

July 2010

**NATIVE AMERICAN
GRAVES
PROTECTION AND
REPATRIATION ACT**

**After Almost 20 Years,
Key Federal Agencies
Still Have Not Fully
Complied with the Act**



GAO

Accountability * Integrity * Reliability



Highlights of [GAO-10-768](#), a report to congressional requesters

Why GAO Did This Study

The Native American Graves Protection and Repatriation Act (NAGPRA) required federal agencies and museums to (1) identify their Native American human remains and other objects, (2) try to culturally affiliate them with a present day Indian tribe or Native Hawaiian organization, and (3) repatriate them under the terms in the act. The National NAGPRA office, within the Department of the Interior's National Park Service (NPS), facilitates the government-wide implementation of NAGPRA. GAO was asked to determine, among other things, the (1) extent to which agencies have complied with their NAGPRA requirements, (2) actions taken by National NAGPRA, and (3) extent of repatriations reported by agencies. GAO reviewed records for eight key agencies with significant historical collections, surveyed agencies to obtain repatriation data, and interviewed agency, museum, and tribal officials.

What GAO Recommends

GAO recommends, among other things, that the Departments of Agriculture, Defense, and the Interior as well as TVA report to Congress the actions that they need to take to fully comply with the act and that they report the status of their repatriations to National NAGPRA. GAO is also recommending that National NAGPRA make improvements in its facilitation of the act. Agriculture, Interior, and TVA agreed with GAO's recommendations. The Department of Defense did not provide comments on the report.

View [GAO-10-768](#) or [key components](#). For more information, contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov.

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act

What GAO Found

Almost 20 years after NAGPRA, key federal agencies still have not fully complied with the act for their historical collections acquired on or before NAGPRA's enactment. GAO examined NAGPRA implementation in detail for eight key federal agencies with significant historical collections: Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), U.S. Fish and Wildlife Service (FWS) and NPS; Agriculture's U.S. Forest Service; the U.S. Army Corps of Engineers (Corps); and the Tennessee Valley Authority (TVA). First, all of the agencies acknowledge that they still have additional work to do to fully comply with the act's requirements to identify all of their NAGPRA items, establish cultural affiliations when possible, and create summaries and inventories of the items. Overall, the Corps, the Forest Service, and NPS did the most work to identify their NAGPRA items. BLM, BOR, and FWS did some work, and BIA and TVA have done the least amount of work. Second, some of the eight agencies, along with some other federal agencies, have not fully complied with NAGPRA's requirement to publish notices of inventory completion for all of their culturally affiliated human remains and associated funerary objects in the *Federal Register*. Until agencies (1) identify all of the possible NAGPRA items in their historical collections, (2) establish cultural affiliations to the extent possible, and (3) publish the required notices, they cannot repatriate their Native American human remains and objects.

To fulfill the Secretary of the Interior's responsibilities under NAGPRA, National NAGPRA has taken some actions consistent with the act, such as publishing notices in the *Federal Register* and administering a grants program. However, GAO identified some actions of concern. National NAGPRA developed a list of Indian tribes eligible under NAGPRA that was inconsistent with BIA's official list of federally recognized tribes and departmental policy. Furthermore, National NAGPRA did not always screen nominations for Review Committee positions properly and, in a few cases, inappropriately recruited nominees for Review Committee positions.

Through fiscal year 2009, 55 percent of the human remains and 68 percent of the associated funerary objects that have been published in notices of inventory completion had been repatriated, according to agency data and GAO's survey results. Agencies are required to permanently document their repatriations, but they are not required to compile and report that information to anyone. Only three agencies—the Corps, the Forest Service, and NPS—centrally track their repatriations. These three agencies, however, along with the other federal agencies that have published notices, generally do not report any of their data on repatriations to National NAGPRA or to Congress. As a result, policymakers, Indian tribes, and Native Hawaiians organizations do not have access to readily available information about culturally affiliated NAGPRA items that have not been repatriated. According to officials, the remaining items have not been repatriated for a variety of reasons, such as a lack of repatriation requests and financial constraints.

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Abbreviations

ANCSA	Alaska Native Claims Settlement Act
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOR	Bureau of Reclamation
FWS	U.S. Fish and Wildlife Service
NAGPRA	Native American Graves Protection and Repatriation Act
NPS	National Park Service
TVA	Tennessee Valley Authority

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United States Government Accountability Office
Washington, DC 20548

July 28, 2010

The Honorable Byron Dorgan
Chairman
Committee on Indian Affairs
United States Senate

The Honorable Nick J. Rahall, II
Chairman
Committee on Natural Resources
House of Representatives

Many federal agencies and museums have acquired Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony over hundreds of years. When the Native American Graves Protection and Repatriation Act (NAGPRA) was enacted, on November 16, 1990,¹ it was estimated that federal agencies and museums had tens of thousands of such items in their historical collections.² NAGPRA required federal agencies and museums to (1) identify their Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony,³ (2) try and determine if a cultural affiliation exists with a

¹Pub. L. No. 101-601, 104 Stat. 3048-58 (1990), *codified at* 25 U.S.C. §§ 3001-3013. The implementing regulations for the act are at 43 C.F.R. pt. 10. The items covered by NAGPRA are defined in table 1.

²NAGPRA has a separate provision for Native American items newly excavated or discovered on federal or tribal lands after the date of enactment, referred to as new or inadvertent discoveries and intentional excavations. New or inadvertent discoveries and intentional excavations are covered in section 3 of the act (25 U.S.C. § 3002) and the identification and repatriation of NAGPRA items within collections that existed on or before the date of enactment, referred to as historical collections, are covered in sections 5, 6, and 7 (25 U.S.C. §§ 3003-3005). In accordance with NAGPRA's implementing regulations, section 5, 6, and 7 also apply to collections federal agencies and museums acquire, from sources other than federal or tribal land, after NAGPRA's enactment. This report focuses on historical collections.

³"Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States. 25 U.S.C. § 3001(9).

present day Indian tribe or Native Hawaiian organization,⁴ and (3) generally repatriate the culturally affiliated items to the applicable Indian tribe(s) or Native Hawaiian organization(s) under the terms and conditions prescribed in the act.⁵ However, a June 2008 report by the Makah Indian Tribe and the National Association of Tribal Historic Preservation Officers reported a number of concerns about federal agencies' compliance with the act.⁶

Of the variety of NAGPRA requirements for federal agencies, museums, and the Secretary of the Interior, those most relevant to their historical collections, and which are the focus of this report, include the following:

- Having each federal agency and museum, with NAGPRA items in their collections, (1) compile an inventory of Native American human remains and associated funerary objects; (2) compile a summary of Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony; and (3) repatriate culturally affiliated human remains and objects identified through the inventory or summary processes if the terms and conditions prescribed in the act are met.
- Having the Secretary of the Interior establish a Review Committee to monitor and review the implementation of these requirements.
- Having certain duties assigned to the Secretary of the Interior, which are carried out by the National NAGPRA Program Office (National NAGPRA)

⁴“Indian tribe” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. § 3001(7). “Native Hawaiian organization” means any organization which (1) serves and represents the interests of Native Hawaiians, (2) has as a primary and stated purpose the provision of services to Native Hawaiians, and (3) has expertise in Native Hawaiian affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei. 25 U.S.C. § 3001(11).

⁵NAGPRA requires repatriation to lineal descendants under certain circumstances, for example when a direct lineal descendant of an individual who owned a sacred object requests repatriation. In this report, we refer to repatriation of culturally affiliated human remains and objects to Indian tribes and Native Hawaiian organizations but intend that reference to include lineal descendants when applicable.

