

Annual Report to Congress

NATIVE AMERICAN GRAVES PROTECTION & REPATRIATION REVIEW COMMITTEE

2018-2019

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total = 2,203.76

Native American Graves Protection & Repatriation
Review Committee

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Executive Summary

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

This report covers Review Committee activities from October 2018 through September 2019.

From October 2018 through September 2019, the Review Committee held two public, face-to-face meetings, one October 17-19, 2018, in Washington, DC, and the other August 21-22, 2019, in Fairbanks, Alaska. In addition, the committee held one public, telephonic meeting on April 22, 2019. Prior to the October 2018 meeting, the committee had not met since May 2017, when the Department of the Interior postponed the activities of all of its Federal Advisory Committee Act (FACA) committees while it conducted a review of their charters and charges.

In its October 2018 and August 2019 meeting, the Review Committee received reports from the National NAGPRA Program regarding implementation and compliance activities under the Act, provided recommendations to the Secretary of the Interior regarding the disposition of culturally unidentifiable human remains, heard presentations from NAGPRA constituents, and received public comment in both oral and written form. At its April 2019 meeting, the Committee discussed the 2017-2018 annual report to Congress and heard public comment.

Attached to this Annual Report are statistics reported by the National NAGPRA Program for fiscal year 2019 regarding the implementation of NAGPRA, grants awarded under the Act, and other important progress made. Despite some notable examples of progress, the National NAGPRA Program and the NAGPRA Review Committee remain hindered by barriers that have been reported to Congress year after year. These barriers are discussed in the body of the report.

Recommendations to Congress

Based on its experience with both barriers and examples of progress, the Review Committee strongly recommends the following Congressional actions:

1. Increase NAGPRA grant funding. Over the 25 years that grant funding has been awarded, the NAGPRA Program has had a maximum of \$2.4 M to award in a single year (2001). In 2005, this figure dipped to its lowest point, at \$1.4 M, and in 2019 the amount available was \$1.7 M. In an average year, 43% of applicants are funded. This percentage reflects a lack of available funds, not a lack of qualified applicants.
2. Amend 54 U.S.C. 302107 (formerly section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470a(a)(7)(A))) to include all cultural items, as the term "cultural items" is defined under section 2(3) of NAGPRA (25 U.S.C. 3001(3)), or make other changes to law so that the curation regulations at 36 CFR Part 79 may be amended to apply to cultural items in any repository. Further we recommend that regulations require:
 - a) Non-federal repositories make available to Federal agencies, or the Secretary of the Interior, all "associated records" (as defined in 36 CFR 79.4(2)), as well as accession and catalog records related to these collections; and
 - b) Federal agencies to assign Federal staff to create inventories and summaries for their NAGPRA collections in non-federal repositories and to notify lineal descendants, Indian Tribes, and Native Hawaiian organizations of the completion of these documents. A date to meet these requirements should be specified by Congress.
3. Amend NAGPRA to include an exemption as provided for under exemption (b)(3) of the Freedom of Information Act, to protect traditional Native American religious practices and specific locations of archaeological sites.
4. Direct Federal agencies that control cemeteries to set aside some percentage of available cemetery plots for use in the reburial of human remains and funerary objects repatriated pursuant to NAGPRA; and also amend the Recreation and Public Purposes Act to facilitate use of Bureau of Land Management lands for this purpose.
5. In 2020, the 30th anniversary year of NAGPRA, hear directly from representatives from the Tribal and Museum and Scientific communities by inviting them to testify about barriers encountered and the progress made in implementing this law.

2018-2019 Report to Congress

Congress has charged the Review Committee with reporting annually on progress made and barriers encountered in NAGPRA implementation. Certain barriers have been reported year after year, and they continue to hinder progress in the implementation of NAGPRA.

