

**Native American Graves Protection and  
Repatriation Review Committee**

**Report to Congress, 2013**

## *Executive Summary*

With the passage of the Native American Graves Protection and Repatriation Act (NAGPRA or the Act) on November 16, 1990, 25 U.S.C. 3001, et seq., Congress mandated the formation of the NAGPRA Review Committee. The NAGPRA Review Committee is authorized by the Act to report to Congress annually regarding progress made, and any barriers encountered, in implementing the Act's repatriation provisions during the previous year, 25 U.S.C. 3006. The Act is a very important piece of Native American legislation reflecting "the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations," 25 U.S.C. 3010, passed because of the egregious nature of the disparate treatment afforded to Native Americans in the protection of their ancestral burials and cultural objects.

Over the course of 2013, the Review Committee held three public meetings: one face-to-face and two telephonic meetings, received reports from the National NAGPRA Program regarding implementation and compliance activities under the Act, provided recommendations to the Secretary regarding the disposition of culturally unidentifiable human remains, and consulted with the U.S. Department of the Interior regarding draft regulations published for comment.

The NAGPRA Review Committee reports that progress toward full implementation continues, but is slower than anticipated. Through FY 2013, summaries from 1,125 museums and Federal agencies have been received, with 459 reporting no collection requiring a summary. Inventories from 1,319 institutions have been received, with 266 reporting no collections requiring an inventory. These include 566 inventories of culturally affiliated human remains and cultural items, representing a minimum of 57,903 individuals and 1,256,200 associated funerary objects, and 753 inventories of culturally unidentifiable remains representing a minimum of 121,623 individuals and 909,996 associated funerary objects. A total of 112 Notices of Inventory Completion were published in FY 2013, bringing the total to 1,731 notices, representing a minimum of 47,742 individuals and 1,136,944 associated funerary objects. An additional 42 Notices of Intent to Repatriate were published, bringing the total to 644 notices, representing 212,289 unassociated funerary objects, 4,816 sacred objects, 7,942 objects of cultural patrimony, 1,613 objects considered both sacred and cultural patrimony, and 236 undesignated objects. In FY 2013, 23 notices were published under the 43 CFR 10.11 rule for the disposition of culturally unidentifiable human remains, or the related 43 CFR 10.16 for disposition in cases where 10.11 does not apply, representing a minimum of 1,068 individuals and 5,604 associated funerary objects. More than \$2.7 million in NAGPRA grants were requested, with \$1.6 million awarded. These grants supported 15 repatriations and reburials and 21 NAGPRA projects.

Despite this continuing progress, the Review Committee notes several barriers encountered. These include:

- NAGPRA’s statutory requirements have been significantly slowed because of lack of staff in the National NAGPRA Program to fulfill certain statutory mandates, and inadequate funding to support compliance and implementation activities;
- Continuing ambiguity in inventories provided by museums and Federal agencies, particularly concerning the scope of Federally associated collections in non-Federal repositories, and the reporting of consultation by museums in inventories listing culturally unidentifiable human remains and funerary objects;
- Lack of appropriate and protected locations for reburial of human remains and cultural items once repatriation or disposition has taken place; and
- Concerns over time frames for compliance with applicable provisions of current regulations, on the part of both tribes and museums.

Based on the extensive experience of the Review Committee, public comments made to the Committee, and the remarks of tribes, Native Hawaiian organizations, Federal agencies, and museums appearing before the Review Committee, we strongly advise and support the following actions of Congress:

1. Fulfill the statutory requirements of NAGPRA by providing adequate and consistent staffing and support to the National NAGPRA Program;
2. Continue to support project-based grant funding to Indian tribes, Native Hawaiian organizations, and museums
3. Create new grant programs designed to build institutional capacity among tribes, Native Hawaiian organizations, and museums to more effectively and efficiently implement the provisions of the Act;
4. Support opportunities for reburial of Native American ancestors on Federal lands, including national parks;
5. Support Federal agency compliance with NAGPRA, including expedited completion of inventories of Federal collections in non-Federal repositories;
6. Hold hearings to determine whether amendments to the Act should be considered that would expedite the repatriation process.

### ***NAGPRA: An Overview***

In 1990, Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA; 25 U.S.C. 3001, et seq.). The Act includes 3 primary compliance activities: 1) it provides for the repatriation of ancestral Native American human remains, funerary objects, objects of cultural patrimony, and sacred objects (“cultural items”) in museum and Federal agency collections to Indian tribes or Native Hawaiian organizations; 2) it prohibits trafficking of such Native American cultural items; and 3) it provides for the disposition of Native American cultural

items removed from Federal or tribal lands to lineal descendants, Indian tribes, or Native Hawaiian organizations, based on geographic or cultural affiliation.

NAGPRA directs the Secretary of the Interior to establish and maintain the NAGPRA Review Committee to monitor and review the requirements of the Act. Though the Act itself was established to provide redress for Native American peoples, membership of the Review Committee was established to ensure a balance between differing viewpoints among Native Americans and museums, with three members selected from tribes and Native Hawaiian organizations, three members selected from scientific and museum organizations, and one member selected from names agreed upon by the Committee itself. The Review Committee operates in accordance with the Federal Advisory Committee Act and a charter issued by the Secretary of the Interior. The Committee's actions and findings are advisory, although they may be admissible in court proceedings.

