisition and Property Management to the Museum Property Program, in the Division of Environmental and Cultural Resource Management. The BIA has collections in 61 non-Federal repositories located in 15 states. From 2003 to 2010, the NAGPRA coordinator position for the BIA was vacant. During this time period, the BIA relied on staff from other Federal agencies to help with their NAGPRA duties. The BIA has recently started to account for all its collections, which includes reviewing Antiquities Act permits, contacting repositories with BIA collections, and establishing tribal contacts. The Review Committee acknowledges the recent efforts of the BIA to further its compliance with the law, but also foresees the great amount of work the BIA will need to perform in the near future.

Bureau of Land Management: The Bureau of Land Management (BLM) gave updates on its NAGPRA activities. Several staff members from within the BLM were present. The BLM manages some 245 million acres of lands in 13 states, including Alaska. The BLM's NAGPRA collections are spread throughout 133 non-Federal repositories, 3 BLM facilities and 4 other Federal holding locations. The collections for which the BLM is accountable are very extensive.

The BLM manages 330,000 recorded cultural heritage properties, and has 10 million artifacts in its control; only 9% of the 245 million acres it manages have been surveyed for heritage resources. NAGPRA responsibilities are divided among BLM state directors, cultural specialists and program leaders. The task of accounting for its collections housed in non-Federal repositories is substantial. The BLM gave no comment on its current litigation with the Fallon-Paiute Shoshone Tribe regarding a set of Native American human remains from the site on BLM lands known as Spirit Cave. The Fallon-Paiute Shoshone Tribe contends the 9,000 year old remains are culturally affiliated to the tribe. The BLM stated that it is enforcing 18 U.S.C. 1170, which prohibits the illegal use for profit of Native American human remains and cultural items. Two investigations in which the BLM participated resulted in the return of hundreds of thousands of items and the convictions of 39 individuals. Until 2006, BLM prohibited reburials on BLM lands but, in 2006, BLM revisited its policy, and now permits reburials on a case-by-case basis.

Fallon-Paiute Shoshone Tribe: Following the BLM's presentation, the Fallon-Paiute Shoshone Tribe gave a presentation on the Spirit Cave remains and their possible disposition to the tribe as "culturally unidentifiable" under 43 C.F.R. 10.11. The tribe requested support from the Review Committee on the transfer to the tribe of the Spirit Cave remains. Previously, the Review Committee found that the tribe had shown by a preponderance of the evidence that a relationship of shared group identity exists between the Spirit Cave remains and the Fallon-Paiute Shoshone Tribe. The tribe is still pursuing the repatriation of those remains as "culturally affiliated."

Columbia Plateau Inter-Tribal Repatriation Group: The Columbia Plateau Inter-Tribal Repatriation Group, which consists of tribes from Washington, Oregon and Idaho, spoke to the Review Committee about the progress it has made and the barriers it has encountered in implementing NAGPRA. The group expressed its concern that: the amount of time that elapses between the receipt of a satisfactory claim and the publication of a notice in the Federal Register is lengthy; a review of how repatriation grants are being used should be conducted; a certain lack of Federal agency compliance constitutes a barrier to NAGPRA implementation; an explanation of the effect on NAGPRA of the decision by the United States Court of Appeals for the Ninth Circuit in the *Bonnichsen* ("Kennewick Man") case is needed; and training on NAGPRA needs to be increased.

Review Committee Action and Decisions

The Review Committee adopted a motion to send a letter, through the DFO, to the Secretary of the Interior, concerning the Department's position on a proposed change by Congress to the definition of "Native American" under NAGPRA. The Department's position was taken absent consultation with the Review Committee. Although consultation was not required, the Review Committee requested that the Secretary consult with it on this and similar matters.

The Review Committee acted on its dispute procedures. A subcommittee, consisting of Sonya Atalay, Rosita Worl and Eric Hemenway, was formed to develop new dispute procedures. Dr. Worl made a motion to proceed with a four-step process, whereby: the Review Committee would review and comment on the draft revised dispute procedures proposal; the Review Committee would update the draft and forward it to the DFO and counsel; the DFO and counsel would make comments and send it back to subcommittee; and the subcommittee would update and make the proposed procedures available for distribution by October 19, 2012. The motion was passed by the Review Committee.

The Forty-Seventh Review Committee Meeting, Washington, DC, November 28-29, 2012

The Review Committee convened in Washington, DC, on November 28-29, 2011, and was hosted by the National Museum of the American Indian. The meeting was attended by members Rosita Worl – Chair, Mervin Wright, Jr., Eric Hemenway, Sonya Atalay, Alex Barker, Adrian John and LindaLee Kuuleilani Farm. Also in attendance were Dr. Sherry Hutt, Program Manager and DFO, Melanie O’Brien, David Tarler, and Mariah Soriano. Stephen Simpson and Carla Mattix, legal counsel to the National NAGPRA Program, were also present.