Barriers Encountered

1. NAGPRA compliance is much more expensive than ever imagined by Congress.

This request has been made in every report since 1995, with no Congressional action. Funding is the primary barrier to success. The Congressional Budget Office estimated, in 1990, that total costs for NAGPRA compliance would run between \$5 million and \$30 million. As of September 30, 2019, the National NAGPRA Program had received requests for nearly \$103 million in grant support and had awarded more than \$50 million. Over this same period, hundreds more millions of dollars have been spent on compliance by Federal agencies, Indian Tribes, and museums. The size of the annual NAGPRA grant funding pool, since its inception, has varied from a maximum of \$2.4 M to a minimum of \$1.4 M. The amount allocated has never been adjusted for inflation, nor has it reflected the scale of repatriation work that remains to be done. The Government Accountability Office's (GAO) report entitled *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied With The Act* (GAO-10-768) identified a lack of resources within Federal agencies dedicated to NAGPRA implementation as "one of the most significant challenges" to compliance with the Act. Although NAGPRA constituents (Indian Tribes, museums, Federal agencies, and the Review Committee) are all working together to address issues related to the complexity of NAGPRA compliance (see Barrier 2 and Progress Made), only Congress can address the funding challenge.

2. NAGPRA compliance is much more complicated than ever imagined by Congress.

Congress envisioned in 1990 that repatriation activity pursuant to NAGPRA would be complete, or nearly so, within five years of the Act's passage. As evidenced by the GAO report (GAO-10-768), as well as statistics compiled and reported annually by the National NAGPRA Program, after nearly three decades, a daunting amount of work remains. A key component of NAGPRA's complexity is the fact that the Act is implemented, of necessity, on a case-by-case basis. A related factor, highlighted nearly ten years ago by GAO, is that vast numbers of human remains and cultural items under the legal control of Federal agencies are curated by non-federal repositories. Federal agencies often do not have physical custody of their collections and, in some cases, may not even know that collections exist or where they are housed, mainly due to the inadequacies of early permitting procedures and gaps in record-keeping. In addition, establishing a Federal agency's legal control might take years, in part because some museums

Native American Graves Protection & Repatriation Review Committee

may not be forthcoming with catalog/accession records. Further, loans, exchanges, and excavation of the same site by multiple institutions have frequently resulted in collections from one site having been split among multiple institutions, each with its own protocols for determining cultural affiliation. Finally, while museums have always known that faunal collections might have included human remains, more careful inventories have recently shown the actual frequency of this occurrence.

3. Legislative work is required in order to broaden opportunities for reburial of Native American human remains and cultural items on public lands.

Progress has been made on identifying places to rebury repatriated human remains and funerary objects (as discussed below), but difficulties remain. Reburial sites must be monitored and protected from looters. Although laws, such as NAGPRA and the Archaeological Resources Protection Act (ARPA), and the Protect PATRIMONY Joint Resolution exist, appropriate Congressional allocations to monitor sites and prevent looting have not been made.

Many Indian Tribes advocate for additional Federal lands to be set aside for reburial. Others feel that, due to changing land use and a lack of assured protection from development, human remains and cultural items should only be reburied on reservation lands. Legislation should reflect the diversity of tribal opinions on this issue.

Information divulged during NAGPRA consultations by lineal descendants, Indian Tribes, and Native Hawaiian organizations and in the possession of a Federal agency is discoverable under the Freedom of Information Act. The inability to keep sensitive information confidential should be considered a barrier to reburial and, therefore, to repatriation. Finally, it is important to note that many Indian Tribes face additional burdens as their ancestors were interred in locations remote from their present-day tribal lands.

Progress Made

1. Success in partnerships between Federal agencies and non-federal repositories

In 2019, the Review Committee heard reports detailing successful partnerships between Federal agencies and non-federal repositories, which have resulted in significant progress toward NAGPRA compliance. The Bureau of Indian Affairs (BIA), for example, reported that it currently had 11 contracts with non-federal repositories and that each was in various stages of NAGPRA implementation, with exemplary results in several cases. BLM recounted similar momentum, noting that the keys to such partnerships have been a shared vision of purpose, i.e., the need to affect the disposition of Native American human remains and cultural items, and the joint leveraging of resources to make that vision a reality. Such partnerships - the US Forest Service is another example - are critical to addressing the barriers associated with the repatriation of Federal collections curated by non-federal repositories.

An alternative model offered by the Department of the Army involves the development of regional centers for the curation of archeological collections, human remains, and cultural items subject to NAGPRA, as well as NAGPRA compliance activities. Work is underway to develop cost comparisons and justifications for this model.