The Review Committee has ten formally defined responsibilities:

1. Designating one of the members of the Committee as chair;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to:
  - a) the identity or cultural affiliation of cultural items, or b) the return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
5. 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;
6. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters within the scope of the work of the Committee affecting such tribes or organizations;
7. Consulting with the Secretary in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary may assign to the Committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing the Act during the previous year.

This report is respectfully submitted to Congress, as required by the Native American Graves Protection and Repatriation Act, to identify progress made and barriers encountered in implementing the requirements of the Act.

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### *Review Committee 2013 Activity Summary*

Members of the NAGPRA Review Committee during all or part of 2013 include:

Nominated by tribes and Native Hawaiian organizations:

- Mervin Wright, Jr. (term ending 2013)
- Eric Hemenway (term ending 2013)
- Adrian John (continuing)
- Steve Titla (term beginning 2013)
- Shannon Keller O'Loughlin (term beginning 2013)

Nominated by museums and scientific organizations:

- Sonya Atalay (term ending 2013, reappointed)
- Alex W. Barker (continuing)
- LindaLee Kuuleilani Farm (continuing)

Nominated by the Committee:

- Rosita Worl (term ending 2013)
- Dennis H. O'Rourke (term beginning 2013)

Review Committee members are appointed for a four-year term and may be reappointed for a second two-year term. The Review Committee wishes to thank members Eric Hemenway, Rosita Worl, and Mervin Wright, Jr., whose terms ended in 2013, for their dedicated service.

### **Review Committee Meetings**

The NAGPRA Review Committee held one in-person and two telephonic meetings in 2013. While the Review Committee believes that telephonic meetings are neither as effective in advancing the work of the Review Committee nor as successful in providing a forum for interested parties to comment on the progress and barriers encountered in implementing the Act, budget constraints required the elimination of one face-to-face meeting in 2013, and the National NAGPRA Program has set this pattern of a single face-to-face meeting per year as its goal going forward. The Review Committee urges the Secretary and Congress to provide funds to allow at least two face-to-face meetings annually without impacting other Program activities. Previously two to three face-to-face meetings were held by the Review Committee annually, and provided an opportunity for communities and stakeholders to meet directly with Review Committee members. All parties involved have stated they found these opportunities valuable. The reduction in face-to-face meetings is due to Federal budget reductions.

Review Committee Meeting 48: The 48th meeting of the NAGPRA Review Committee was held telephonically on January 10, 2013, to finalize the Committee's 2012 Report to Congress, and was chaired by Ms. Worl. The subcommittee on the

report to Congress included Mr. Hemenway and Ms. Farm; Ms. Farm was asked to chair the discussion of the report.

While much of the 2012 Report to Congress reflects the consensus view of the Review Committee, the recommendations section raised a number of issues where there was a lack of general consensus. The 2012 Report to Congress was approved by a majority vote, with one vote against. Due to the procedures in place at the time, the chair of the discussion was not able to vote.

As both Ms. Atalay and Mr. Hemenway were scheduled to complete their terms shortly after the conclusion of the meeting, the Committee expressed their thanks to both for their service. Ms. Hutt, DFO and National NAGPRA Program Manager, suggested that as both then served on the Review Committee Reburial Subcommittee they could, under FACA rules, continue to serve on the subcommittee at the discretion of the Committee Chair and DFO. Ms. Worl and Ms. Hutt agreed that Ms. Atalay and Mr. Hemenway should continue to serve.

Review Committee Meeting 49: The 49th meeting of the NAGPRA Review Committee was held telephonically on May 22, 2013, and was chaired by Ms. Worl.

Composition of the Review Committee was established by statute, with three individuals appointed from nominations submitted by tribes and Native Hawaiian organizations, three submitted by scientific and museum organizations, and one from names unanimously agreed upon by the Review Committee. As the term of the sitting at-large member was concluding, the continuing members of the Review Committee considered names for submission to the Secretary for selection. Review Committee members summarized the names each put forth for consideration, their qualifications, and a discussion of the strengths each might bring to the Committee and its operation: Ms. Irene Dundas (Tlingit, Neix.ádi Clan, Sanyakwáan, Tribal President) and Dr. Dennis O'Rourke (physical anthropologist, University of Utah). Subsequent to the meeting, Mr. O'Rourke was selected by the Secretary for appointment to the Review Committee.

The Review Committee also discussed spring 2014 meeting venues, examining prior meeting locations to ensure that constituents and concerned parties in all areas had opportunities to bring matters before the Review Committee without excessive expense, and to meet with Review Committee members and National NAGPRA Program staff on a face-to-face basis. It was decided that the Review Committee would meet in Juneau, Alaska. However, this face-to-face meeting did not take place due to budgetary constraints.

The Committee discussed draft dispute procedures being developed by a subcommittee chaired by Ms. Atalay. Ms. Atalay indicated that the updated draft would soon be sent to the DFO and counsel for input, and then distributed to the Review Committee for review.

The Review Committee considered a disposition request under 43 CFR 10.16. Colorado State University requested disposition of, at minimum, 50 individuals with no geographic identification. The identification of the remains as Native American was made based on the collecting practices of the institution. The Review Committee unanimously endorsed the proposed disposition to the Ute Mountain Tribe.

During the public comment portion of the meeting, the Review Committee heard from several tribes, agency officials, and individuals regarding progress in implementing the Act and barriers encountered.