⁶Makah Indian Tribe and the National Association of Tribal Historic Preservation Officers, *Federal Agency Implementation of the Native American Graves Protection and Repatriation Act* (Washington, D.C.: June 30, 2008).

within the Department of the Interior's National Park Service's (NPS) Cultural Resources program.

To address the status of NAGPRA implementation, you asked us to determine the (1) extent to which federal agencies have complied with NAGPRA's requirements for their historical collections; (2) activities taken by the Review Committee to fulfill its role under NAGPRA and what challenges, if any, it faces; (3) actions taken by National NAGPRA to fulfill its responsibilities under NAGPRA; and (4) extent to which federal agencies reported repatriating Native American human remains and objects.

To determine the extent to which federal agencies have complied with their NAGPRA requirements for their historical collections, we obtained and verified data from National NAGPRA on all federal agencies' notices of NAGPRA items published in *Federal Register* notices through the end of fiscal year 2009. We examined NAGPRA implementation in detail for eight key federal agencies with significant historical collections: Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), U.S. Fish and Wildlife Service (FWS), and NPS; the U.S. Army Corps of Engineers (Corps); the Department of Agriculture's U.S. Forest Service; and the Tennessee Valley Authority (TVA). For each of these agencies we reviewed records on NAGPRA compliance, such as inventories, summaries, *Federal Register* notices, and correspondence. We interviewed both headquarters and field staff for each agency, except TVA, to discuss their NAGPRA implementation. For TVA we interviewed its entire staff responsible for NAGPRA implementation. TVA's NAGPRA staff are located at its headquarters in Knoxville, Tennessee. We also reviewed information for other federal agencies that had published NAGPRA notices and included basic data on their submissions in our analysis. To determine how the Review Committee has carried out its role of monitoring and reviewing NAGPRA implementation and what challenges it faces, we attended two Review Committee meetings and interviewed 10 out of 23 current and former Review Committee members who represented a variety of experiences.⁷ We interviewed some federal, tribal, museum, and scientific organization officials on the role of the Review Committee. We also analyzed the Review Committee's recommendations to the Secretary of the Interior on

⁷As of September 30, 2009, there were 20 living current and former Review Committee members; 3 former members are deceased.

disposition requests for culturally unidentifiable human remains and its recommended resolutions of disputes. To examine how National NAGPRA has carried out its role of facilitating NAGPRA implementation, we reviewed National NAGPRA’s list of eligible Indian tribes, Review Committee nomination files, National NAGPRA annual reports, and we interviewed the National NAGPRA program staff. To measure the extent to which federal agencies have repatriated items published in notices of inventory completion, we obtained data from the three agencies that track their repatriations—the Corps, the Forest Service, and NPS. For other agencies that had published notices of inventory completion—four other key federal agencies as well as eight additional federal agencies—we deployed a survey. A more detailed description of our scope and methodology is presented in appendix I.

We conducted this performance audit from July 2009 to July 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

NAGPRA covers five types of Native American cultural items, which we refer to collectively, in this report, as NAGPRA items (see table 1).

Table 1: Five Types of Native American Cultural Items Covered by NAGPRA

NAGPRA item	Definition
Human remains	Physical remains of the body of a person of Native American ancestry. 43 C.F.R. § 10.2(d)(1).
Associated funerary objects	Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects. 25 U.S.C. § 3001(3)(A).
Unassociated funerary objects	Objects that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe. 25 U.S.C. § 3001(3)(B).

NAGPRA item	Definition
Sacred objects	Specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents. 25 U.S.C. § 3001(3)(C).
Objects of cultural patrimony	Objects having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group. 25 U.S.C. § 3001(3)(D).

Source: NAGPRA and its implementing regulations.

Since the early 1800s, federal agencies have amassed archeological collections with items numbering in the millions. Some, such as NPS, acquired their collections through archeological excavations intended to advance scientific knowledge and preserve cultural resources. Others, such as the Corps and TVA, have made discoveries during the massive construction projects that are part of their missions.⁸ Forest Service officials estimated that an overwhelming majority of the agency’s collections resulted from non-Forest Service initiated activities, such as research by museums and universities or as a result of the construction of highways, reservoirs, and pipelines; or mining claims. Interior—with its land-management agencies—has the largest collection outside of the Smithsonian Institution, with an estimated 146 million objects and documents that cover archeology as well as disciplines such as art and zoology. Federal agency archeological collections are currently stored at a variety of repositories,⁹ both federal and nonfederal, located throughout the country. For example, BLM’s collections are stored at three BLM facilities and 121 other repositories. According to TVA officials, TVA’s collections are stored at universities in Alabama, Kentucky, Michigan, Mississippi, North Carolina, and Tennessee.¹⁰ These federal collections

⁸The federal government has come into possession of collections, and Native American collections in particular, through other means. For example, in the late 1880s, the Surgeon General issued a directive for military personnel in the field to gather the skulls of Native Americans killed in battle for the purposes of scientific study. The remains were first stored and studied at the Army Medical Museum, then later became part of the Smithsonian Institution’s collections.

⁹A repository is a facility such as a museum, archeological center, laboratory or storage facility that is managed by a university, college, museum, or other educational or scientific institution, a federal, state, or local government agency, or Indian tribe that can provide professional, systematic, and accountable curatorial services on a long-term basis. 36 C.F.R. § 79.4(j).

¹⁰According to TVA officials, its NAGPRA items are confined to the collections in Alabama, Kentucky, and Tennessee.

include tens of thousands of Native American human remains and hundreds of thousands of funerary objects, sacred objects, and objects of cultural patrimony subject to NAGPRA.

NAGPRA defines a federal agency as any department, agency, or instrumentality of the United States, except the Smithsonian Institution,¹¹ and defines a museum as any institution or state or local government agency, including any institution of higher learning, that receives federal funds and has possession of, or control over,¹² Native American cultural items, except the Smithsonian Institution.¹³ The eight federal agencies with significant historical collections that we reviewed—BIA, BLM, BOR, FWS, NPS, the Corps, the Forest Service, and TVA—manage various amounts of federal land in conjunction with their missions and differ in organizational structure (see table 2). They also have long histories over which they came into possession or control of NAGPRA items.

¹¹The Smithsonian Institution's repatriation requirements were established in 1989 and amended in 1996. *See* National Museum of the American Indian Act, Pub. L. No. 101-185, §§ 11-17, 103 Stat. 1336, 1343-7 (1989); Pub. L. No. 104-278, §§ 3-5, 110 Stat. 3355-7 (1996) (codified as amended at 20 U.S.C. §§ 80q-9 to -15).

¹²"Possession" means having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations (43 C.F.R. § 10.2(a)(3)(i)); and "control" means having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the federal agency or museum to treat the objects as part of its collection for purposes of these regulations whether or not the human remains, funerary objects, sacred objects, or objects of cultural patrimony are in the physical custody of the federal agency or museum (43 C.F.R. § 10.2(a)(3)(ii)). Often collections controlled by federal agencies are in the possession of a nonfederal repository.

¹³25 U.S.C. § 3001(4) (federal agency); and 25 U.S.C. § 3001(8) (museum).