2. Increasing development of Tribal coalitions and Tribal-State agreements

The Columbia Plateau Inter-Tribal Repatriation Group (CPITRG) has presented to the Review Committee at nearly every meeting in recent history. The members of the CPITRG have worked together to provide a strong, consistent voice for cultural preservation and repatriation in their region, including working to pass special legislation to transfer and rebury the Ancient One (Kennewick Man). The Michigan Anishinaabek Cultural Preservation and Repatriation Alliance has worked with museums to facilitate repatriation to members of the Alliance. The newly formed Southeastern Tribal Alliance for Repatriation will likely follow the model set by these two successful organizations.

An additional model of Tribal cooperation comes from Iowa, where 25 Tribes signed an agreement with the Iowa State Archaeologist's office to facilitate the repatriation of culturally affiliated human remains and NAGPRA objects and the transfer of culturally unaffiliated human remains. The original agreement between the state and Tribes actually predates NAGPRA legislation. It has been renewed in 2006 and in 2018, each time with more Tribes entering into the agreement.

3. Improved reporting of Federal agencies' NAGPRA activities

In 2017, at the urging of Chairman Armand Minthorn, the committee requested that letters be sent to all Federal agencies holding NAGPRA collections, requesting that each send a representative to report to the committee on its NAGPRA activities. Many agencies responded to these requests. Some, such as the Department of the Army, had not reported to the committee in a very long time. Others, such as the Tennessee Valley Authority and the Department of the Navy, had never before presented information to the Review Committee. The process of drafting these reports brought the requirements of NAGPRA compliance to the attention of agency administrators. The resulting reports alerted Native American Tribes and Native Hawaiian Organizations to the human remains and cultural items held by these agencies, making it possible for descendant groups to seek repatriation.

Native American Graves Protection & Repatriation
Review Committee

2018-2019 Review Committee Activities

Review Committee Members

Nominated by Tribes and Native Hawaiian organizations:

John Beaver (term ends May 2022)

Barnaby Lewis (term ends May 2022)

Armand Minthorn, Chair through October 2018 (term ended November 2018; reappointed, term ends August 2021)

Nominated by museums and scientific organizations:

Heather Edgar (term ends November 9, 2019)

Patrick Lyons, Chair after October 2018 (term ends November 9, 2019)

Francis McManamon (term ends October 2022)

Nominated by the Committee:

Honor Keeler (term ends May 2022)

Review Committee members are appointed for a four-year term and may be reappointed for a second, two-year term.

Review Committee Meetings

The 63rd meeting of the NAGPRA Review Committee was held October 17-19, 2018, in Washington, DC, at the Department of Interior. Five Review Committee members were present. Minutes and a transcript of the 63rd meeting can be accessed at:

<https://irma.nps.gov/DataStore/Reference/Profile/2258921>. In addition to hearing the National NAGPRA Program's report, the Review Committee:

- heard 14 presentations,
- made one determination of cultural affiliation,
- made one recommendation to the Secretary of the Interior regarding the disposition of culturally unidentifiable human remains,
- made one recommendation that the Secretary of the Interior approve a renewal of a process for reburial of culturally unidentifiable Native American human remains and associated funerary objects,
- had a preliminary discussion of this Report to Congress, and
- benefitted from both oral (public) and written comments.

The 64th meeting of the NAGPRA Review Committee was held April 22, 2019, telephonically. Six Committee Members participated. Minutes and a transcript of the 64th meeting can be accessed at:

<https://irma.nps.gov/DataStore/Reference/Profile/2265109>. The Review Committee discussed the 2017-2018 Report to Congress and heard one public comment.

The 65th meeting of the NAGPRA Review Committee was held August 21-22, 2019, in Fairbanks, AK, at the University of Alaska Museum of the North. Six Review Committee members were present. Minutes and a transcript of the 65th meeting can be accessed at <https://irma.nps.gov/DataStore/Reference/Profile/2265110>. In addition to hearing the National NAGPRA Program's report, the Review Committee:

- heard seven presentations,
- made one recommendation to the Secretary of the Interior regarding the disposition of culturally unidentifiable human remains,
- had a preliminary discussion of this Report to Congress, and
- benefitted from both oral (public) and written comments.