Sherry Hutt, Program Manager and DFO, reported that: the Charter for the Review Committee was filed with Congress, and will be in effect for the period November 26, 2012 to November 26, 2014; the 2009 – 2010 report by the Government Accountability Office (GAO) on NAGPRA is officially closed; and the Department of the Interior has carefully considered the ethical complaints related to the two disputes that were heard during the November 2010 Review Committee meeting. As to the November 2010 meeting, there were findings of no criminal activities, no findings were made concerning ethical transgressions, and the matter was remanded to the National NAGPRA Program Manager to ensure that the Review Committee provide a venue for facilitating the resolution of disputes that is fair, impartial and respectful.

The Review Committee heard the National NAGPRA Program report on the implementation of NAGPRA in Fiscal Year 2012.² The National NAGPRA Program FY 2012 statistics, in brief, are:

² The presentation from the National NAGPRA Program was made by Sherry Hutt, Manager, National NAGPRA Program; Melanie O’Brien, Notice Coordinator; David Tarler, Enforcement Coordinator, Shannon Keller O’Loughlin, Civil Penalties Analyst; Kirsten Versaggi, NCPE Intern; Maya Solis, NCPE Intern; Mariah Soriano, Web Master and Database Coordinator, also Federal Agency Coordinator in charge of Federal Agency Progress Report per GAO. The FY 2012 Final Report is attached as an Addendum to this report.

- Summaries received: 1,580 total from institutions, 460 reporting no collection requiring a summary
- Inventories received: 1,347 total, 1,138 from museums, 265 reporting no collection
- Notices of Inventory Completion: Published 131 in FY12, 1,619 in total
 - account for 44,958 human remains and 1,114,179 associated funerary objects (AFO)
 - no requests for extension of time to complete an inventory pending, no new requests in FY12
- Notices of Intent to Repatriate: Published 57 in FY12, 602 in total
 - account for 211,065 unassociated funerary objects (UFO), 4,759 sacred objects, 7,735 objects of cultural patrimony, 1,372 objects both sacred and patrimony, and 292 in undesignated categories
- Notices of Intended Disposition (Federal Agency newspaper notices of new discoveries)
 - 130 Notices reported for 1,004 minimum number of individuals (MNI), 8,847 AFO, 64 UFO, and 4 objects of cultural patrimony
- Notices using the culturally unidentifiable 10.11 rule: 49 in FY 2012, 82 in total to date, accounting for 868 human remains and 1,614 AFO
- Notice processing FY 2012: 162 received, 188 published; aging drafts (pre-2007) 16 remaining
- Culturally Unidentifiable Native American Human Remains (CUI): 739 inventories, from 677 institutions
 - 127,268 Minimum Number of Individuals (MNI), 937,292 AFO
 - 3,984 MNI transferred as CUI dispositions; 5,573 MNI subsequently culturally affiliated (CA)
- Culturally Affiliated Native American Human Remains: 547 inventories, from 461 institutions
 - 57,258 MNI, 1,119,372 AFO
- Total MNI in NAGPRA: CUI 121,695 (127,268 CUI - 5,573 CUI now CA) and CA 57,258 = 178,953
- Grants: Requested – \$2.7M; Awarded – \$1.6M in 21 project grants; \$186,397 in 15 repatriation grants
- Civil Penalties:
 - In FY2012, 16 allegations of failure to comply involving 19 institutions received
 - In FY 2012, investigation completed on 9 counts involving 3 institutions, with investigation completed on 144 counts involving 27 institutions total to date; investigation begun on 12 counts involving 4 institutions
 - In FY 2012, 8 counts unsubstantiated (88.8%), with 123 total counts unsubstantiated to date; in FY 2012, 1 count substantiated (11.1%), with 21 total counts substantiated to date

- Total of \$42,679.44 collected through civil penalty assessments and settlement agreements
- NAGPRA Regulations 43 C.F.R. 10:
 - 10.7 Unclaimed – proposed rule under review prior to publication
 - 43 C.F.R. Part 10 Minor amendments – proposed rule published April 18, 2012, Final rule under review in Department of the Interior
 - 43 C.F.R. Part 10 revised – consultation and drafting ongoing
- Technical Assistance and Reports:
 - 184 hours of training to 1,418 participants in 29 events;
 - 982 views of the training videos on the National NAGPRA YouTube Channel
 - 4 FOIA requests
 - 2,000 email and telephone requests for technical information
 - 8 special reports in progress
- Goals for FY 2013
 - Digitization Project for all NAGPRA compliance documents, to link them to the web
 - Archive Project for all National NAGPRA program files from 1990 forward
 - Complete outstanding research reports requested by the Review Committee
 - Obtain full-time civil enforcement investigator
 - Maintain pace of notice publication to eliminate backlog
 - Post FY 2012 grants guidelines on October 1, 2012 (complete) and continue outreach
 - Offer six more webinars and live training
 - Publish the proposed rule for unclaimed cultural items removed from Federal lands (10.7)
 - Host two in-person and one telephonic meeting of the Review Committee
 - Work on resolving the questions of the intersection of Section 106 and NAGPRA in a single training document in partnership with the Advisory Council on Historic Preservation
 - Promote efficient and trouble-free application of NAGPRA process through technical information and training.