Table 2: Background Information on Eight Federal Agencies with Significant Historical Collections

Federal agency	Date established	Organization structure	Acres managed (in millions)	Estimated number of objects in museum collection (in millions)	Fiscal year 2010 total enacted agency budget (in billions)
Department of the Interior ^a					
BIA	1824	12 regions and 83 agency offices	55	5.7	\$4.8
BOR	1902	5 regions	6.5	8.3	1.2
BLM	1946 ^b	12 state offices and 144 field offices	253	13.2	1.3
NPS	1916	7 regions and 392 park units	84	122.5	3.2
FWS	1940 ^c	8 regions, 551 national wildlife refuges, and over 700 field offices	150	6.2	2.8
Corps of Engineers ^d	1802 ^e	8 regional divisions and 38 districts	11	^f	4.6
Forest Service	1905	9 regions, 155 national forests, 20 grasslands, and over 600 ranger districts	193	^g	6.2
TVA	1933	Independent federal corporation ^h	0.3 ⁱ	^j	^k

Source: Data from the eight federal agencies.

^aThe Department of the Interior was established in 1849 and was originally comprised of the General Land Office, the Patent Office, the Indian Affairs Office, and the military pension offices.

^bBLM was established in 1946 through the consolidation of the General Land Office, created in 1812, and the U.S. Grazing Service, formed in 1934.

^cFWS was established through the merger of the U.S. Fish Commission, established in 1871, and the Office of Economic Ornithology and Mammalogy, established in 1885.

^dAccording to Corps officials, the number of Corps organizational units listed in the table are the units that administer fee title lands and are subject to NAGPRA.

^eWhen the Continental Congress organized the Continental Army in 1775, it provided for a Chief Engineer to design and construct military batteries and fortifications. In 1802, Congress permanently established the Corps.

^fThe Corps estimates that the size of its collection is 47,500 cubic feet of objects.

^gThe Forest Service estimates that it manages 589,796 cubic feet of objects in museum collections. Forest Service archeological collections include 377,953 cubic feet of material at the Grey Towers National Historic Site, which is a historic mansion in Milford, Pennsylvania, converted into a conservation education and leadership center.

^hTVA has four main offices (Knoxville, Chattanooga, and Nashville, Tennessee; and Muscle Shoals, Alabama), regional customer service centers, and offices in seven economic development regions. It manages 11 coal-fired plants, 9 combustion turbine plants, 3 nuclear plants, 29 hydroelectric dams, and a pumped-storage plant, among other things.

ⁱAccording to TVA, it manages one of the nation's largest river systems covering a 41,000 square mile watershed and 11,000 miles of shoreline.

^jTVA estimates that the size of its collection is 20,954 cubic feet of objects.

^kTVA is an independent, wholly owned federal corporation and receives no federal funding for its operations. It is funded through power sales and the sales of bonds on the financial markets. It has annual revenues of over \$9 billion.

In addition, the missions of the agencies vary widely. For example, NPS's mission is to preserve unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. In contrast, the mission of TVA is to serve the Tennessee Valley through energy, environment, and economic development. Because of their varying missions, the scope and treatment of their archeological programs have also differed.

Since 1906, federal agencies have been issuing permits to individuals, universities, and corporations to perform archeological excavation and research on the federal land they manage.¹⁴ Although the permitting system has changed over time, these permits generally allowed the entities conducting the excavation and research to preserve the excavated materials in public museums.¹⁵ Thus, in theory, archeological materials legally excavated from federal lands since 1906 are recorded in agency reports and records, or in permitting records located in agency files, the Smithsonian Institution's National Anthropological Archives, or the National Archives. However, due to the age of some of the permits, the large number of permits, and administrative processes that have changed over time, it can be difficult for some agencies to know where all of their collections are currently located. For example, a recent Interior Inspector General report stated that Interior agencies' collections are held in 625 Interior facilities and at least 1,020 non-Interior facilities, but that four of its agencies were not aware of the location of their collections held in the non-Interior facilities.¹⁶

¹⁴The Antiquities Act of 1906 authorized the Secretaries of the Interior, Agriculture, and Army to issue permits for the examination of ruins, excavation of archeological sites, and the gathering of objects of antiquity on lands under their jurisdiction. Pub. L. No. 59-209, 34 Stat. 225 (1906), *codified at* 16 U.S.C. §§ 431-433. These three departments adopted joint regulations that authorized the Secretaries to issue the permits after receiving a recommendation on the permit application from the Smithsonian Institution. The Archaeological Resources Protection Act of 1979 replaced the Antiquities Act of 1906. Pub. L. No. 96-95, 93 Stat. 721 (1979), *codified at* 16 U.S.C. §§ 470aa-mm. In 1981, when the Archaeological Resources Protection Act process came into effect, NPS issued permits for all government agencies, and some agencies eventually began issuing permits themselves.

¹⁵Federal regulations regarding how agencies should oversee and manage these collections removed from federal lands but preserved in public museums were not promulgated until September 1990, 2 months before NAGPRA was enacted. 55 Fed. Reg. 37616 (Sept. 12, 1990).

¹⁶U.S. Department of the Interior, Office of the Inspector General, *Department of the Interior – Museum Collections: Accountability and Preservation*, Report No. C-IN-MOA-0010-2008 (Washington, D.C.: Dec. 16, 2009).

NAGPRA Requirements for Historical Collections

NAGPRA's requirements for federal agencies, museums, and the Secretary of the Interior, particularly the ones most relevant to their historical collections, which are the focus of this report, include the following:

- *Compile an inventory and establish cultural affiliation.* Section 5 of NAGPRA required that each federal agency and museum compile an inventory of any holdings or collections of Native American human remains and associated funerary objects that are in its possession or control. The act required that the inventories be completed no later than 5 years after its enactment—by November 16, 1995—and in consultation with tribal government officials, Native Hawaiian organization officials, and traditional religious leaders. In the inventory, agencies and museums are required to establish geographic and cultural affiliation to the extent possible based on information in their possession. Cultural affiliation denotes a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.¹⁷ Affiliating NAGPRA items with a present day Indian tribe or Native Hawaiian organization is the key to deciding to whom the human remains and objects should be repatriated. If a cultural affiliation can be made, the act required that the agency or museum notify the affected Indian tribes or Native Hawaiian organizations no later than 6 months after the completion of the inventory. The agency or museum was also required to provide a copy of each notice—known as a notice of inventory completion—to the Secretary of the Interior for publication in the *Federal Register*. The items for which no cultural affiliation can be made are referred to as culturally unidentifiable.¹⁸
- *Compile a summary of other NAGPRA items.* Section 6 of NAGPRA required that each federal agency and museum prepare a written summary of any holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony in its possession

¹⁷25 U.S.C. § 3001(2).

¹⁸NAGPRA's implementing regulations direct federal agencies and museums to retain possession of culturally unidentifiable human remains pending promulgation of 43 C.F.R. § 10.11 (the regulation to govern the disposition of culturally unidentifiable human remains) unless legally required to do otherwise, or recommended to do otherwise by the Secretary of the Interior. Recommendations regarding the disposition of culturally unidentifiable human remains may be requested prior to final promulgation of 43 C.F.R. § 10.11. 43 C.F.R. § 10.9(e)(6). The regulation to govern the disposition of culturally unidentifiable human remains, 43 C.F.R. § 10.11, was promulgated on March 15, 2010, and became effective on May 14, 2010. 75 Fed. Reg. 12378 (Mar. 15, 2010). Appendix IV further discusses this regulation.

or control, based on the available information in their possession. The act required that the summaries be completed no later than 3 years after its enactment—by November 16, 1993. Preparation of the summary was to be followed by federal agency consultation with tribal government officials, Native Hawaiian organization officials, and traditional religious leaders. The summary was to describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable. After a valid claim is received by an agency or museum, and if the other terms and conditions in the act are met, a notice of intent to repatriate must be published in the *Federal Register* before any item identified in a summary can be repatriated.¹⁹ In contrast to a notice of inventory completion for NAGPRA items listed in inventories, notices of intent to repatriate for NAGPRA items listed in summaries are not published until after an Indian tribe or Native Hawaiian organization has submitted a claim for an item.