NAGPRA At-A-Glance Fiscal Year 2019

236 notices published in the
Federal Register

3 Review Committee
meetings

0 letters alleging failure to
comply received

\$1.65 million awarded for grants

\$113,088 12 repatriation grants

\$1,543,912 22 project grants

NAGPRA collections increased – the number of human remains reported in NAGPRA inventories increased by 7,865 individuals.

NAGPRA activity remains high – 40% more notices were published than last year, a record year for notice publication.

NAGPRA funding remains level – despite increased demand of \$3.15 million in requests, available grant funds were level at \$1.65 million.

More NAGPRA work needed – Over 118,000 Native American individuals are still in collections and almost 96% of those have not been culturally affiliated with any present-day Indian tribe or NHO. Cultural affiliation studies and in-depth consultations could resolve the rights to many of these individuals.

NAGPRA Accomplishments FY 1990 – FY 2019

92.57% of culturally affiliated human remains have completed the NAGPRA process.

Over 1.77 million associated funerary objects have been transferred with human remains.

28% of museums subject to NAGPRA have resolved all Native American human remains under their control.

Nearly 330,000 unassociated funerary objects have been repatriated.

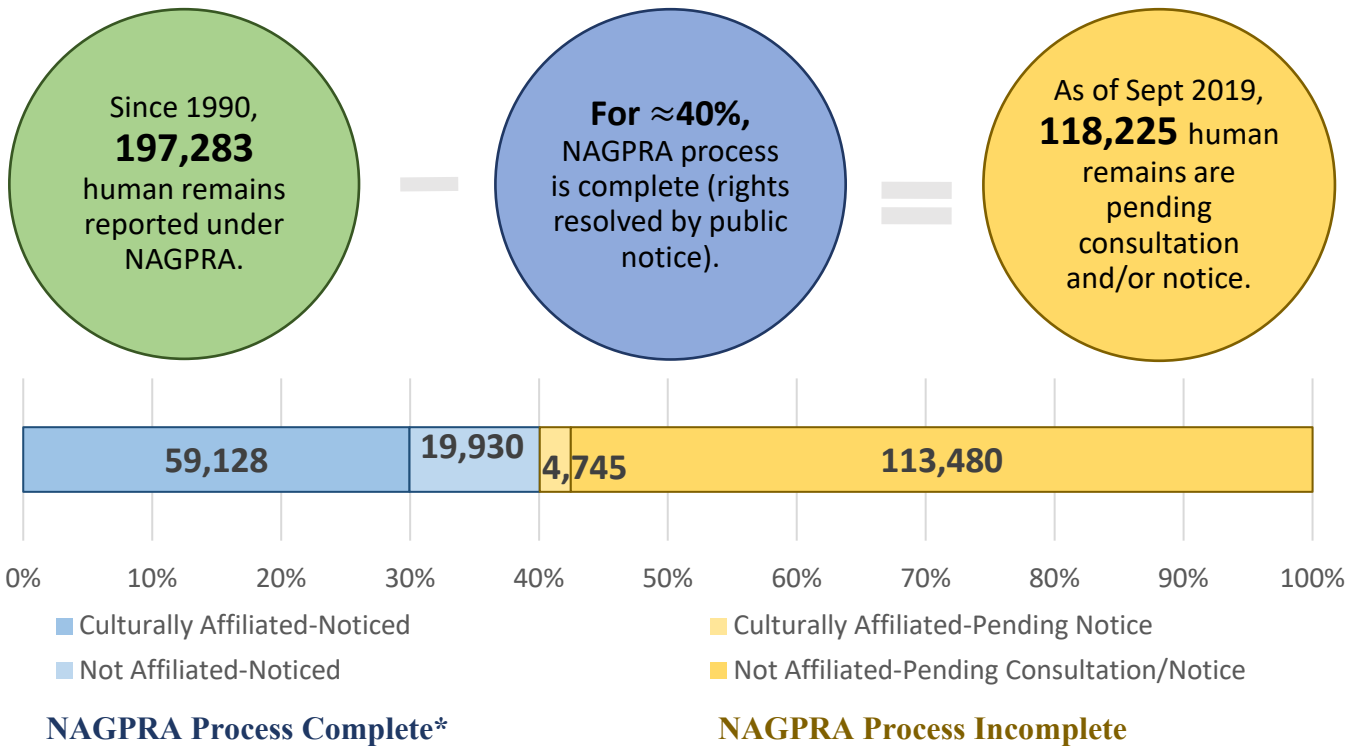
About 15,000 other cultural items have been repatriated.