Ms. Christine Landrum (Director, Office of Indian Affairs and American Culture, Intermountain Region, National Park Service) reported on the activities of the Colorado Lands Repatriation and Reinterment Workgroup. The Colorado Lands Repatriation and Reinterment Workgroup's primary purpose is to identify potential lands within the state of Colorado for reburial of Native American human remains in museum, university, state, and Federal agency collections. To date, the workgroup has been successful in developing a final draft agreement, which is currently under legal review by each participating tribe, agency and museum. The purpose of the agreement is to provide a standardized process to identify suitable and appropriate state, Federal and tribal lands for the reburial of Native American human remains and funerary objects originating within the state of Colorado and repatriated under the authority of NAGPRA. The workgroup will be offering a brief work session for the Review Committee Reburial Subcommittee members and other appropriate participants in conjunction with the November 2013 Review Committee meeting. The workgroup will also partner with Intermountain Region, History Colorado, and the Ute Mountain Tribe to prepare a report for the Committee on the issue of reburial on public lands.

Mr. Frank Wozniak (NAGPRA Coordinator, USDA Forest Service) provided an update on the Forest Service's NAGPRA implementation. Mr. Wozniak stated that for FY 2013, the Forest Service plans repatriations comparable in number to repatriations in FY 2011 and FY 2012. In addition, by the end of FY 2013, the Forest Service will have substantively completed its reporting and implementation tasks set forth in the Secretary of Agriculture's response to Congress regarding the recommendations of the Government Accountability Office (GAO) in its NAGPRA audit report, GAO 10-768.

Mr. Lalo Franco (Santa Rosa Rancheria, Tachi Yokut Tribe) described his tribe's continued struggles and frustration in working with the University of California Hearst Museum on NAGPRA implementation. Mr. Franco stated that the tribe is concerned about the museum's history of inadequate consultation with tribes and insufficient consideration of evidence provided by tribes in support of claims. Mr. Franco further expressed concern over the lack of a civil penalties investigator as

part of the National NAGPRA Program.

In the course of his remarks Mr. Franco also expressed concern that he had submitted an allegation of failure to comply to the National NAGPRA Program, but that the submission had not been acknowledged. Ms. Hutt apologized and reviewed the usual procedures followed when such complaints are received. Ms. Worl asked for updates to be provided to the Review Committee on incoming civil penalty correspondence, in order for the Review Committee to ensure that the materials were addressed in a timely manner. Counsel replied that due to the nature of the Review Committee's statutory role, the information provided to the Review Committee regarding civil penalties would be limited to general matters, such as those provided by the National NAGPRA Program in its annual reports.

Ms. Bambi Kraus (National Association of Tribal Historic Preservation Officers (NATHPO)) asked for clarification of the civil penalties section of the National NAGPRA Program mid-year report. In response, Mr. Tarler (National NAGPRA Program Staff) repeated his earlier statements made during the presentation of the National NAGPRA Program's mid-year report. Ms. Kraus also asked how separate violations are counted. In response, Mr. Tarler read verbatim from the preamble to the final rule concerning civil penalties (68 FR 16354-16356, April 3, 2003), where the answer to this question was provided.

Ms. Kraus also asked for clarification of the use of Executive Order 12630 in the final rule dated May 9, 2013. The rule does not require consultation with lineal descendants of an individual who owned a ceremonial object that has been recovered from Federal lands after November 16, 1990, regarding the disposition of such an object. Concerns were raised by some commenters to the rule that this might result in a taking of property by the United States without compensation, in violation of the Fifth Amendment of the U.S. Constitution. Mr. Simpson (Office of the Solicitor, Department of the Interior) stated that the Department believes that the Final Rule is not a policy or regulation with significant takings implications under the definition in Executive Order 12630, because, under NAGPRA, the implementing regulations cannot effect a taking.

Review Committee Meeting 50: The Review Committee met in person in Mount Pleasant, Michigan, on November 6 and 7, 2013. The Review Committee was welcomed by its host, the Ziibiwing Center of Anishinabe Culture and Lifeways, and it was noted that this represented the first Review Committee meeting held on tribal trust land. The Review Committee wishes to express its thanks for the warm welcome it received.

Prior to the meeting, on November 5, Review Committee members met informally with members of the Colorado Lands Repatriation and Reinterment Workgroup regarding efforts to find state and Federal lands for reinterment of repatriated remains and cultural items. The workgroup estimates that there may be thousands of



individuals awaiting reinterment because of the absence of appropriate and secure locations for reburial, and has been working collaboratively to establish procedures allowing reburial on public lands.

The Review Committee selected Ms. Lindalee Kuuleilani Farm as its chair for the 50th and 51st meetings, deferring a more permanent decision in the absence of two Review Committee members representing tribes and Native Hawaiian organizations.

The Review Committee considered three requests for the disposition of culturally unidentifiable human remains where the geographic location from which the remains were excavated could not be reliably determined. In each of these cases, the Review Committee recommended that the disposition, as requested by the respective museums, be approved by the Secretary.

The University of Denver requested disposition of one set of culturally unidentifiable human remains to the Ute Mountain Tribe and the Southern Ute Indian Tribe. The remains of this individual had been inscribed “Basketmaker, female, early Southwest.” Based on museum research on the activities of the original collectors and consultation with tribes, the most likely area from which the remains originated was determined, and a consortium of tribes from that area stepped forward to accept the remains, with Ute Mountain Tribe and Southern Ute Indian Tribe agreeing to accept custody. The Review Committee discussed the particulars of the case and requested minor modifications to the Federal Register notice prior to disposition (clarifying that the disposition was to the Ute Mountain Tribe and Southern Ute Indian Tribe, as additional consulted tribes were included in the draft notice). The Review Committee recommended to the Secretary that disposition to the Ute Mountain Tribe and Southern Ute Indian Tribe be approved.