- *Repatriate culturally affiliated human remains and objects.* Section 7 of NAGPRA and its implementing regulations generally require that, upon the request of an Indian tribe or Native Hawaiian organization, all culturally affiliated NAGPRA items be returned to the applicable Indian tribe or Native Hawaiian organization expeditiously—but no sooner than 30 days after the applicable notice is published in the *Federal Register*—if the terms and conditions prescribed in the act are met. Furthermore, the regulations require federal agencies and museums to adopt internal procedures adequate to permanently document the content and recipients of all repatriations.²⁰

Review Committee Established by NAGPRA

Section 8 of NAGPRA required the Secretary of the Interior to establish a Review Committee to monitor and review the implementation of the inventory and identification process and repatriation activities under the act.²¹ The Review Committee is composed of seven members appointed by the Secretary. Three members are to be appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders. At least two of these members must be traditional Indian religious leaders. Three members are to be appointed from nominations submitted by national museum organizations and

¹⁹ 43 C.F.R. § 10.8(f).

²⁰ 43 C.F.R. § 10.10(f)(1).

²¹ 25 U.S.C. § 3006.

scientific organizations. The seventh member is to be appointed from a list of persons developed and consented to by all of the other members. Among other functions, the Review Committee is responsible for (1) upon request, reviewing and making findings related to the identity or cultural affiliation of cultural items or the return of such items;²² (2) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, and federal agencies or museums relating to the return of such items;²³ and (3) compiling an inventory of culturally unidentifiable human remains and recommending specific actions for developing a process for disposition of such remains.

The Review Committee is a federal advisory committee subject to the requirements of the Federal Advisory Committee Act and its implementing regulations.²⁴ The Federal Advisory Committee Act establishes requirements for advisory committees subject to the act, including broad requirements for balance, independence, and transparency. Specifically, the Federal Advisory Committee Act requires that the membership of committees be “fairly balanced in terms of points of view represented and the functions to be performed by the advisory committee.” Members of advisory committees subject to the Federal Advisory Committee Act are generally appointed as special government employees or representatives. Special government employees are appointed to provide advice on behalf of the government on the basis of their best judgment and must meet certain federal requirements pertaining to freedom from conflicts of interest.²⁵ Representatives, in contrast, provide stakeholder advice—that is, advice reflecting the views of the entity or interest group they are representing, such as industry, labor, or consumers—and are not subject to the same conflict of interest requirements. NAGPRA Review Committee members are appointed as special government employees. The Federal

²²Pub. L. No. 101-601, § 8(c)(3) (1990), *codified at* 25 U.S.C. § 3006(c)(3).

²³Pub. L. No. 101-601, § 8(c)(4) (1990), *codified at* 25 U.S.C. § 3006(c)(4). The Review Committee’s authority under sections 8(c)(3) and section 8(c)(4) is separate and distinct from the Review Committee’s authority to hear and make recommendations regarding the disposition of culturally unidentifiable human remains. We refer to these findings, recommendations, and facilitating the resolution of disputes that do not involve culturally unidentifiable human remains simply as “disputes” in this report.

²⁴Pub. L. No. 92-463, 86 Stat. 770 (1972) (classified at 5 U.S.C. app. 2); 41 C.F.R. pt. 102-3.

²⁵Federal conflict-of-interest statutes (18 U.S.C. § 201), including the principal criminal financial conflict-of-interest statute (18 U.S.C. § 208), apply to regular and, in large part, special government employees.

Advisory Committee Act also requires the Secretary of the Interior to appoint a Designated Federal Officer for the NAGPRA Review Committee. Among other things, the officer must approve or call the meetings of the committee, approve the agendas, and attend the meetings.

The NAGPRA Review Committee differs from most advisory bodies subject to the Federal Advisory Committee Act in two important ways. First, while most agencies have broad discretion in balancing their committees, NAGPRA limits this discretion because of its requirements both for the types of members that can serve (i.e., the requirement that at least two members be traditional Indian religious leaders) and the entities that can nominate them. Second, according to Interior officials, most federal advisory committees are not tasked with the dispute resolution function performed by the Review Committee.

NPS's National NAGPRA Program Office

NAGPRA also assigned duties to the Secretary of the Interior that are carried out by the National NAGPRA Program Office (National NAGPRA) within Interior's NPS Cultural Resources program. National NAGPRA has a staff of 5.75 full-time equivalent employees and one contractor. Its annual operating budget, which includes the operating expenses for the Review Committee, is about \$1 million. One of the duties assigned to National NAGPRA is to help fill vacancies on the Review Committee. National NAGPRA is also responsible for developing NAGPRA's implementing regulations and it provides administrative support to the Review Committee. The main body of the regulations was proposed in 1993 and became effective in 1996.²⁶

The Evolution of National NAGPRA

NAGPRA required the Secretary of the Interior to perform a number of functions, which the Secretary initially delegated to the Departmental Consulting Archeologist, a position within NPS that provides coordination, leadership, technical assistance, and guidance to all federal agencies with responsibility for archeological resources. According to agency officials, this position was housed within the Archeological Assistance Division under the Associate Director for Cultural Resources. Officials further stated that, from 1990 to the mid-1990s, the Departmental Consulting Archeologist and other support staff within the Archeological Assistance Division were responsible for facilitating NAGPRA compliance

²⁶58 Fed. Reg. 31122 (May 28, 1993) (proposed rule); and 60 Fed. Reg. 62134 (Dec. 4, 1995) (final rule). The final rule was effective on January 3, 1996.

governmentwide (such as reviewing inventories and summaries and publishing notices) and the Anthropology Division, also within the Cultural Resources Program, was responsible for conducting NPS's compliance activities to meet NAGPRA requirements (such as completing inventories and summaries and drafting notices). Both offices reported to the Associate Director of Cultural Resources. Officials said that in the mid-1990s, the Archeological Assistance Division and Anthropology Division were merged into a new unit—the Archeology and Ethnography Program—under the Departmental Consulting Archeologist, who then conducted both activities until 2000.

In 2000, due to concerns voiced by NAGPRA practitioners over a conflict of interest between NPS's facilitation of governmentwide NAGPRA implementation and its own NAGPRA compliance, the Director of NPS split these functions by creating a National NAGPRA office to handle the facilitation of NAGPRA governmentwide and a Park NAGPRA office to handle NPS compliance with the act. However, the two offices still reported to the Associate Director for Cultural Resources. New staff were brought in for National NAGPRA; the Departmental Consulting Archeologist continued to lead Park NAGPRA efforts and both NAGPRA programs reported to the manager of the Center for Cultural Resources, under the Associate Director for Cultural Resources.

Additional changes were made in 2004 due to continued concerns about the two offices reporting to the same manager under the Associate Director for Cultural Resources. The Secretary removed Park NAGPRA from the Cultural Resources Program and placed it within the Office of Indian Affairs and American Culture in NPS's Intermountain Region; this office then reported to the Regional Director. In addition to being organizationally moved, Park NAGPRA was physically moved from Washington, D.C., to the Intermountain Region located in Denver, Colorado. National NAGPRA was removed from the Center for Cultural Resources and placed directly under the Associate Director for Cultural Resources, but it remained in Washington, D.C.²⁷ As a result of these changes, the Departmental Consulting Archeologist and the Archeology Program, as it is currently known, no longer has any NAGPRA responsibilities.

²⁷ Although its location within NPS has changed over time, and it has been called different things over time, for simplicity in our report we will refer to the office that has carried out the Secretary of the Interior's national responsibilities under NAGPRA since 1990 as National NAGPRA.