65 Review Committee meetings have been held since 1992.

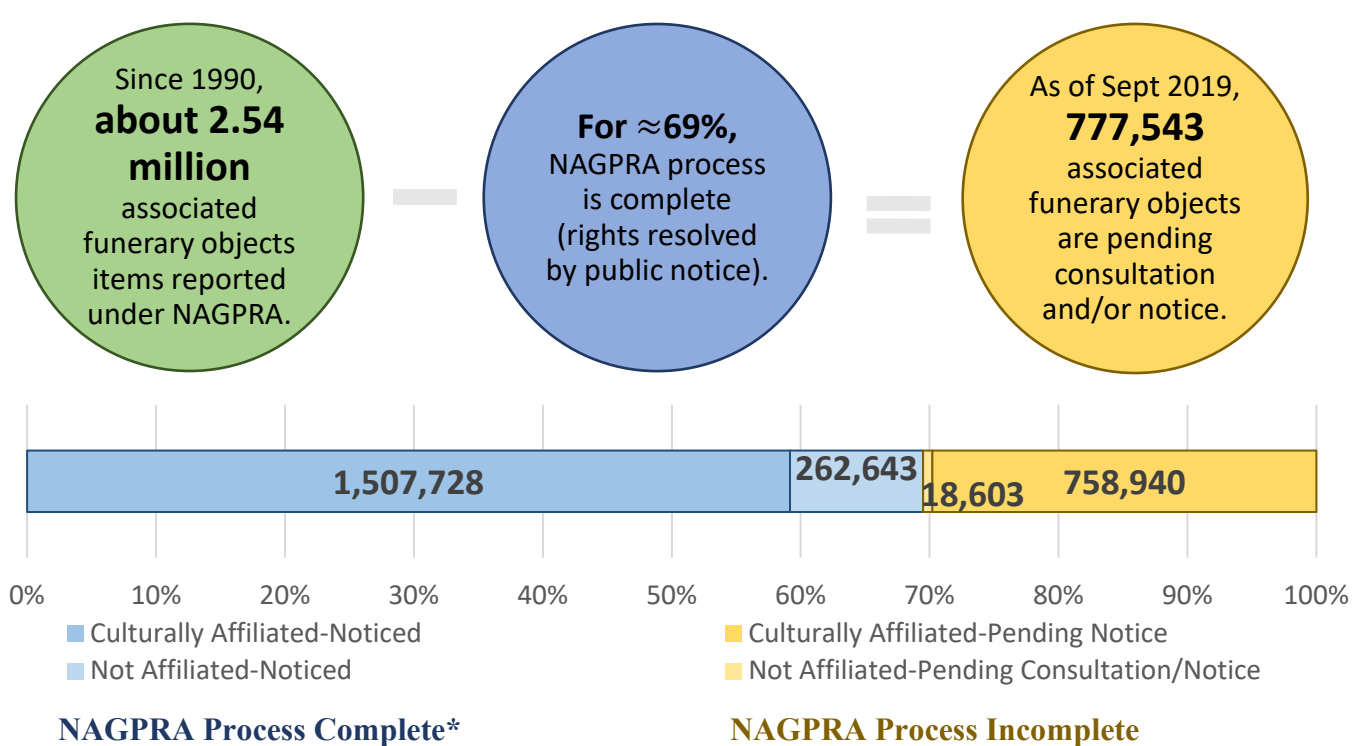
\$59,111 has been collected in civil penalties for failures to comply.

\$50.12 million has been awarded in NAGPRA grants.