The National Park Service Western Archeological and Conservation Center (WACC) requested disposition of culturally unidentifiable human remains of at least 23 individuals that had been found in the WACC collections to the Hopi Tribe. While the disposition request concerned at least two groups of remains (one consisting of a single individual, the other 22 individuals) in the absence of provenience or catalogue information or documentation relating to the individual remains, it was impossible to establish cultural affiliation for any of them. The Review Committee discussed the possibility that one set of remains might not necessarily represent a Native American individual. Results of osteological analysis of that set of human remains were pending; the Review Committee recommended to the Secretary that disposition of the 22 sets of remains determined to be Native American to the Hopi Tribe be approved, and that the final set of remains be included if the osteological analysis indicated that the remains were reasonably of a Native American individual.

The Museum of Natural History, University of Colorado requested disposition of human remains representing one individual from the Hoofnagle collection to the Eastern Band of Cherokee Indians, Pokagon Band of Potawatomi Indians, Saginaw Chippewa Tribe of Michigan, Sault Ste Marie Tribe of Chippewa Indians of Michigan,

and the United Keetoowah Band of Cherokee Indians in Oklahoma. This larger collection contained other human remains that could be reasonably affiliated with specific tribes, and repatriation to the culturally affiliated tribes had occurred in those cases. The human remains considered here could not be affiliated nor the precise location of discovery determined. During discussion with the Review Committee, the museum representative indicated that the geographic area could only be localized to a region based on the bounded nature of the collection itself, and the areas in which the collector was known to have worked during his career. The Review Committee recommended that this be made explicit in the final Federal Register notice. After discussion, the Review Committee recommended to the Secretary that disposition as requested by the museum be approved.

The Review Committee discussed the proposed 43 CFR 10.7 regulation regarding disposition of unclaimed human remains and cultural items found on Federal land after November 16, 1990, which was published and circulated to members of the Committee on October 29, 2013. Four main concerns were identified by the Review Committee: 1) if newspaper notification had not been successful in bringing forward appropriate parties to make claims based on lineal descent or affiliation, perhaps broader exposure through a Federal Register notice might be more appropriate, particularly as the Federal Register is widely used for dissemination of other NAGPRA information to interested parties; 2) that alternative forms of social media and other modes of communication should be explored to better reach potential claimants; 3) that provisions privileging groups that chose to advance a claim over groups for whom closer affiliation could be shown but had not advanced a claim seemed at odds with the spirit and purpose of the Act; and 4) members of the Review Committee discussed the adequacy of existing regulations regarding the curation of archeological material under 36 CFR 79 and culturally sensitive protocols for human remains and cultural items.

Erica Koswz, a MA/PhD student of Review Committee member Sonya Atalay at the University of Massachusetts Amherst, presented an analysis of key issues raised at Review Committee meetings over the past twenty years, conducted as part of a graduate seminar in Indigenous Archaeology in spring 2013. Ms. Kowsz suggested that while finer-grained study was needed, the work could provide valuable information on changing concerns and interests considered by or brought before the Committee.

The Review Committee also heard public comment from:

Ms. Lauren Sieg (National Museum of the American Indian (NMAI)), presenting updates on the NMAI repatriation efforts, which proceed under separate legislation and are not under the direct purview of the Review Committee.

Ms. Angela Neller (Curator, Wanapum Heritage Center, Beverly, Washington) reported to the Review Committee on efforts by the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes and Bands of the Colville Reservation, Nez

Perce Tribe, Wanapum Band of Priest Rapids, and Confederated Tribes of the Umatilla Reservation to have the remains of the Ancient One, or Kennewick Man, transferred to the tribes for reinterment. Ms. Neller described the presentation of the results of analyses of the remains by Dr. Douglas Owlsey (Smithsonian Institution) to the tribes at the Wanapum Heritage Center, and indicated that the tribes would continue to work for the immediate transfer of the remains from the Burke Museum in Washington.

Ms. Veronica Pasfield (Bay Mills Indian Community) and Ms. Giiwegiizhigookway Martin (Tribal Historic Preservation Officer, Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, Ketegitigaaning Ojibwe Nation) discussed their successful repatriation of human remains and cultural items from the University of Michigan. They noted that past relations with the University had been strained, but lauded recent changes in the University's approach to implementing the provisions of the Act. They pointed to these consultations and their successful resolution as a model of respectful relations and sustained collaboration.

Ms. Jan Bernstein (Bernstein & Associates) described another success story of successful and positive dialogue between museums and tribes, specifically concerning the disposition of culturally unidentifiable remains by the University of Colorado Museum of Natural History to the Eastern Band of Cherokee Indians, Pokagon Band of Potawatomi Indians, Saginaw Chippewa Tribe of Michigan, the Sault Ste Marie Tribe of Chippewa Indians of Michigan, and the United Keetowah Band of Cherokee Indians in Oklahoma. The human remains for which disposition was requested were part of a larger Hoofnagle collection; other human remains from this collection could be affiliated with specific tribes and were repatriated, but these remains could only be localized to a region and a joint disposition agreement was developed. Responding to Review Committee questions raised during discussion of both the draft regulations for 43 CFR 10.7 and ambiguities in reporting of Federal collections held by non-Federal museums and repositories, Ms. Bernstein noted that previous reporting instruments sent by Federal agencies to non-Federal museums were lengthy, complex and onerous, and might not be the most effective vehicle to address the stated concerns.