Sherry Hutt, Program Manager and DFO, sought the Review Committee’s guidance on the Database of Culturally Unidentifiable Native American Human Remains (CUI Database). Pursuant to 25 U.S.C. 2006 (c)(5), one of the Review Committee’s responsibilities is to compile an inventory of culturally unidentifiable human remains in the possession or control of each Federal agency and museum. To assist the Committee, the National NAGPRA Program has been maintaining a database of culturally unidentifiable Native American human remains since 2005. In the course of updating the database, the Program staff encountered situations where submissions from one or more museums did not indicate at least one of the following: the minimum number of individuals (MNI); a decision on either cultural affiliation or the inability to

determine cultural affiliation; or the tribes consulted and provided with the inventory. The decision was made, as a matter of NAGPRA Program policy, to list the MNI on the CUI database by default, and thereby demonstrate the existence of a (albeit approximate) minimum number of individuals that otherwise would not be accounted for in the database. This decision has affected an estimated 10,000 MNI listed on the CUI database. Although the goal of having publicly-accessible databases is the disclosure of pertinent information, presenting the data in question as though it is the decision of a museum may impact museums and tribes when they consult on overcoming CUI decisions. The Review Committee instructed the National NAGPRA Program to maintain the entries on the CUI database, but insert the following notation in the appropriate entries: “** The minimum number of individuals (MNI) listed is an estimate made by the National NAGPRA Program and not a determination by the Federal agency or museum with possession or control. These MNI have not been determined to be either culturally unidentifiable or culturally affiliated; however, the data was made available to the National NAGPRA Program and is provided here for information purposes.” The Review Committee also recommended that the National NAGPRA Program go back to the museums and Federal agencies to encourage them to enter into consultation with tribes. The Review Committee also asked the National NAGPRA Program Staff to provide the Review Committee with examples of the information submitted which did not contain the necessary MNI, cultural affiliation status determinations, or tribes contacted.

Research Reports Presented to and Requested by the Review Committee

The Review Committee was presented with a number of research reports that the Review Committee has requested over the years. The written reports are posted on the National NAGPRA Program website and are briefly summarized as follows:

Evaluation of Training by the National NAGPRA Program: Through a cooperative agreement between the Museum of Northern Arizona (MNA) and the National NAGPRA Program, the MNA analyzed evaluations of the Program training during the period 2005 – 2012, as requested by the Review Committee. The data, in general, indicated that trainees were overwhelmingly satisfied with training and the trainers. Comments were also solicited as part of the survey, and further study of the data to identify various trends will be the subject of an ongoing analysis.

Composite of Feedback from NAGPRA Grant Recipients: National NAGPRA Program intern Kelsea Raether prepared the report *NAGPRA Consultation/Documentation Grants: Analysis of Final Reports*. The report provides a comprehensive analysis of FY 2007 grants, using publicly available information as well as that provided by the grantees themselves; the 2007 grants fully closed in 2012. In FY 2007, 30 consultation/documentation grants totaling \$1,830,102 were awarded. Nine museums received 10 grants amounting to \$538,215, and 19 tribes received 20 grants amounting to \$1,292,070. The report also looks at those applicants whose grants were not awarded, and provides suggestions for improving grant proposals. The report contains various statistical data regarding the time needed to complete grants, geographical distribution of grants,

outcomes resulting from grants, obstacles faced in implementing grants, and the larger impact of grant projects on the constituents. The report also provides suggestions, based on feedback received, on how the National NAGPRA Grant Program can better support grant implementation. In response, the National NAGPRA Program has actively pursued ways to improve the grant process and streamline grants management requirements. Specifically, the Program has provided annual webinars on administering a NAGPRA grant, as well as onsite training courses. The lack of funding of both grants and training/research remains a constituent concern.

A Study of NAGPRA Grant Expenditures: National NAGPRA Program intern Maya Solis presented a report on the 2008 – 2012 grant expenditures. The data indicates that the most commonly requested expense was for salaries and wages for both museums and tribes to effectively carry out the NAGPRA compliance process, from identification and consultation to repatriation.

Final Report on a Cooperative Agreement for Training with the National Preservation Institute: Sherry Hutt presented a report on the National NAGPRA Program--National Preservation Institute (NPI) cooperative agreement during the period 2008 – 2012. The cooperative agreement called for the National NAGPRA Program and the NPI to work closely together to develop training and training materials, and to provide some of the trainers. The cooperative agreement was successful in providing seminars through the NPI and other training venues. Travel scholarships were provided to tribes and small museums. Eight training videos were also developed and distributed to tribes, museums and Federal agencies; they are now available for viewing on the National NAGPRA Program's YouTube Channel.