Native American Human Remains in Holdings and Collections



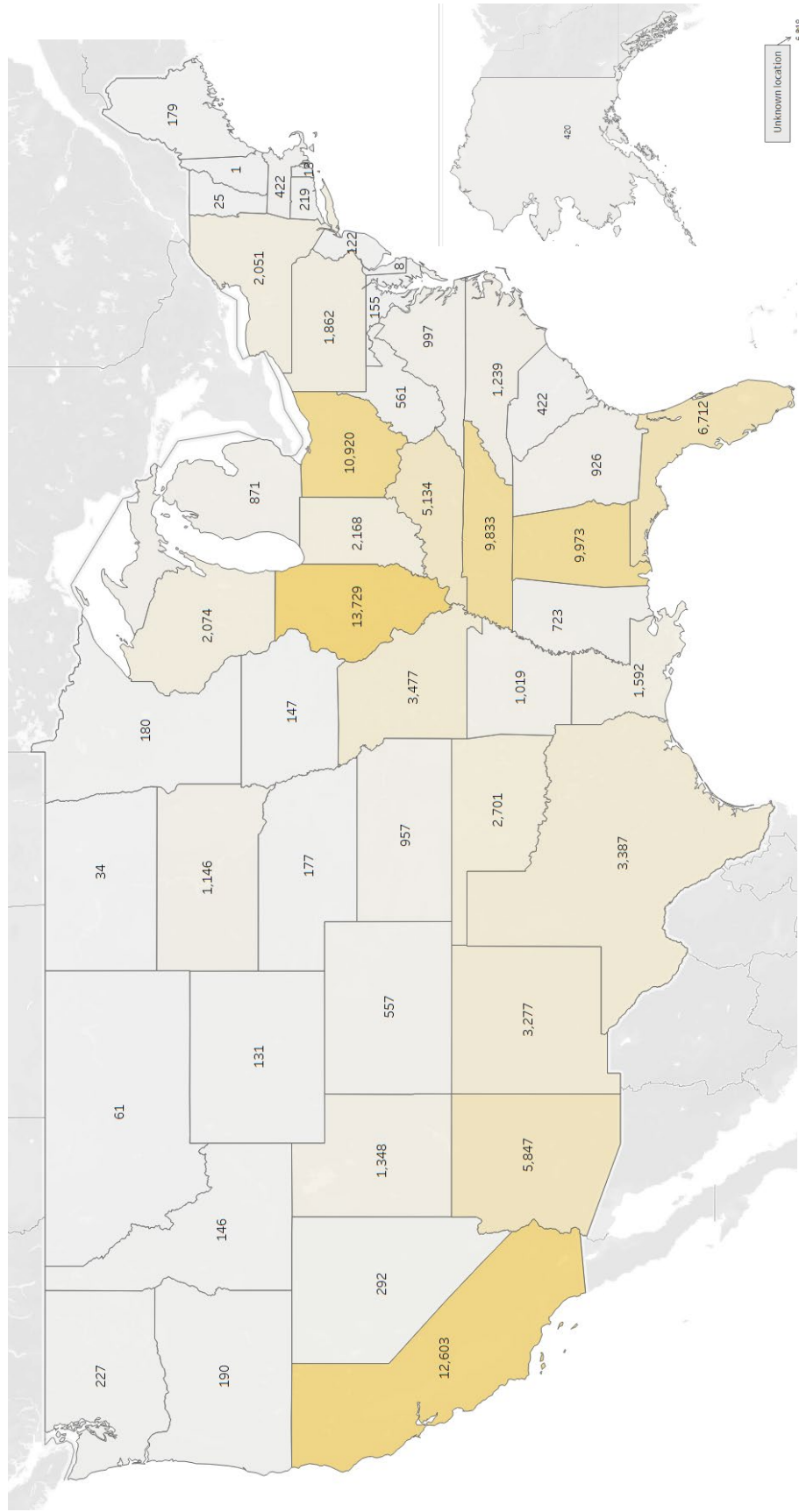
Native American Associated Funerary Objects in Holdings and Collections