Ms. Mary Carroll (Park NAGPRA Program Manager, National Park Service) presented updates to the Review Committee on compliance activities in the National Park Service. Dr. Joe Watkins (Chief Supervisory Anthropologist of Tribal Relations and American Cultures, National Park Service) also addressed the Committee and discussed his new responsibilities.

Mr. Frank Wozniak (NAGPRA Coordinator, USDA Forest Service) briefed the Committee on Forest Service activities to comply with the provisions of the Act, and updated the metrics provided to the Review Committee at its 49th meeting. Mr. Wozniak reported that Forest Service units had identified 6,206 MNI and 47,343 associated funerary objects in notices, and repatriated 1,666 individuals and 21,680 cultural items.

Mr. Damian Fisher (counsel, Little River Band of Ottawa Indians) spoke to the Review Committee regarding the impact of repatriation and the Act itself on increasing engagement and empowerment of Native communities, and described the activities of all concerned with implementation as contributing to the growth of these communities.

Mr. Monroe Warshaw spoke to the Committee regarding his decision to acquire two Hopi Katsina friends at a recent and controversial auction in Paris. Attempts to block the sale had been unsuccessful, and Mr. Warshaw acquired two figures, met with the Hopi Tribal Elders and representative, and returned those cultural items to the tribe.

Finally, the Review Committee discussed its own procedures for hearing disputes brought under 25 U.S.C. 3006(c)(3 & 4). Again, due to the absence of two members of the Review Committee who were unable to attend the 50th meeting, no final action was taken.

### *Progress Made*

Since NAGPRA addresses concerns surrounding human remains and culturally significant or sacred items it would be a mistake to measure success purely in terms of numbers. All involved would agree that this is not, ultimately, the best way to gauge the success of the process of documentation, consultation, and repatriation or to understand its impact on communities. The Review Committee explicitly recognizes that numbers tell only part of the story, and do not reflect the impact of repatriation on the rights and identities of Native American individuals and families, the strengthening of cultures, the continuation of ceremonial practices, and tribal sovereignty. The numbers do, however, provide a rough indication of the scale of progress to date. By any reasonable standard, that progress has been considerable.

For fiscal year 2013, the National NAGPRA Program reported the following statistics summarizing NAGPRA implementation, briefly stated:

**Summaries received:** 1,125 from institutions and 459 reporting no collection requiring a summary

**Inventories received:** 1,319 from institutions and 266 reporting no collection requiring an inventory

**Culturally Unidentifiable Native American Human Remains (CUI):** 753 inventories

- 121,623 Minimum Number of Individuals (MNI), 909,996 Associated Funerary Objects (AFO)
- 4,740 MNI transferred as CUI dispositions; 6,331 MNI subsequently culturally affiliated

**Culturally Affiliated Native American Human Remains (CA):** 566 inventories

- 57,903 MNI, 1,256,200 AFO

**Notices of Inventory Completion:** Published 112 in FY 2013. Published 1,731 in total:

- account for 47,742 human remains and 1,136,944 Associated Funerary Objects (AFOs)
- no requests for extension of time to complete an inventory pending, no requests in FY 2013

**Notices of Intent to Repatriate:** Published 42 in FY 2013. Published 644 in total:

- account for 212,289 Unassociated Funerary Objects (UFOs), 4,816 sacred objects, 7,942 objects of cultural patrimony, 1,613 objects both sacred and patrimony, and 236 undesignated

**Notices of Intended Disposition** (Federal Agency newspaper notices of new discoveries)

- 143 Notices reported for 1,047 minimum number of individuals, 10,964 AFOs, 64 Unassociated Funerary Objects (UFO), and 4 objects of cultural patrimony

**Notices using the 10.11 rule:** Published 23 in FY 2013, 101 in total, account for 1,068 human remains, 5,604 AFOs (CUI also in notices using 10.16, prior to 10.11 and when 10.11 does not apply)

**Notice processing FY 2013:** 170 received, 154 published; aging drafts (pre-2007) 9 remaining

**Grants:** Requested: \$2.7 m (33 projects); Awarded: \$1.6 m – 21 project and \$186,397 – 15 repatriation

**Civil Penalties:**

- Received 7 allegation letters of failure to comply against 8 museums
- Investigations completed FY 2013: 12 counts (4 museums); Investigations begun but not completed FY 2013: 3 counts (1 museum); Investigations FY 2006-2013: 156 counts (31 museums)
- FY 2013 (pending adoption by the Assistant Secretary): 7 counts substantiated (58.3% of counts investigated) and 5 counts unsubstantiated (41.7% of counts investigated); FY 2006-2013: 128 counts unsubstantiated and 28 counts substantiated
- Total of \$42,679.44 collected through civil penalty assessments and settlement agreements

**Review Committee:** Meetings: Nov. 28-29, 2012 DC; January 10 & May 22, 2013 telephonic

**NAGPRA Regulations 43 CFR 10:**

- 10.7 Unclaimed – proposed rule under administrative review prior to publication
- 43 C.F.R. Part 10 minor amendments – Final rule May 9, 2013, effective June 10, 2013
- 43 C.F.R. Part 10 revised – draft proposed rule under review at the Department of the Interior

**Technical Assistance and Reports:**

- Training provided to 482 participants at 15 events;
- 2,591 views of the training videos on the National NAGPRA YouTube Channel (264% increase over FY 2012); FY 2012-2013: 3,573 views
- 2,000 email and telephone requests for technical information
- 1 special report in progress – Twenty Years of NAGPRA Grants: 1994 – 2013

Based on these data, the total minimum number of individuals under NAGPRA is 179,526 individuals, including remains of 57,903 individuals for whom affiliation with a particular culture, tribe, Native community, or Native Hawaiian organization could be determined and 121,623 individuals for whom no cultural affiliation could be established.