National NAGPRA's Grant Program

National NAGPRA operates a grants program established by section 10 of NAGPRA that amounts to about \$2 million per year. The grants are for two purposes—consultation and repatriation.²⁸ Consultation grants are competitively awarded to Indian tribes, Native Hawaiian organizations, and museums to consult and document human remains and objects. They are not awarded for activities related to excavations or inadvertent discoveries under section 3 of NAGPRA, cultural items in the control of a foreign institution, or activities associated with the Smithsonian Institution, among other things. For fiscal year 2010, consultation grant awards can range from \$5,000 to \$90,000. National NAGPRA issues an annual call for consultation grants that provides a deadline for applications. In contrast, repatriation grants are non-competitive and are awarded to defray the expenses associated with repatriating human remains and objects, such as the packaging, transportation, and documenting the condition and treatment history of cultural items to mitigate potential health risks. Applications for repatriation grants are accepted on a rolling basis year round.

Once received, National NAGPRA staff review the applications for consultation and repatriation grants to ensure they meet the eligibility requirements. For consultation grants, a panel, selected by National NAGPRA and consisting of federal government employees familiar with repatriation issues, reviews and scores grant applications and provides recommendations on which grants to award. The Assistant Secretary of Fish, Wildlife, and Parks ultimately makes the award decisions. According to the National NAGPRA Program Manager, consultation and repatriation grants are neither available to federal agencies nor to Indian tribes or Native Hawaiian organizations seeking to consult with and repatriate items from federal agencies.

Federally Recognized Tribes and Alaska Native Villages

In accordance with NAGPRA's implementing regulations, National NAGPRA has developed a list of Indian tribes and Native Hawaiian organizations for the purposes of carrying out the act. The list is comprised of federally recognized tribes, Native Hawaiian organizations, and, at various points in the last 20 years, corporations established

²⁸Although consultation grants are technically referred to as consultation/documentation grants, for the purposes of this report, we will refer to them as consultation grants.

pursuant to the Alaska Native Claims Settlement Act (ANCSA).²⁹ The term “recognize” means the federal government acknowledges that a particular Native American group is a tribe by conferring specific legal status on that group, establishing a government-to-government relationship between the United States and the tribe, imposing on the government a fiduciary trust relationship to the tribe and its members and imposing specific obligations on the federal government to provide benefits and services to the tribe and its members.³⁰ National NAGPRA’s list has evolved over time as additional tribes have either been granted federal recognition or had their federal recognition restored.³¹ Since NAGPRA was enacted, 28 Indian tribes have been newly recognized or restored (see app. II). In addition, hundreds of Indian groups that are currently not federally recognized have expressed an interest to BIA in seeking federal recognition.

Since the enactment of two recognition laws in 1994,³² BIA has regularly published a comprehensive list of recognized tribes—commonly referred to as the list of federally recognized tribes—that federal agencies are

²⁹Pub. L. No. 92-203, 85 Stat. 688 (1971), *codified as amended at* 43 U.S.C. §§ 1601-1629h. ANCSA directed the establishment of 12 for-profit regional corporations—1 for each geographic region in Alaska comprised of Natives having a common heritage and sharing common interests—and over 200 village corporations. It also allowed nonresident Alaska Natives to elect to establish a 13th regional corporation. In addition, ANCSA section 14(h)(2) allowed groups that did not qualify to form an Alaska Native village corporation to form Alaska Native “group” corporations and ANCSA section 14(h)(3) allowed Alaska Natives living in Sitka, Kenai, Juneau, and Kodiak to establish “urban” corporations.

³⁰H.R. Rep. No. 103-781 at 2-3 (1994).

³¹For additional information on BIA’s administrative process for granting federal recognition see GAO, *Indian Issues: Improvements Needed in Tribal Recognition Process*, GAO-02-49 (Washington, D.C.: Nov. 2, 2001). Also see enclosure II of GAO, *Indian Issues: BLM’s Program for Issuing Individual Indian Allotments on Public Lands Is No Longer Viable*, GAO-07-23R (Washington, D.C.: Oct. 20, 2006), for information on new and restored tribes.

³²The Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, Title I (1994), recognizes that the Secretary of the Interior is charged with keeping a list of all federally recognized tribes that should be accurate and regularly updated since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States and that the list should reflect all of the federally recognized Indian tribes in the United States that are eligible for the special programs and services provided by the United States because of their status as Indians. Additionally, in response to the omission of the Central Council of Tlingit and Haida Indian Tribes of Alaska from BIA’s 1993 list, Congress passed the Tlingit and Haida Status Clarification Act to reaffirm and acknowledge that the Council is a federally recognized tribe. Pub. L. No. 103-454, Title II (1994). The Council has been included in subsequent BIA lists of federally recognized tribes.

supposed to use to identify federally recognized tribes. As of August 11, 2009, there were 564 federally recognized tribal entities—339 in the continental United States and 225 in Alaska—recognized and eligible for funding and services from BIA by virtue of their status as Indian tribes.³³ Indian groups not included in the list are commonly referred to as “non-federally recognized tribes.”

The recognition of Alaska Native entities eligible for the special programs and services provided by the United States to Indians because of their status as Indians has been controversial. Since a 1993 legal opinion by the Solicitor of the Department of the Interior,³⁴ BIA’s list of federally recognized tribes has not included any ANCSA group, regional, urban, and village corporations. These corporations, chartered under state law, were the vehicle for distributing land and monetary benefits to Alaska Natives to provide a fair and just settlement of aboriginal land claims in Alaska.

ANCSA defined Alaska Native villages by referring to the lists of villages contained in sections 11 and 16 of ANCSA. ANCSA required the Secretary of the Interior to review the section 11 list and add or delete villages that did not meet specified requirements. The Secretary’s review produced a so-called modified list, which included Alaska Native villages defined in or established under section 11 of ANCSA and the villages listed in section 16. Interior’s Solicitor has noted that a number of post-ANCSA statutes have included Alaska Native villages within their definition of Indian tribe by reference to the ANCSA definition of Native village and that these references are to this modified ANCSA list.

Key Federal Agencies Have Not Fully Complied with NAGPRA for Their Historical Collections

While the eight key federal agencies we reviewed generally prepared their summaries and inventories by the statutory deadlines, the amount of work put into identifying their NAGPRA items and the quality of the documents prepared varied widely. For some of the human remains and associated funerary objects that these eight key federal agencies, along with other federal agencies, have culturally affiliated, they have published notices of inventory completion, although some notices have encountered delays. In addition, not all of the culturally affiliated human remains and associated funerary objects have been published in a *Federal Register* notice as required. Officials for the eight agencies also identified

³³74 Fed. Reg. 40218 (Aug. 11, 2009).

³⁴Op. Sol. Int. M-36975 (Jan. 11, 1993).

challenges that they faced complying with NAGPRA, which included lack of funding and staff only working on NAGPRA compliance for historical collections as a collateral duty.

Key Federal Agency Summaries and Inventories were Generally Prepared on Time, but the Amount of Work Conducted and the Quality Varied Widely

While federal agencies compiled hundreds of summaries and inventories, generally by the statutory deadlines, the amount of work conducted and the quality of the documents prepared varied widely and in some cases did not provide reasonable assurance of compliance with the act. When NAGPRA was enacted, the task facing each federal agency varied depending on several factors, including the size of their historical collections, the extent of centralized records in existence for their collections and institutional knowledge of repositories in possession of their collections, how dispersed their collections were both geographically and among different repositories, and each agency's structure, staffing, and resources available for cultural resources management.