Study of Review Committee Decisions on Culturally Unidentifiable Dispositions: Sally Butts, during a National NAGPRA Program internship, prepared a report on the Review Committee's actions in fulfilling its statutory responsibilities under 25 U.S.C. 3006(c)(5). Subpart (c)(5) states that the Review Committee shall be responsible for compiling an inventory of culturally unidentifiable human remains (CUI) 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. The report reviewed the 82 requests that had come before the Review Committee from 1994 to 2009, regarding the disposition or reburial of CUI. This report was completed prior to the active implementation of 43 C.F.R. Section 10.11 (which was promulgated in 2010).

Maps of NAGPRA Activity: Alayna Rasile, a National NAGPRA Program intern and contractor, prepared a report in the form of a spatial analysis of statistics reported to the National NAGPRA Program. The report provides a visual representation of NAGPRA compliance activity across the United States.

Study of Large Museum Administration of NAGPRA Compliance: Lauren Miyamoto, a National NAGPRA Program intern, wrote a report entitled *The NAGPRA Process at Museums*

with Large Collection of Native American Human Remains in response to the Review Committee's request for a report on the progress of museums in resolving the disposition of Native American human remains and funerary objects for large collections under their control. The focus of the report was whether, and in what ways, the size of a collection affected museum compliance with NAGPRA. In sum, the large size of a collection amplified NAGPRA compliance issues and made completion of the initial inventory, in 1995, daunting. Responses to surveys indicated that insufficient time, lack of adequate resources (both financial and manpower), and lack of known archaeological context for human remains and cultural items hampered the compliance process. Many respondents also felt that the Act was vague and did not provide adequate guidance for inventories or consultation. Respondents also cited the attitude of their internal institutional administration as a factor in their success. Although faced with challenges, many respondents felt that the NAGPRA process had opened a dialogue between universities, museums, Indian tribes and Native Hawaiian organizations. Respondents were also generally positive about the Federal Register notice process, noting that there were clearer guidelines and that the process was more efficient. Some reported that the process was burdensome and often slowed the repatriation process. Respondents also noted that preparing notices was a continual learning process, since each notice was unique.

Tribal, Museum, and Federal Agency Presentations

Columbia Plateau Inter-Tribal Repatriation Group: The Columbia Plateau Inter-Tribal Repatriation Group (consisting of the tribes and bands from the Columbia Plateau in the Pacific Northwest state of Washington, Idaho and Oregon) (CPITRG) provided information to the Review Committee on its experience with NAGPRA compliance. In 2012, CPITRG repatriated 132 individuals and 2,808 funerary objects from 13 institutions. CPITRG also brought to the Review Committee's attention its frustrations related to inadvertent discoveries on Federal or tribal lands after November 16, 1990, which are regulated by Section 3 (d) of NAGPRA and 43 C.F.R. 10.4. CPITRG suggested that timelines for completing NAGPRA compliance regarding inadvertent discoveries be included in the revisions of the regulations; milestone markers and checklists be instituted; any Written Plan of Action also address timeliness and readiness, as well as site treatment; and that training be developed for agencies on inadvertent discoveries and proceeding in a timely manner. The Review Committee will place the review of the regulations, including timeframes, on the agenda of its next meeting. The Review Committee also requested that the National NAGPRA Program look into and report on the training that is available and/or can be made available to Federal agencies on consultation and compliance with the law.

Bureau of Indian Affairs: The Bureau of Indian Affairs (BIA) provided an update to the Review Committee on its recent activities, specifically concerning BIA control of certain human remains and objects located in various repositories, and BIA progress on publishing notices. The BIA reported that it had secured additional funding that would allow it to enter into contracts in furtherance of its NAGPRA obligations and to locate BIA collections in the various repositories.

The BIA also stressed the benefits in working collaboratively with other Federal agencies, museums and tribes.

Inter-Tribal Council of the Five Civilized Tribes: The Inter-Tribal Council of the Five Civilized Tribes (an organization that unites the tribal governments of the Chickasaw, Choctaw, Cherokee, Muscogee (Creek), and Seminole Nations) presented the Review Committee with a resolution in support of the efforts of the lineal descendants of Ocevpofo (Hickory Ground) Ceremonial Ground/Tribal Town to halt the claimed desecration and future desecrations of Ocevpofo (Hickory Ground) Ceremonial Ground/Tribal Town located in Wetumpka, Alabama, by the Poarch Band of Creek Indians during the development and expansion of its casino. Although the Review Committee is sympathetic to the situation, it does not have jurisdiction to take any action.

NPS Office of Indian Affairs and American Culture: Christine Landrum, Director of the Office of Indian Affairs and American Culture (IAAC), National Park Service, provided an update on the Colorado work group's presentation in May 2012, regarding its efforts to find lands available for reburial of human remains. The work group has compiled agency policies, maps, minimum number of individuals (MNI), and other materials, which it offered to make available to the Review Committee subcommittee on burial grounds, together with training on this topic. The Review Committee will look into taking advantage of the offer and the opportunity for training prior to its spring 2013 meeting.