These are noteworthy numbers, particularly when each is understood as the outcome of a sustained, deliberate, and sometimes difficult process of documentation, study, consultation, and collaboration between one or more museums, institutions, or Federal agencies with a range of tribes or Native Hawaiian organizations.

While it may not be possible to establish the cultural affiliation for all human remains pursuant to NAGPRA requirements, it is worth noting that in instances where human remains are associated with funerary items, the likelihood of successfully establishing affiliation is much increased. While culturally affiliated human remains make up less than one-third of the total MNI of individuals under NAGPRA, these individuals account for the majority of all associated funerary objects (1,256,200 associated funerary objects with culturally affiliated individuals, 909,996 with the remaining individuals for whom cultural affiliation could not be determined).

Consultation with tribes is needed before a museum or Federal agency makes its determination of affiliation. The current database of culturally unidentifiable individuals and associated funerary objects does not include information about consultation that was performed prior to completion of an inventory. Human remains and funerary objects that have at least geographic information may have enough information to contact tribes that may be affiliated. Consultation is extremely important, considering the large numbers of culturally unidentifiable individuals.

Over the past twenty-one years, the National NAGPRA Program has published 1,731 Federal Register Notices of Inventory Completion accounting for 47,742 human remains and 1,136,944 Associated Funerary Objects (AFOs). In FY 2013, a total of 112 Notices of Inventory Completion were published, accounting for 1,251 human remains and 14,201 AFOs. Over the same period the National NAGPRA Program has published 644 Notices of Intent to Repatriate in the Federal Register, accounting for 212,289 Unassociated Funerary Objects (UFOs), 4,816 sacred objects, 7,942 objects of cultural patrimony, 1,613 objects that are both sacred objects and objects of cultural patrimony, and 236 undesignated cultural items. In FY 2013, a total of 42 Notices of Intent to Repatriate were published, accounting for 1,226 UFOs, 57 sacred objects, 207 objects of cultural patrimony, and 185 objects that are both sacred objects and objects of cultural patrimony.

Tables 1 and 2, rephrased from the 2013 National NAGPRA Program Annual Report, summarize information regarding repatriation and disposition activities in FY 2013. Under the Act, repatriation refers to the return of human remains, associated or unassociated funerary objects, objects of cultural patrimony and sacred objects to

culturally affiliated groups, while disposition refers to human remains given to tribes or Native Hawaiian organizations to whom cultural affiliation could not be determined.

**Table 1.—Minimum Number of Individuals (MNI) – Both Culturally Affiliated (CA) and Culturally Unidentifiable (CUI) – Repatriated to Indian Tribes and Native Hawaiian Organizations (NHOs) in FY 2013.**

INSTITUTION	MNI Total	CUI	CA	Repatriated
Federal	33,132	14,252	18,880	11,272
Museum	146,394	107,371	39,023	2,672
<b>TOTAL</b>	<b>179,526</b>	<b>121,623</b>	<b>57,903</b>	<b>13,944</b>

**Table 2.—MNI and Associated Funerary Objects (AFOs) Repatriated to Indian Tribes and NHOs in FY 2013.**

INSTITUTION	MNI Total	MNI Repatriated	AFOs	AFOs Repatriated
Federal	33,132	11,272	303,598	152,337
Museum	146,394	2,672	1,772,598	33,976
<b>TOTAL</b>	<b>179,526</b>	<b>13,944</b>	<b>2,076,196</b>	<b>186,313</b>

The Review Committee is currently working to develop clear and consistent procedures for hearing disputes. In 2010, the Review Committee established a subcommittee (consisting of Ms. Sonya Atalay, Mr. Eric Hemenway, and Review Committee Chair Ms. Rosita Worl) charged with soliciting input from museums, Federal agencies, and tribes to develop more specific dispute procedure guidelines to be followed during disputes heard by the Review Committee. The subcommittee reported on its efforts and introduced draft dispute procedures at the Review Committee’s November 2013 meeting. The Review Committee seeks to develop transparent procedures ensuring fairness and impartiality in the hearing of disputes and in facilitating their resolution. In doing so it seeks to provide procedural clarity without appearing to serve as a courtroom or forum for legal argumentation. The Review Committee’s goal is to facilitate the resolution of disputes and help parties resolve questions of fact.

Two forms have also been created and posted on the National NAGPRA Program’s website to assist in submitting requests to the Review Committee. One of the forms is for a request that, pursuant to its section 8 (c)(3) responsibility, the Review Committee make findings of fact regarding the identity or cultural affiliation of cultural items, or the return of such items, where a dispute between parties is not clearly evident. The other form is for a request that, pursuant to its section 8 (c)(4) responsibility, the Review Committee convene parties and facilitate the resolution of a dispute related to the return of cultural items, where a dispute is clearly evident.