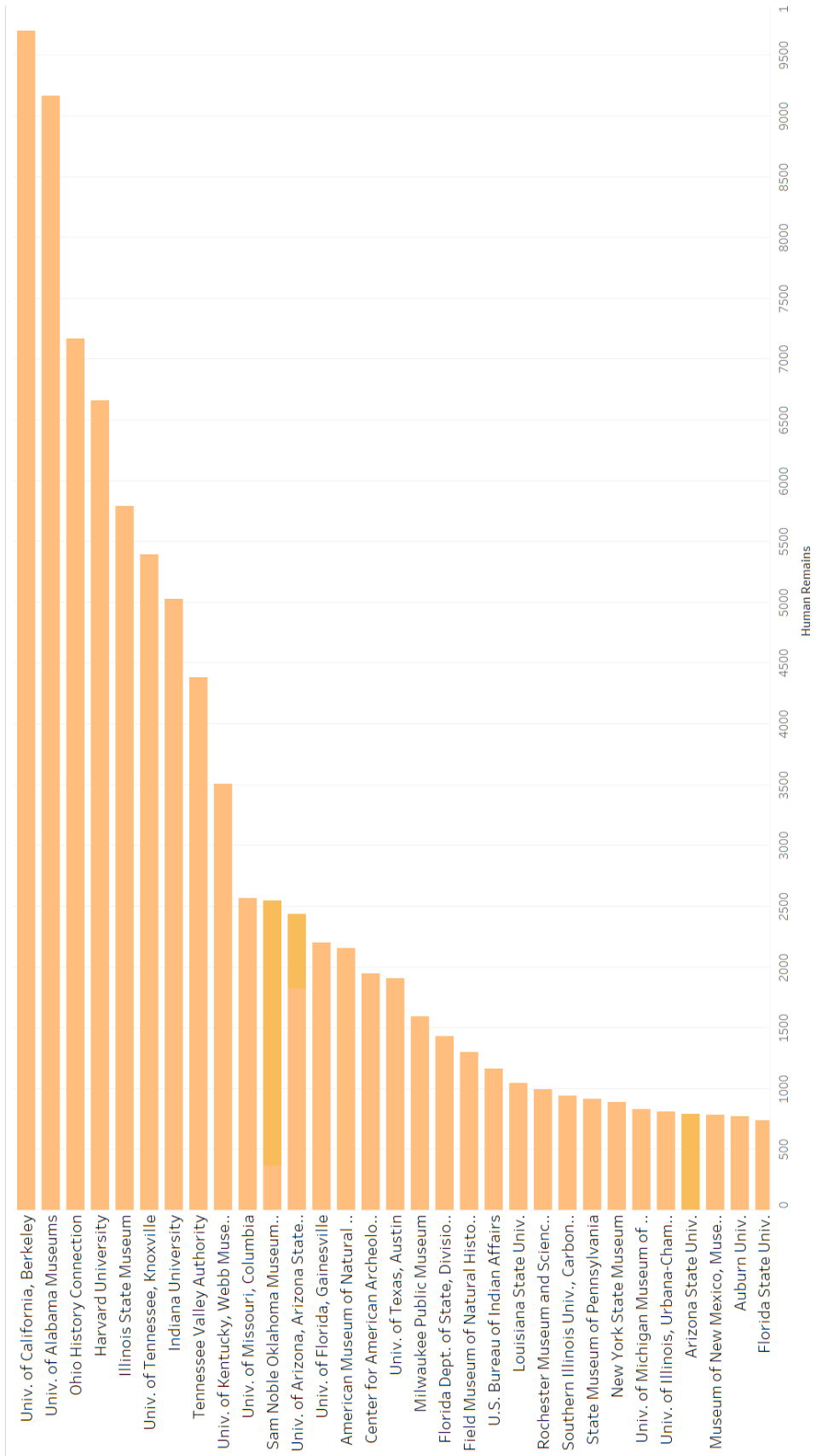
*Includes notices pending publication as of 10/1/2019

Native American Graves Protection & Repatriation
Review Committee

Sets of Native American human remains by state of removal/excavation.
Showing the 118,225 human remains pending consultation/notice as of Sept 2019.



Sets of Native American human remains by institution.
Showing the 118,225 human remains pending consultation/notice as of Sept 2019.





United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Teresa Leger Fernández
Chair, Subcommittee for Indigenous Peoples of the United States
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chair Fernández:

The Native American Graves Protection and Repatriation Review Committee (Review Committee) asked me to forward to you the Review Committee's fiscal year (FY) 2019 Report to Congress. On June 28, 2021, the Review Committee held a public meeting and requested the National Park Service distribute the FY 2019 report as prepared in October 2019 as a separate report instead of combining it with a FY 2020 report.

Section 8 of the Native American Graves Protection and Repatriation Act (NAGPRA) requires the Review Committee to report to Congress on the progress made, and any barriers encountered, in implementing NAGPRA. This is the twentieth report prepared for Congress by the Review Committee. As the report is the work product of the Review Committee, it does not necessarily reflect the views of the Department of the Interior (Department) or the National Park Service.

