

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

## **Report to the Congress for 2005**

### **Introduction**

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

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

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

### **Review Committee Activities**

This report summarizes the Review Committee's activities for calendar year 2005. The Review Committee convened two times during the reporting period: March 13-15, 2005, in Honolulu, HI; and November 16-17, 2005, in Albuquerque, NM.

**R**eview Committee membership changed in calendar year 2005. Members appointed from nominations received from Indian tribes, Native Hawaiian organizations, or traditional religious leaders were Willie Jones, Lee Staples, and Rosita Worl. Lee Staples resigned from the Review Committee in December 2005. Members appointed from nominations received from national museum organizations and scientific organizations were Garrick Bailey, Dan Monroe, and Vincas Steponaitis. The seventh member, appointed from a list of persons developed and consented to by all of the other members of the Review Committee was Vera Metcalf, whose term expired in June, 2004, but agreed to serve until the position was filled. Colin Kippen was appointed as the seventh member in August, 2005.

**T**he Review Committee's activities are prescribed by the Review Committee's charter and the Act. During calendar years 2005 the Review Committee –

- Monitored the inventory and identification process conducted by museums and Federal agencies;
- Attempted to facilitate the resolution of a dispute between the Hui Malama I Na Kupuna O Hawai'i Nei and the Bishop Museum regarding the Kalaina Wawae;
- Attempted to facilitate the resolution of a dispute between Hui Malama I Na Kupuna O Hawa'i Nei and the Bishop Museum regarding items from Molokai, HI;
- Attempted to facilitate the resolution of a dispute between Hui Malama I Na Kupuna O Hawai'i Nei and Hawaii Volcanoes National Park regarding five items from Kawaihae, HI;
- Reconsidered a previous recommendation regarding a dispute between Royal Hawaiian Academy of Traditional regarding items from Kawaiheha, HI;
- Monitored the completion of the inventory of culturally unidentifiable human remains;
- Made recommendations regarding the disposition of culturally unidentifiable human remains from Utah and South Dakota;
- Consulted with representatives of the Secretary of the Interior regarding proposed regulations for the disposition of unclaimed cultural items (43 CFR 10.7); and
- Consulted with Indian tribes, Native Hawaiian organizations, museums, and Federal agencies on inventory, identification, and repatriation activities.

## **Progress Made**

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

**S**ection 5 of the Act requires all museums and Federal agencies that have possession or control over Native American human remains and associated funerary objects to compile inventories of such items in consultation with Indian tribes and Native Hawaiian organizations. As of December 31, 2005, inventories had been completed by 538 museums and 265 Federal agencies.

**S**ection 6 of the Act requires all museums and Federal agencies that have possession or control over collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony to complete summaries of such collections. As of December 31, 2005, summaries had been completed by 770 museums and 287 Federal agencies.

**S**ection 7 of the Act requires all museums and Federal agencies to repatriate human remains, funerary objects, sacred objects, and objects of cultural patrimony upon the request of known lineal descendants or culturally affiliated Indian tribes or Native Hawaiian organizations. While the number of actual repatriations is not monitored, notices published in the Federal Register provide a measure of museums and Federal agencies that have agreed to repatriate cultural items. As of December 31, 2005, museums and Federal agencies had published 879 notices of inventory completion accounting for the remains of 31,675 individuals and 638,342 associated funerary objects. Museums and Federal agencies had also published 323 notices of intent to repatriate accounting for 93,182 unassociated funerary objects, 3,341 sacred objects, 277 objects of cultural patrimony, and 662 cultural items that fit both the sacred and cultural patrimony categories.

**I**n 2005 a complete database of Native American human remains that have been determined to be culturally unidentifiable and associated funerary objects was made available on the Web. This database was compiled on behalf of the Review Committee pursuant to 43 CFR 10.10 (g). The database includes 15,990 records describing 118,352 Native American human remains and 852,660 associated funerary objects inventoried by 605 museums and Federal agencies. Among the human remains included here are 3,626 that have been affiliated or transferred since they were first inventoried as culturally unidentifiable. Corrections, updates, and additions to this database will be made as museums and agencies continue to verify the data that have been entered, or submit revised inventories.

## **Barriers Encountered**

**R**eview Committee is very concerned about the costs of compliance. These costs include documentation, consultation, travel, and the transfer of cultural items. Most of these costs are borne by museums, Federal agencies, and tribes. The National NAGPRA Program administers a competitive grant program to assist in funding some of these activities. The National NAGPRA Program anticipates awarding grants in FY2006 totaling approximately \$2 million. This amount is only about 54% of what the applicants requested this year. The Review Committee strongly endorses the effectiveness of NAGPRA grants. Also, the Review Committee continues to be concerned that annual shortfalls in overall program funding are made up at the expense of grant awards. With the advent of the culturally unidentifiable database placing information in the inventories on-line and accessible to tribes, it is anticipated that there will be a resurgence of consultation activity on a large scale, putting additional pressure on the grants program.

**M**ore than 15 years after NAGPRA's passage, four key sections of the implementing regulations are still pending. Currently, the proposed rules for disposition of culturally unidentifiable human remains (43 CFR 10.11) and final rules on future applicability (43 CFR 10.13) are under review within the Department of the Interior. In addition, rules on the disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony (43 CFR 10.7) are still in development, with ongoing consultations. Work on 43 CFR 10.15(b), failure to claim where no repatriation or disposition has occurred, has not yet begun, pending completion of the other rules. The Review Committee believes it is of utmost importance that these rules be completed and implemented as soon as possible.

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

**T**he ability to rebury as close to the original interment site as possible is an issue of great importance to many Native Americans. Since many of the human remains subject to NAGPRA originate from burials on Federal lands, agencies' reburial policies often determine whether a repatriation can be fully satisfactory. Unfortunately, there is no uniform Federal policy on reburial. The Review Committee recommends that a uniform reburial policy on Federal lands be developed in consultation between agencies and tribes, and adopted.

## Recommendations

Authorized by the Native American Graves Protection and Repatriation Act [25 U.S.C. 3006], the Native American Graves Protection and Repatriation Review Committee has served since 1992 to monitor and review implementation of the Act. At its May 30-31, 2006, meeting, the Review Committee made the following recommendations:

- 1. Costs to Comply with NAGPRA.** The Review Committee recommends that Congress appropriate the following amounts for FY2008 to ensure continued implementation of the Act:
  - At least \$5 million in grants to Indian tribes, Native Hawaiian organizations, and museums;
  - The amounts requested by the administration that is targeted for the National NAGPRA Program and each Federal agency's compliance efforts.

The Review Committee also recommends that the President request the same amounts listed above in the FY2009 budget proposal.

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

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

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

**National Park Service  
U.S. Department of the Interior**



**National NAGPRA**

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

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

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

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