For most agencies, the task of identifying their NAGPRA items within the larger universe of their historical collections was complicated by long-standing challenges with the curation and management of their archeological collections.³⁵ For example, in 1981, we reported that Interior's efforts to guide and coordinate many federal archeological activities were characterized by "disorder, confusion, and controversy."³⁶ More recently, a December 2009 report by Interior's Office of Inspector General described similar deficiencies with the management of Interior's museum collections (including NAGPRA items) and stated that Interior is failing to fulfill its stewardship responsibilities over museum collections, which are second in size only to the Smithsonian Institution.³⁷ The Inspector General report noted that for fiscal year 2007, 53 percent of Interior's museum collections, or 78 million objects, were not catalogued, and that Interior "had little idea" what collections non-Interior repositories held.

³⁵Curation is the process of managing and preserving a collection according to professional museum and archival practices.

³⁶GAO, *Are Agencies Doing Enough or Too Much for Archaeological Preservation? Guidance Needed*, CED-81-61 (Washington, D.C.: Apr. 22, 1981).

³⁷U.S. Department of the Interior, Office of the Inspector General, *Department of the Interior – Museum Collections: Accountability and Preservation*, Report No. C-IN-MOA-0010-2008 (Washington, D.C.: Dec. 16, 2009).

Officials at several of the eight agencies that we focused on during our review said NAGPRA compliance involved a large amount of work and because they had different levels of resources to expend, they took varied approaches to meet the act's requirements for their historical collections. Of these eight agencies, the Corps, the Forest Service, and NPS did the most extensive work to identify their NAGPRA items, and therefore they have the highest confidence level that they have identified all of them and included them in summaries and inventories (see table 3). In contrast, relative to the top three agencies, BLM, BOR, and FWS were moderately successful in identifying their items and including them in summaries and inventories, and BIA and TVA have done the least amount of work. As a result, these five agencies have less confidence that they have identified all of their NAGPRA items and included them in summaries and inventories.

Table 3: Examples of Eight Federal Agencies' Activities to Identify NAGPRA Items and Prepare Summaries and Inventories

Agency	Agency activities to identify their NAGPRA items and prepare summaries and inventories
Agencies that have done the most work and have the highest confidence that all their NAGPRA items have been identified	
Corps of Engineers	<p>Requested funding. According to Corps staff, before NAGPRA's enactment, the agency proactively requested additional funding to identify archeological collections. As of the end of fiscal year 2008, the Corps' Mandatory Center of Expertise for the Curation and Management of Archeological Collections (Center) for NAGPRA estimated that it had attained about 80 percent compliance (complete summaries and inventories and publication of relevant notices).</p> <p>Examined records and performed physical inspections. The Corps' Center staff examined historical records and archeological permits at the Smithsonian Institution, the National Archives, and State Historic Preservation Offices, and performed physical inspections of non-federal repositories. They determined that the Corps has confirmed collections in 166 repositories around the country.</p> <p>Centralized reporting. All Corps components must consult with the Center in compiling NAGPRA summaries and inventories, and the Center has prepared full collection audits on non-federal repositories' curation of the Corps units' NAGPRA items.</p> <p>Maintains compliance data. The Corps Center maintains agencywide data for the Corps on NAGPRA compliance status and activities, including repatriations.</p> <p>Funding levels. For fiscal year 2009, the Corps' Center expended over \$1.55 million for NAGPRA compliance activities.</p>
Forest Service	<p>Region 3 controls most NAGPRA collections. According to Forest Service staff, 90 percent of the Forest Service's NAGPRA items are under the control of Region 3, which covers portions of the Southwestern United States. Staff also stated that in 1991, the Forest Service hired a NAGPRA coordinator for Region 3, who later became the Forest Service's agencywide NAGPRA coordinator, and expanded the search for archeological permits and collections to all the other Forest Service regions.</p> <p>Examined records and contacted repositories. In the early 1990s, the NAGPRA Coordinator retrieved all the archeological records for Region 3 from the Smithsonian Institution and the National Archives that could have involved NAGPRA items. According to the NAGPRA Coordinator, copies of the records were then sent to all the relevant non-federal repositories for verification, and he followed up on discrepancies that emerged from their responses.</p> <p>Maintains compliance data. The Forest Service's NAGPRA Coordinator collects and maintains agencywide data for the Forest Service on NAGPRA compliance, status, activities, and completed repatriations.</p> <p>Funding levels. For fiscal year 2009 the Forest Service expended \$210,000 for NAGPRA compliance work and repatriations.</p>
NPS	<p>Maintained collections before NAGPRA. According to NPS officials, NPS units curate a major portion of their archeological collections in their own facilities before and since NAGPRA. This factor gave NPS an initial advantage in achieving NAGPRA compliance, and enabled NPS to compile more complete summaries and inventories.</p> <p>Maintains compliance data. Park NAGPRA maintains agencywide data for NPS on NAGPRA compliance status and activities, including repatriations.</p> <p>Funding and staffing levels. Park NAGPRA manages a \$850,000 agencywide budget for NAGPRA activities, approximately \$500,000 of which it awards to NPS regions through a competitive, needs-based process, according to NPS staff. The office has a Program Manager with collateral duties and one additional full-time employee.</p>

Agency	Agency activities to identify their NAGPRA items and prepare summaries and inventories
Agencies that have done some work and have less confidence that all their NAGPRA items have been identified	
BLM	<p>Relied on BLM State Offices and the Corps to identify collections. According to BLM staff, BLM relied on its state offices to contact the repositories in the western states directly and for the eastern half of the country BLM contracted with the Corps' Center to compile a list of non-federal repositories in possession of BLM's archeological collections. Some of these efforts led to successful NAGPRA compliance, but in some cases the agency encountered significant challenges in determining its NAGPRA collections—for example in the states of Utah, California, and Alaska.</p> <p>Building centralized compliance data. The first centralized reporting and data collection for BLM NAGPRA compliance was started in 2006. The BLM NAGPRA Coordinator has since been able to create a baseline of data and also stated that the agency has accelerated its efforts to comply with NAGPRA.</p> <p>Funding levels. For fiscal year 2009, BLM had a budget over \$15.7 million for its cultural resources budget, of which \$69,286 was expended for NAGPRA compliance.</p>
BOR	<p>Identified repositories, but additional work to identify NAGPRA item remains. According to BOR's Federal Preservation Officer and NAGPRA Coordinator, BOR has been able to identify the non-federal and BOR repositories that maintain archeological collections, but has not verified if the repositories contain NAGPRA items.</p> <p>Faced challenges in compiling inventories. Some BOR regions were able to compile complete summaries and inventories. However, the Great Plains and Mid-Pacific Regions have faced considerable challenges in NAGPRA compliance because complicated land ownership issues and discrepancies in land ownership records must first be addressed to determine whether BOR controls the item.</p> <p>Building compliance data. There is no centralized BOR tracking of NAGPRA compliance, although BOR's NAGPRA Coordinator said a database is in the process of being developed.</p>
FWS	<p>Identified repositories, but additional work to identify NAGPRA items remains. According to agency officials, FWS contracted with the Corps' Center to identify all non-federal repositories in possession of FWS archeological material. The FWS Service Archaeologist (the national NAGPRA coordinator for FWS) stated that 80 percent of FWS's collections have not been comprehensively reviewed (i.e., compared against records, examined, catalogued) to identify NAGPRA items.</p> <p>Lacks compliance data. Although FWS did submit summaries and inventories, the FWS NAGPRA coordinator said it is unlikely that the documents are complete because the agency is not fully aware of the contents of its collections.</p> <p>Funding levels. FWS provides approximately \$385,000 annually for all museum property management functions, which includes NAGPRA compliance.</p>
Agencies that have done the least work and have low confidence that all their NAGPRA items have been identified	
BIA	<p>Scope of BIA's compliance responsibility was ambiguous and remains unsettled. In 1998 BIA headquarters officials requested a legal opinion from Interior's Office of the Solicitor regarding whether BIA owned NAGPRA items removed from Indian lands under the Antiquities Act of 1906 and therefore would have to comply with NAGPRA for those items. The Solicitor has not issued a legal opinion but has discussed the matter with BIA. As a result of these discussions, BIA has, in some cases, issued joint notices with the non-federal repositories in possession of NAGPRA items. BIA reports that in the past it has contracted with the Corps Center to produce reports assessing its nationwide curation needs.</p> <p>Lacks compliance data. BIA's Chief of Environmental and Cultural Resources Management (the national NAGPRA coordinator for BIA) stated that BIA Regional Offices act independently to implement NAGPRA and that centralized tracking of NAGPRA compliance data for the agency was started in 1997, but has not yet been completed due to staff turnover and lack of resources.</p> <p>Funding levels. For fiscal year 2009, BIA had a budget of \$300,000 for its museum program, \$150,236 of which funded contracts with museums for NAGPRA compliance.</p>