The Department would welcome an opportunity to discuss the issues raised in this report further and discuss how Congress might address them. We appreciate your interest in the successful implementation of NAGPRA and look forward to working closely with you and other members of Congress on NAGPRA matters. If you have any questions regarding the Review Committee, please do not hesitate to contact the Review Committee's Designated Federal Officer, Melanie O'Brien, at Melanie_O'Brien@nps.gov or by phone at (202) 354-2204.

A similar letter is being sent to the Honorable Chuck Schumer, Senate Majority Leader; Honorable Brian Schatz, Chairman, and the Honorable Lisa Murkowski, Vice Chairman, Committee on Indian Affairs in the United States Senate. In the U.S. House of Representatives, a similar letter is being sent to the Honorable Nancy Pelosi, Speaker; the Honorable Bruce Westerman, Ranking Member, Committee on Natural Resources; and the Honorable Don Young, Ranking Member, Subcommittee for Indigenous Peoples of the United States, Committee on Natural Resources.

Sincerely,

Shannon A. Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

Enclosure

cc: Members of the House Subcommittee for Indigenous Peoples of the United States



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Raúl Grijalva
Chair, Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chair Grijalva:

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Sincerely,

Shannon A. Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

Enclosure

cc: Members of the House Committee on Natural Resources
Members of the Native American Caucus



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Lisa Murkowski
Vice Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Senator Murkowski:

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Sincerely,

Shannon A. Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

Enclosure

cc: Members of the Senate Committee on Indian Affairs
Members of the Native American Caucus



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Dear Madam Speaker:

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Sincerely,

Shannon A. Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

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United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Brian Schatz
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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Sincerely,

Shannon A. Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

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cc: Members of the Senate Committee on Indian Affairs
Members of the Native American Caucus



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Chuck Schumer
Senate Majority Leader
Washington, DC 20510

Dear Senator Schumer:

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Sincerely,

Shannon A. Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

Enclosure



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Bruce Westerman
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Representative Westerman:

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cc: Members of the House Committee on Natural Resources
Members of the Native American Caucus



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

November 29, 2021

The Honorable Don Young
Ranking Member
Subcommittee for Indigenous Peoples of the United States
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Representative Young:

The Native American Graves Protection and Repatriation Review Committee (Review Committee) asked me to forward to you the Review Committee's fiscal year (FY) 2019 Report to Congress. On June 28, 2021, the Review Committee held a public meeting and requested the National Park Service distribute the FY 2019 report as prepared in October 2019 as a separate report instead of combining it with a FY 2020 report.

Section 8 of the Native American Graves Protection and Repatriation Act (NAGPRA) requires the Review Committee to report to Congress on the progress made, and any barriers encountered, in implementing NAGPRA. This is the twentieth report prepared for Congress by the Review Committee. As the report is the work product of the Review Committee, it does not necessarily reflect the views of the Department of the Interior (Department) or the National Park Service.

The Department would welcome an opportunity to discuss the issues raised in this report further and discuss how Congress might address them. We appreciate your interest in the successful implementation of NAGPRA and look forward to working closely with you and other members of Congress on NAGPRA matters. If you have any questions regarding the Review Committee, please do not hesitate to contact the Review Committee's Designated Federal Officer, Melanie O'Brien, at Melanie_O'Brien@nps.gov or by phone at (202) 354-2204.

A similar letter is being sent to the Honorable Chuck Schumer, Senate Majority Leader; Honorable Brian Schatz, Chairman, and the Honorable Lisa Murkowski, Vice Chairman, Committee on Indian Affairs in the United States Senate. In the U.S. House of Representatives, a similar letter is being sent to the Honorable Nancy Pelosi, Speaker; the Honorable Raúl Grijalva, Chair, and the Honorable Bruce Westerman, Ranking Member, Committee on Natural Resources; and the Honorable Teresa Leger Fernández, Chair, Subcommittee for Indigenous Peoples of the United States, Committee on Natural Resources.

Sincerely,

Shannon A. Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

Enclosure

cc: Members of the House Subcommittee for Indigenous Peoples of the United States
Members of the Native American Caucus