National Congress of American Indians: Shannon Keller O'Loughlin, attorney, presented the National Congress of American Indians (NCAI) resolution supporting NCAI member tribes and other nations in their efforts to repatriate Native American human remains and cultural items from international repositories and requesting United States governmental bodies to make themselves available to assist such efforts.

Peabody Museum: The Peabody Museum of Archaeology and Ethnology, Harvard University, presented a progress report on its implementation of NAGPRA and the development of its relationships with native communities in furtherance of its educational and research objectives. The Peabody Museum also expressed concern that the regulation on culturally unidentifiable Native American human remains, at 43 C.F.R. 10.11, lacks sufficient clarity, and that such lack of clarity could lead to confusion among NAGPRA constituents.

Review Committee Actions and Decisions

Request for Recommendation to the Secretary of the Interior #1: The University of Washington, Department of Anthropology, requested that the Review Committee recommend to the Secretary of the Interior that the proposed disposition of culturally unidentified human remains jointly to the constituents of the Washington State Inter-Tribal Consortium proceed. The members of the Consortium are tribes from Oregon, Washington, and Idaho who have prehistoric and historic

connections to present-day Washington State. The Review Committee concurred with the request, and recommended to the Secretary of the Interior that the proposed disposition proceed.

Request for Recommendation to the Secretary of the Interior #2: Central Washington University requested that the Review Committee recommend to the Secretary of the Interior that the proposed disposition of culturally unidentified human remains to the Wanapum Band of Priest Rapids, a non-Federally recognized Indian group, proceed. The remains were removed from the aboriginal lands of the Confederated Tribes of the Colville Reservation, Washington, and Confederated Tribes and Bands of the Yakama Nation, Washington. The remains are Native American and were culturally connected to the Wanapum Band of Priest Rapids, Washington. The Review Committee concurred with the request, and recommended to the Secretary of the Interior that the proposed transfer proceed.

Request for Recommendation to the Secretary of the Interior #3: The University of New Hampshire, Archaeology Laboratory, requested that the Review Committee recommend to the Secretary of the Interior that the proposed disposition of culturally unidentified human remains to the Western Abenaki Nation Coalition (including the Abenaki Nation of New Hampshire and the Cowasuck Band of the Pennacook-Abenaki People), all of whose members are non-Federally recognized Indian groups, proceed. The human remains and associated funerary objects were removed from Plum Island, in Newburyport, Essex County, Massachusetts. The Review Committee conditionally concurred with the request, contingent upon the University showing that it has consulted with the federally recognized tribes located in the area where the human remains were removed and that there are no objections from these tribes to the proposed disposition.

Review Committee Burial Grounds Subcommittee: The Review Committee subcommittee on burial grounds (Eric Hemenway, Alex Barker, and Mervin Wright, Jr.) reported on its review of the efforts, successes and failures of securing appropriate sites on Federal and state lands for the reburial of Native American human remains. The subcommittee looked at the successes of the collaborative efforts between tribes and Federal agencies. There remains a need to contact Federal agencies to determine the barriers that have been encountered, and what collaborative agreements have been successful and why. Concern was raised by Review Committee members about protecting reburied human remains to ensure they are not further disturbed. The timely development of a solution is important, as there is an immediate need for reburial sites. The Review Committee requested that the National NAGPRA Program compile and analyze current Federal agency policies on reburial on Federal land, in order to inform the development of future policies regarding reburial.

Review Committee Dispute Procedures Subcommittee: The Review Committee continued the discussion of its dispute procedures, Sonya Atalay having sought further comments on the draft as outlined at the previous meeting. The primary objective of setting forth procedures was to provide a fair and impartial venue for all parties who appear before the Review Committee. The

Review Committee approved a motion to forward draft dispute procedures to the DFO for review and comment by the DFO, counsel, and the public.

The Review Committee continues to seek comments concerning: (a) progress made, and any barriers encountered, in implementing NAGPRA; (b) the outcomes of disputes that come before the Review Committee pursuant to Section 8 (c)(4) of NAGPRA; and (c) Review Committee dispute procedures. The Review Committee continues to address the comments it has received from tribes, museums, and Federal agencies.

Other Items of Note

Presentation: Robert Sutton, the Chief Historian of the National Park Service, announced the publication, in early 2013, of a book on American Indians in the Civil War. Review Committee member Eric Hemenway is one of the contributors to the book.

Monthly Review Committee Memos: Consistent with previous Review Committee reports to Congress that have called for frequent and detailed communication between staff of the National NAGPRA Program and members of the Review Committee, the Review Committee is pleased to report that such communications have continued through periodic memos describing ongoing activities and upcoming events. The Review Committee expressed its appreciation to the National NAGPRA Program for its continued communications.