The National NAGPRA Program offered training to 482 individuals at 15 events in FY 2013, a significant decrease from the more than 1,000 individuals trained in FY 2012. The percentage of individuals receiving training through webinars has increased over that period from 30.6% to 52.7%, however. Viewings of videos offered through the National NAGPRA YouTube channel increased 264% from the previous year, suggesting that new media outlets may be effective in reaching individuals or communities seeking NAGPRA training. As of September 30, 2013, there were 39 subscribers to the NAGPRA YouTube channel. The National NAGPRA Program also scheduled a training session from the Colorado Burial Lands Working Group to take place immediately before the Review Committee's November meeting, and asked the Review Committee to advocate for the working group's efforts. The National NAGPRA Program website remains the main forum for information relating to the Act and compliance activities (<http://www.nps.gov/nagpra/>). The National NAGPRA Program further notes that it responds to more than 2,000 telephonic and electronic inquiries relating to NAGPRA annually.

### *Barriers Encountered*

Congress has charged the Review Committee with reporting annually on both progress made and on barriers encountered to NAGPRA implementation. Despite the real progress previously noted, several barriers remain.

- **NAGPRA's statutory requirements have been significantly slowed because of lack of staff in the National NAGPRA Program to fulfill certain statutory mandates, and inadequate funding to support compliance and implementation activities;**
- **Continuing ambiguity in inventories provided by museums and Federal agencies, particularly concerning the scope of Federally associated collections in non-Federal repositories, and the reporting of consultation by museums in inventories listing culturally unidentifiable human remains and funerary objects;**
- **Lack of appropriate and protected locations for reburial of human remains and cultural items once repatriation or disposition has taken place, and;**
- **Concerns over time frames for compliance with applicable provisions of current regulations, on the part of both tribes and museums.**

**Lack of Adequate Staffing and Support:** Current staffing levels in the National NAGPRA Office are inadequate to effectively implement and monitor all aspects of the Act. The lack of adequate grant funding to tribes, Native Hawaiian Organizations, and museums to build institutional infrastructure to support NAGPRA implementation represents a major barrier. Funding in the form of either NAGPRA grants or support for the National NAGPRA Program has not kept pace with increases in the compliance and disposition activities required to implement effectively the Act. This issue has been consistently raised by the Review Committee, by scientific, museum, and cultural organizations, and by tribes and Native Hawaiian organizations, and is the single greatest impediment to more complete and timely compliance. The Review Committee has heard for many years that one very significant barrier is that many



tribes simply lack the financial capacity to handle NAGPRA implementation. Museums likewise often lack dedicated staff to complete NAGPRA compliance work, and must therefore rely on staff with other full-time responsibilities; both may be forced to rely on part-time or less experienced individuals not able to set aside the time needed to become familiar with NAGPRA requirements and properly perform ongoing NAGPRA tasks. NAGPRA Program Grants provide support to tribes and museums to help complete specific NAGPRA projects, but are currently inadequate in three respects: 1) as noted, allocated funding for NAGPRA grants has not kept pace with the increasing tempo of repatriation and disposition activities; 2) precedence is understandably given to funding physical repatriation and reburial, so that funding available for NAGPRA projects is both limited and varies year to year; and 3) current grants support individual, specifically focused projects but do not allow capacity-building in either Native communities or museums to coherently and consistently implement the provisions of the Act. Separate funding aimed at building capacity within tribes or Native Hawaiian organizations and museums would allow communities and institutions to address NAGPRA compliance in a more holistic and less fragmented fashion, and further the Congressional policy of self-determination for tribes.

**Ambiguity in the Completeness of Inventories:** Federal agencies and institutions receiving Federal funds and which possess or control human remains and associated funerary objects are required to list these remains and cultural items in an inventory, and considerable progress is being made in these continuing efforts. There are, however, areas of ambiguity in cases where institutions hold remains or cultural items on behalf of a Federal agency, in which it may be unclear whether the Federal agency controlling these remains or items, or the institution holding them on behalf of that agency, is responsible for their inventory and reporting. Some institutions having custody of Federal collections did not list certain human remains and funerary objects in an inventory because they assumed that the Federal agency having control did so, according to some reports. The Review Committee is thus concerned that there may be human remains and associated funerary objects that are not currently in inventories because both the institution holding the remains or items and the agency responsible for the remains or items assumes the other has included them in their inventory and reports. As noted in previous annual reports, this concern could be addressed through 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. It is noted that this is likely to require additional support for institutions holding such collections, either to support inventory and documentation of and consultation regarding collections for which they are not responsible, or to fund the appropriate packing and return of these collections to the Federal agencies responsible for them by statute.

**Lack of Appropriate Locations for Reburial:** Numerous tribes have expressed a desire for more consistent and more accommodating regulations allowing public lands to be set aside for the reburial of human remains and associated funerary objects. Many tribes strongly prefer that reburials take place in a location as close to the

original burial site as possible, and in many cases this means that the preferred reburial site is not under tribal control. While limited provisions exist allowing reburial on Federal land, these provisions vary by agency and also vary in how consistently they are applied within individual agencies. Concerns have also been raised regarding the provision of adequate protection for these sites after reburial has taken place. Consistent regulations and procedures allowing portions of Federal land to be set aside for reburial, and for the protection of these sites once reburial has taken place, would reduce delays in the completion of repatriation and disposition requests.