Agency	Agency activities to identify their NAGPRA items and prepare summaries and inventories
TVA	<p>Relied on repositories to compile and submit inventory and summary documents. TVA relied on its own records and those of its repositories to identify the locations of its archeological collections. TVA generally relied on repositories in possession of its collections to compile the agency's summaries and inventories. The repositories prepared these documents more than 10 years ago. For TVA's collections at the University of Alabama, TVA has not conducted specific consultations on cultural affiliations. As a result, TVA considers its inventories to be preliminary since the required consultations have not yet occurred.</p> <p>Lacks compliance data and faces other challenges. According to TVA's NAGPRA coordinator, a database of TVA's NAGPRA collections is being developed. TVA cultural resources management staff stated that due to gaps in communications, a lack of consultations, and other challenges, TVA has not been able to establish final cultural affiliations for any of the NAGPRA items in its historical collections. In addition, for NAGPRA items that were excavated during the course of TVA projects several decades ago, some ambiguity may exist as to which entity—TVA or the museum that curates the items—has legal control over the items, according to TVA.</p> <p>Funding levels. As of fiscal year 2009, TVA did not specifically track costs associated with NAGPRA.</p>

Source: GAO analysis of NAGPRA activities for the eight federal agencies.

While some agencies have done more than others to comply with the requirements of the act, it does not appear that any of the eight agencies we reviewed are in full compliance. The act and its implementing regulations did not provide a specific list of activities or actions that federal agencies and museums had to take in order to identify their NAGPRA items. However, the act clearly stated that the summaries and inventories had to contain the NAGPRA items each agency or museum was in possession or control of. We believe that without conducting a level of activities that would provide a federal agency with a reasonable assurance that the summaries and inventories were complete, federal agencies cannot be confident that they have complied with NAGPRA's inventory and summary requirements. Even those agencies that have done the most work acknowledge that they still have some individual units that have more work to do. For example, the Corps reports that as of the end of fiscal year 2009 the Louisville, Nashville, Mobile, and Tulsa Districts have not yet produced their inventories. Additionally, some agencies said they do not know exactly how much work is left in order to be confident that they have identified all of their NAGPRA items.

In addition to the completeness of agency summaries and inventories, we found that two other important requirements affecting the quality of these documents—consultations with Indian tribes and Native Hawaiian organizations and the establishment of cultural affiliations—were also lacking in some instances. We found that the confusion over when consultations should occur and when cultural affiliations should be established appeared to be rooted in the confusion among some NAGPRA practitioners about the differences between summaries and inventories. Specifically, summaries described collections, and consultation was to

occur after the summary document was prepared; and cultural affiliations were to be included in summaries where readily ascertainable.³⁸ In contrast, inventories were item-by-item descriptions, consultation was to occur before the inventory document was completed, and cultural affiliations were to be made to the extent possible. However, we found examples where agency officials treated inventories like summaries in that the consultation occurred and cultural affiliation determinations were made after the preparation of the inventory. Also, several tribal officials stated that the frequency and thoroughness of consultations throughout the NAGPRA process for historical collections varied widely depending on the agency and agency personnel involved. However, agency officials also reported challenges in consulting with tribes, such as certain tribes not wanting to attach any cultural affiliations to NAGPRA items because of deeply-held spiritual beliefs. If agencies did not perform these initial critical steps to fully identify and disclose the NAGPRA items that they have in their historical collections, the repatriation process cannot move forward.

Publication of Some Notices of Inventory Completion Has Been Delayed, and Some Agencies Have not Published All Required Notices

According to information from National NAGPRA's database, as of September 30, 2009, 16,302 Native American human remains, or 55 percent of all the Native American human remains inventoried by agencies, had been published in notices of inventory completion and 13,519 had been listed in inventories for federal collections as culturally unidentifiable (see table 4). Of the associated funerary objects inventoried by federal agencies, 193,324 objects, or 74 percent, had been published in a notice of inventory completion and 66,918 had been listed as culturally unidentifiable.

³⁸25 U.S.C. § 3004.

Table 4: Native American Human Remains and Associated Funerary Objects Published in Notices of Inventory Completion and Those Listed in Federal Agency Inventories as Culturally Unidentifiable, as of September 30, 2009

Agency	Published in notices of inventory completion				Culturally unidentifiable ^a	
	Number of original notices	Number of corrections	Human remains ^b	Associated funerary objects	Human remains ^b	Associated funerary objects
Department of the Interior						
NPS	86	10	4,053	77,927	1,304	14,656
BLM	55	1	1,565	16,615	399	249
BOR	7	2	550	3,330	122	38
BIA	32	1	464	9,621	56	18
FWS	14	0	127	626	765	5,123
Indian Arts and Crafts Board	2	0	2	0	0	0
Subtotal	196	14	6,761	108,119	2,646	20,084
Department of Defense						
Department of the Navy	8	1	3,397	7,734	214	0
Corps of Engineers	27	1	722	40,869	1,508 ^a	9,955 ^a
U.S. Army	8	2	105	1,557	172	753
U.S. Air Force	4	1	38	85	3	0
National Museum of Health and Medicine	8	0	16	0	158	0
Subtotal	55	5	4,278	50,245	2,055	10,708
Forest Service	47	9	5,246	33,618	757	15,157
Department of Justice	5	0	9	2	2	1
Department of Energy	4	0	6	1,340	20	97
Department of Homeland Security	2	0	2	0	0	0
TVA	c	c	c	c	8,030 ^a	20,870 ^a
Environmental Protection Agency	c	c	c	c	9	1
Total	309	28	16,302	193,324	13,519	66,918

Source: National NAGPRA.

Note: In a few cases, notices of inventory completion were published listing culturally unidentifiable human remains after the Secretary made a recommendation in response to a disposition request submitted to the Review Committee.

^aNumbers in the culturally unidentifiable columns are from National NAGPRA's database, which, as noted in appendix I, may be unreliable. Several agencies that maintain their own data have asserted that the numbers reported for them in this table do not match their own data. For example, the Corps reports 87 human remains and 422 associated funerary objects, and TVA reports that while they do not have exact numbers, their estimates are not close to what National NAGPRA's reports. Officials from both agencies indicated that they will continue to work with National NAGPRA to reconcile these numbers.