Next Meetings: The Review Committee recommended Denver, Colorado, and History Colorado Museum, as the location of the forty-ninth meeting, to be held May 22-23, 2013, and Mount Pleasant, Michigan, and Saginaw Chippewa Indian Tribe of Michigan, Ziiibiwing Cultural Center, as the location of the fiftieth meeting, to be held in the fall of 2013.

Member Terms Expiring: The Review Committee thanked two members, Eric Hemenway and Sonya Atalay, whose terms expire on January 12, 2013, for their tireless dedication, work and insights shared during the past four years, and wished them well.

Progress Made

Since the 2010 promulgation of 43 C.F.R. 10.11, on the disposition of Native American human remains determined to be culturally unidentifiable, museums and Federal agencies have published 72 notices of inventory completion in the Federal Register (as of October 2012), accounting for 868 individuals and 1,586 funerary objects. Through the 43 C.F.R. 10.11 process, dozens of tribes have been able to assume control of the disposition of Native American human remains and associated funerary objects that had been removed from their tribal or aboriginal lands.

In FY 2012, museums and Federal agencies published 131 notices of inventory completion and 57 notices of intent to repatriate cultural items in the Federal Register, for a total of 188 notices.

The notices of inventory completion account for culturally affiliated human remains, as well as human remains deemed to be culturally unidentifiable.

In FY 2012, Federal agencies published 130 notices of intended disposition. These Federal agency notices are published in newspapers for discoveries of human remains and cultural items that occur on Federal or tribal land after November 16, 1990.

In FY 2012, 1,418 people participated in 29 NAGPRA-related training events involving the National NAGPRA Program. Webinars accounted for 8 of these events. Webinars and trainings at various locations across the country widen the opportunity for participation in NAGPRA trainings. The Review Committee encourages the development of new training events, such as webinars, as well as the in-person training that is offered.

The number of museums complying with 43 C.F.R. 10.11 has increased. This is evidenced by the 49 notices of inventory completion for culturally unidentifiable Native American human remains that were published in 2012. The disposition of the human remains covered by these 49 notices likely would not have taken place absent the rule at 43 C.F.R. 10.11.

The numbers represented in the above-mentioned notices are proof that progress is being made under NAGPRA. Each notice represents human remains being brought back by tribal communities, or signifies ceremonial items being repatriated.

Internships at a multitude of institutions, agencies and tribes help generate a greater awareness of NAGPRA and of best practices in implementing the law. The National NAGPRA Program utilizes interns on a continual basis, as do many museums and tribal programs. The practice of using interns not only helps productivity but creates a unique and meaningful learning experience for individuals going into allied fields. The Review Committee encourages future internships.

The utilization of cooperative agreements to facilitate training, such as the one with the National Preservation Institute (NPI), has been a success and a benefit to the National NAGPRA Program in fulfilling its objectives. More such cooperative agreements are encouraged.

Barriers Encountered

The inclusion of funerary objects under 43 C.F.R. 10.11. The non-mandatory inclusion of associated funerary objects with dispositions of culturally unidentifiable human remains under 43 C.F.R. 10.11 has been an ongoing, contentious issue for tribes. Multiple tribes have expressed concern regarding museums and agencies having the discretion to include associated funerary objects with remains being disposed under 43 C.F.R. 10.11. The tribes who voiced this concern unanimously wanted the regulations to be amended to make the inclusion of all associated funerary objects mandatory. The lack of a requirement to return funerary objects is detrimental to various cultural protocols of tribes implementing NAGPRA in their communities.

Federal Agency Lack of Consultation. The lack of consultation between tribes and Federal agencies, as required by NAGPRA, is an ongoing issue. Federal agencies hold a large number of Native American human remains, as well as a great number of items that potentially fall under the jurisdiction of NAGPRA. In their presentations to the Review Committee, tribes have expressed their concern over lack of compliance by certain Federal agencies, especially in regard to consultation concerning the human remains in their control. Various tribes have made numerous attempts to hold conversations with certain Federal agencies and in many instances, the tribes received no return phone calls or follow-up emails.

Federal Agency Collections. The matter of Federal agency collections in non-Federal repositories was addressed before the Review Committee in 2012. The Bureau of Indian Affairs reported that it had collections in approximately 60 different, non-Federal repositories across the United States. Having so many collections that are under the control of one entity in so many repositories is of major concern. Accountability for, and the integrity of, such collections for purposes of NAGPRA compliance is threatened, as is the ability to conduct meaningful consultations with tribes. When Federal agencies have a very difficult time knowing what they control, NAGPRA compliance is adversely affected.

Unknown remains. Collections of human remains of unknown provenience -- simply listed as Native American and identified as “Z-Unknown” collections in the National NAGPRA Program CUI database -- require attention. The development of policies to address the disposition of these NAGPRA collections would greatly assist tribes, agencies and museums. Joint agreements between Federal and state parks in the states where the Z-Unknown remains currently are located, and consultation with tribes on reburial on tribal lands could possibly result in successfully effectuating the disposition of such collections.