**Concerns Over Time Frames for Compliance:** Tribes and Native Hawaiian organizations have expressed concern that no time frame for compliance is provided in certain parts of the regulations, feeling that museums and other collections-holding institutions may be delaying compliance, and have therefore called for mandatory time frames for all compliance activities. Museums, on the other hand, have continued to express concern with the restrictive nature of the current 90-day rule or other rules that impose arbitrary time frames for responses to complex requests requiring considerable staff time and other resources to properly complete, or which may require consultation or coordination with multiple parties to whom such time frames do not necessarily apply. This may place museums in the untenable position of having to choose whether to complete a good-faith consultation with all parties concerned or adhere to the 90-day rule. Confusion regarding aspects of the 90-day rule is reported by all concerned, and this is one area of the existing regulations that the National NAGPRA Program reports it is reviewing to clarify the definitions and processes.

### *Recommendations to Congress*

The Review Committee strongly advises and recommends the following Congressional actions:

1. Fulfill the statutory requirements of NAGPRA by providing adequate and consistent staffing and support to the National NAGPRA Program;
2. Continue to support grant funding to Indian tribes, Native Hawaiian organizations, and museums that will build institutional capacity and meet the requirements of Congressional policy of Indian self-determination;
3. Enact legislation to further and consistently protect Native American burials
4. Support broader opportunities for reburial of Native American ancestors on Federal lands, including national parks;
5. Support Federal agency compliance with NAGPRA, including expedited completion of inventories of Federal collections in non-Federal repositories;
6. Hold hearings to determine whether amendments to the Act should be considered that would expedite the repatriation process.

**Recommendation 1:** Fulfill the statutory requirements of NAGPRA by providing adequate and consistent staffing and support to the National NAGPRA Program. Increased funding for the National NAGPRA Program and for NAGPRA grants is sorely needed. One of the clear and often-remarked barriers to further and faster

progress in implementation 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, with direct allocations for NAGPRA grants to Indian tribes, Native Hawaiian organizations, and museums.

Grant-based funding is currently provided by the National NAGPRA Program for two distinct kinds of activities: 1) repatriation and reburial; and 2) project grants for consultation/documentation. The former provides support for activities generally associated with repatriation of human remains or cultural items at the conclusion of the NAGPRA review process and documentation of any known condition or treatment issues that might impact human health, as well as decontamination of items if appropriate. In recent years repatriation funding requests--which are awarded on a non-competitive basis prior to consideration of NAGPRA project grants using monies from the same pool--have increased by more than 300%, and to date have been fully honored. NAGPRA project grants, which are available to tribes, universities, state or local government agencies, or museums, are allocated from remaining resources after distribution of funds to support repatriations, support the costs of consultation, compliance and other tasks mandated by the Act. Because requests for repatriation funding have, at least thus far, been fully honored, any additional programmatic funds available as grants could support the necessary consultation and documentation work of tribes, museums, and universities to fully comply with the provisions of the Act in a timely manner.

**Recommendation 2:** Continue to support grant funding to Indian tribes, Native Hawaiian organizations, and museums that will build institutional capacity and meet the requirements of Congressional policy of Indian self-determination. Currently NAGPRA grants are awarded only to support individual, discrete projects, and cannot be used to build institutional capacity to implement NAGPRA more generally. In many cases, tribes or museums may have greater needs for addressing ongoing issues of pursuing repatriation or disposition requests or responding in a timely manner to such requests than for clearly bounded projects. Because such projects often involve hiring of temporary staff to complete specific aspects of the funded project, in many cases that experience and capacity is lost at the end of the project. Additional funding to build capacity in both Native communities and museums is needed.

**Recommendation 3:** Enact legislation to further and consistently protect Native American burials. As its title suggests, the Native American Graves Protection and Repatriation Act is concerned with the protection and repatriation of Native American human remains. Currently activities under NAGPRA focus primarily on repatriation and disposition rather than protection. The issue of "protection" is covered in Section 4 of the Act, the criminal section (codified at 18 U.S.C. 1170). Concerns have been voiced to the Review Committee that differences in burial laws among states result in uneven protection for burial sites and human remains. The Review Committee feels that more comprehensive protection of burials is needed, and that such protection should be equal to the protections given to non-Native American burials. Such protection is not currently covered in the NAGPRA legislation, but is an important

part of what needs to be accomplished in years to come. The Committee recommends that Congress consider legislative means through which such protections can be accomplished, starting with a comprehensive study of the current state-by-state burial laws.

**Recommendation 4:** Support broader opportunities for reburial of Native American ancestors on Federal lands, including national parks. Many tribes assert that reburial of remains received through repatriation or disposition requests cannot be completed because appropriate locations for reburial are not available. Regulatory changes by the full range of Federal agencies responsible for the management of public lands or legislative action by Congress is needed to allow portions of Federal lands to be set aside and protected as reburial sites.

**Recommendation 5:** Support Federal agency compliance with NAGPRA, including expedited completion of inventories of Federal collections in non-Federal repositories. Some collections may remain un-inventoried and unreported because of confusion between the Federal agency responsible for a collection and the non-Federal institution holding that collection, with each assuming that the other is responsible for compliance under NAGPRA. We recommend 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 either to support compliance by the institution currently holding the collections or to support appropriate packaging and transport of such collections to the Federal agency responsible for them.

**Recommendation 6:** Hold hearings to determine whether amendments to the Act should be considered that would expedite the repatriation process. Several aspects of the Act may require amendment, for example the redefinition of Native American for purposes of the Act. These are important and complex issues meriting careful Congressional review.