Reburial on Federal Lands. Various tribes reported in 2012, that they have encountered barriers when trying to rebury repatriated human remains on Federal lands. The remains in some cases belong to culturally unidentifiable individuals whose disposition to a tribe occurred under 43 C.F.R. 10.11. Tribal representatives testified that they have encountered obstacles regarding the policy of certain National Park System units towards reburial. Ambiguous reburial policies result in undue delays to tribes wishing to conduct reburial ceremonies. Tribes have expressed before the Review Committee the need to have the reburial ceremony done in the timeliest manner possible once the remains are in the possession of the tribe. Another concern expressed by tribes was reburial as close as possible to the site where the remains originally were buried. In some cases, the provenience of Native American human remains in the custody of museums and Federal agencies is National Park System lands.

Civil Penalties Investigator. During 2012, tribes cited the lack of a full-time staffer to investigate allegations of museum failure to comply with the requirements of NAGPRA as a barrier to NAGPRA compliance. According to the tribes, the Secretary of the Interior’s ability to

levy civil penalties against museums acts as a deterrent to non-compliance. Absent an investigator, ultimately, the Secretary is unable to assess civil penalties.

Recommendations³

Recommendation 1: AMEND 43 C.F.R. 10.11. The Review Committee recommends that 43 C.F.R. 10.11 be amended to include a deadline to publish a Federal Register notice of inventory completion and to transfer control of human remains pursuant to section 10.11. The Review Committee further recommends that 43 C.F.R. 10.11, which concerns culturally unidentifiable human remains, be revised to include a mandate to transfer associated funerary objects along with the human remains.

Recommendation 2: INCREASE FUNDING FOR THE NATIONAL NAGPRA PROGRAM. The National NAGPRA Program budget has not been significantly increased for some two decades. While much progress has been made in implementing NAGPRA, much remains to be done. One clear and often-cited barrier to such progress is a lack of adequate resources on the part of all parties concerned. We respectfully recommend increasing the National NAGPRA Program's budget to \$4.5 million annually, to include direct allocations for NAGPRA grants to Indian tribes, Native Hawaiian organizations, and museums, support for the administration of the National NAGPRA Program, a dedicated civil penalties investigator, and additional staff as needed.

Congress should increase the amount of grant funds available to museums and tribes, and should allow grant funds to be utilized to support NAGPRA staff positions within tribes and museums. Offering greater monetary assistance would result in more museums complying with the requirements of NAGPRA, more tribes experiencing successful repatriations, and more robust implementation of the law. Museums and tribes both have expressed the financial difficulties they have encountered in implementing NAGPRA, such as consultation and transfer costs. During FY 2012, \$2.7 million in grants was requested, while only \$1.6 was awarded. The amount of funds for grants recommended by the Review Committee is \$4.2 million.

Recommendation 3: PROVIDE FUNDING TO TRIBES FOR NAGPRA STAFF. The Review Committee recommends that Congress consider allotting a certain amount of money to establish tribal staff positions that will assist tribes in implementing NAGPRA. These funds will help tribes create the capacity to work with museums and agencies in carrying out NAGPRA. Staff, resources and training would not only assist tribes in achieving successful outcomes under the law, but also would immensely help museums and Federal agencies whose resources are overstretched. The funds would be utilized to establish a program much like the Tribal Historic Preservation Officer program. Many tribes have told the Review Committee of not having enough staff and resources to carry out the work needed to carry out NAGPRA responsibly.

³ For the context in which the Recommendations were developed, Congress is referred to the minutes of the 46th Meeting, held May 9-10, 2012 and the 47th Meeting, held on November 28-29, 2012.

Recommendation 4: DESIGNATE LANDS FOR REBURIAL. The issue of reburial of Native American ancestral remains on Federal lands was aired before the Review Committee in 2012 on numerous occasions. Tribes from across the country, representing a wide variety of tribal communities with vastly different cultural backgrounds, stressed the need to have greater access to Federal lands for reburial purposes. These tribes stressed their desire to rebury as close as possible to the location where the remains originally were interred. In many cases, Native American human remains were discovered on Federal lands inadvertently (for example, in the course of construction) or during organized archeological excavations. Although the location where remains are to be reburied is discretionary with the repatriating tribe or tribes, tribes are having increasing difficulty finding suitable locations for reburial. Site security and the desire to rebury as close as possible to the original place of interment are two concerns that have been expressed by tribal representatives. The Review Committee recommends that Congress designate a portion of Federal lands for reburials.

Recommendation 5: PROVIDE A TIMELINE FOR THE TRANSFER OF AFFILIATED HUMAN REMAINS. Collections of remains in the control of Federal agencies and published in notices need to be repatriated and reburied. Today, thousands of individuals await transfer and reburial. The Review Committee recommends that Congress consider implementing a timeline for transfer of control of these remains to the appropriate tribes following a request.

Recommendation 6: ADDRESS INTERNATIONAL REPATRIATION. International repatriation increasingly has become a global issue. Congress has already enacted the National Museum of American Indian Act and the Native American Graves Protection and Repatriation Act to address repatriation within the United States. Additionally, the United States is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples. Article 12 of the Declaration specifically addresses repatriation. Currently two countries, Australia and New Zealand, have offices dedicated to international repatriation. The Review Committee recommends that the United States establish an International Office to facilitate the repatriation of Native American human remains and cultural items presently located outside the US borders back to their communities of origin.

Recommendation 7: CHANGE THE DEFINITION OF NATIVE AMERICAN. The Review Committee recommends that Congress amend the definition of “Native American” in 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.”

CARRYOVER RECOMMENDATIONS: The following are carryover recommendations from the 2011 Report to Congress, which the Review Committee again presents to Congress for consideration.

Recommendation: DIRECT THE GAO TO STUDY NAGPRA COMPLIANCE BY MUSEUMS AND TRIBES. The Government Accountability Office has now completed

separate assessments of compliance by the Smithsonian Institution under the National Museum of the American Indian Act and by Federal agencies under the Native American Graves Protection and Repatriation Act. An equivalent assessment of compliance by museums -- state and local government agencies, private institutions, and institutions of higher learning -- along with an assessment of how effectively and appropriately these institutions, tribes and Native communities have used the NAGPRA grant monies awarded to them in implementing the provisions of the law, would make the assessment of all affected parties complete, and would provide needed information to Congress regarding how best to allocate scarce resources to accomplish its intentions when it enacted these two repatriation statutes.

Recommendation: ENACT FURTHER LEGISLATION TO PROTECT NATIVE AMERICAN BURIALS. NAGPRA is concerned with, among other things, the protection and repatriation of Native American human remains. Currently, the issue of “protection” is covered in Section 4 of the Act (codified at 18 U.S.C. 1170). The Review Committee has heard concerns from tribes that the differences in burial laws among the states are frustrating and result in uneven protection for burial sites and human remains. The Review Committee feels that there needs to be more comprehensive protection of burials, and that such protection should be equal to the protections given to non-Native American burials. Such protection is not currently covered by NAGPRA. The Committee recommends that Congress consider legislative action whereby such protections can be accomplished, and that it perhaps start by comprehensively studying all the current state burial laws.

Recommendation: HOLD OPEN HEARINGS TO DETERMINE PROGRESS MADE AND BARRIERS ENCOUNTERED. One of the stated roles of the Review Committee is to report on progress made and barriers encountered in implementing the Act. While the Review Committee has done so in its annual reports, Congressional hearings regarding the Act and its implementation may be worthwhile for several reasons. First, it is self-evident that tribes, Native communities, museums, and related institutions are best able to express their own experiences in implementing the Act, offer firsthand testimony regarding both successes and remaining barriers, and describe how the Act has impacted them. Second, different parties affected by the Act understand its intent in different ways. For some tribes and Native communities, NAGPRA represents human rights law; its intent is the return of all cultural property to Native peoples. On the other hand, for some museums, NAGPRA represents historic preservation law intended to return ancestral remains and designated cultural items to descendant communities. These differing understandings and expectations lead to distrust and the polarization of viewpoints when disputes arise. Such divisions have become more pronounced since the promulgation of 43 C.F.R. 10.11, concerning culturally unidentifiable human remains, as this regulation shifts the logic of repatriation from emphasizing the return of ancestral remains to descendant communities to the disposition of human remains to tribes based on criteria which do not necessarily suggest cultural affiliation, kinship or descent.

Recommendation: DEVELOP MECHANISMS FOR DETERMINING RESPONSIBILITY TO REPORT FEDERAL COLLECTIONS HELD BY NON-FEDERAL INSTITUTIONS. Some collections may remain uninventoried and unreported because of confusion between a controlling Federal agency legally responsible for a collection and a non-Federal repository caring for that collection on the agency's behalf over which party is responsible for compliance under NAGPRA. The Review Committee recommends that a clear and consistent mechanism be developed for structured discussion between Federal agencies and those institutions having custody of their collections, resulting in explicit agreements assigning responsibility for reporting and inventorying these remains and items. Appropriate funding needs to be provided to support either compliance by institutions currently caring for such collections or appropriate packaging and transport of such collections to the Federal agency responsible for them.

Recommendation: REVISE THE REGULATIONS REGARDING CULTURALLY UNIDENTIFIABLE HUMAN REMAINS. Tribes, Native communities, museums, and scientific and cultural organizations have all commented repeatedly that they find the current regulations regarding culturally unidentifiable human remains problematic, and the Review Committee voted unanimously at its June 2011 meeting to ask the Department of the Interior to revise these regulations based on the results of listening sessions, written comments from a range of stakeholders, and previous recommendations unanimously voted by the Review Committee in 2008. The Department has indicated that it is considering discretionary review of all parts of the NAGPRA regulations. While most parts of the regulations have advanced the intent of the Act, it is the consensus of the Review Committee and the affected parties that provisions of 43 C.F.R. 10.11 are problematic and require revision.