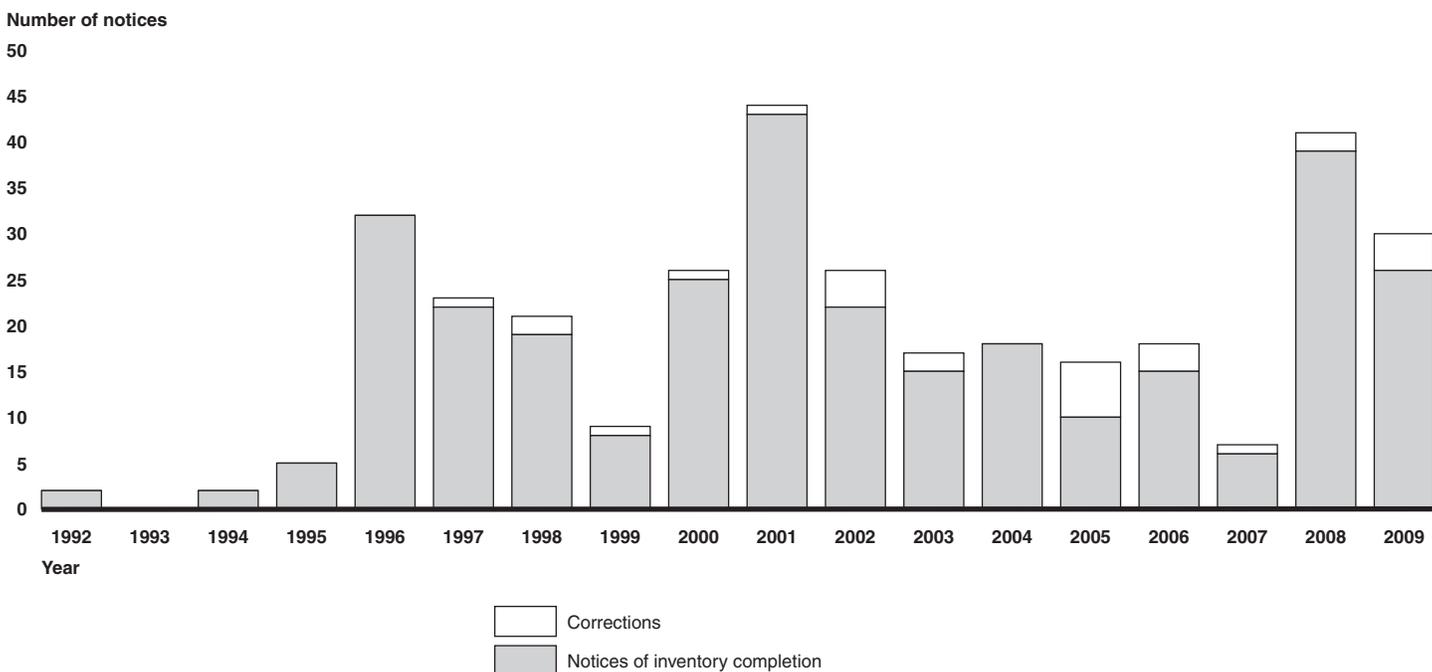
^bHuman remains are counted using the “minimum number of individuals” approach. The minimum number of individuals refers to the fewest possible number of people in a skeletal assemblage. This is often used in forensic anthropology and osteology to determine an estimate of how many individuals are represented in a cluster of bones. While there are formulae that can be applied to determining the minimum number of individuals, making this determination is essentially based on logic. Counts of the minimum number of individuals are based on age, sex, and repeat skeletal elements. For example, if there are three right humerus bones, that implies there were at least three individuals. If those all three happen to be male, and there is a clearly female skull, then that adds one more individual to the count. A count of one could be for a complete skeleton of over 200 bones or one fragment of a bone from one individual.

^cAs of September 30, 2009, TVA and the Environmental Protection Agency had not published any notices of inventory completion. The inventory for the Environmental Protection Agency did not include any culturally affiliated NAGPRA items and therefore no notice was required.

However, we found that in some cases the publication of these notices encountered significant delays. When agencies made cultural affiliation determinations for Native American human remains and associated funerary objects listed in their inventories, they were required to notify the affiliated Indian tribe(s) or Native Hawaiian organization(s) within 6 months and at the same time submit a copy of the notice to National NAGPRA for publication in the *Federal Register*.³⁹ NAGPRA and its implementing regulations do not contain a deadline for when the notice actually had to be published. If a notice of inventory completion is published and later is found to be inaccurate or new information emerges, agencies are to work with National NAGPRA to publish a correction notice. Through fiscal year 2009, federal agencies had published 309 notices of inventory completion and 28 corrections (see fig. 1).

³⁹Six months after the November 16, 1995, deadline for the completion of inventories was May 16, 1996.

Figure 1: Number of Notices of Inventory Completion and Corrections Published by Federal Agencies, by Fiscal Year



Source: GAO analysis of National NAGPRA data.

According to agency officials and National NAGPRA, several reasons contributed to the delays in publishing notices of inventory completion. First, during its review process National NAGPRA determined that some inventories had not been properly prepared and, as a result, agencies had prepared improper draft notices. For example, one improperly prepared draft notice included unassociated funerary objects, which are to be included in summaries and notices of intent to repatriate. This may have been partly because the regulation for the inventory process was not finalized until December 4, 1995, after the deadline for preparing inventories had passed.⁴⁰ National NAGPRA officials said they returned improperly prepared draft notices to the agencies. A second reason for delays in publishing notices, according to some agency officials, was the highly complex nature of their consultations with the tribes, which

⁴⁰60 Fed. Reg. 62134 (Dec. 4, 1995). National NAGPRA did issue guidance prior to the promulgation of the regulation, including summary and inventory templates to agencies, but agencies stated that they were not always received by the appropriate agency staff.

resulted in the agencies needing additional time to finalize their cultural affiliations before publishing their notices. Third, some agencies treated inventories like summaries and waited for a culturally affiliated entity to request repatriation before submitting a notice for publication. Fourth, some agencies relied on non-federal repositories (such as universities and museums) that held their historical collections to compile the summary and inventory documents and submit them directly to National NAGPRA. According to one former National NAGPRA official, in one case the P.A. Hearst Museum at the University of California, Berkeley was granted an extension to the 5-year deadline for compiling inventories for their own collections, and some agencies believed that this extension also applied to their federal collections held by the museum.⁴¹

Additionally, we found that a number of federal agencies have not fully complied with NAGPRA's requirement to publish notices of inventory completion for all of their culturally affiliated human remains and associated funerary objects in the *Federal Register*, thereby complicating efforts of Indian tribes or Native Hawaiian organizations to make repatriation requests for those items (see table 5). Agency officials provided several reasons for their lack of compliance with this requirement. For example, TVA staff stated that, because of personnel turnover and poor communication—with a repository and with National NAGPRA in the 1990s—320 human remains preliminarily culturally affiliated to the Creek and Cherokee tribes have not yet been published in notices. In addition, an official at BOR's Great Plains Regional Office stated that, even though the office had listed culturally affiliated human remains in its inventory, National NAGPRA rejected the inventory in the 1990s because it was not properly formatted. The BOR official stated that resources have not been available to revise the inventory and publish the required notices.

⁴¹See 25 U.S.C. § 3003(c).

Table 5: Examples of Federal Agencies' Units That Still Need to Publish Notices of Inventory Completion for Culturally Affiliated Human Remains

Agency component	Culturally affiliated human remains that have not been published in a notice of inventory completion ^a
BOR, Great Plains Region, Nebraska-Kansas Area Office	61
BOR, Pacific Northwest Region	15
NPS, Glen Canyon National Recreation Area	13
FWS, Buenos Aires National Wildlife Refuge	4
FWS, Upper Mississippi National Wildlife and Fish Refuge	4
Forest Service, Gifford Pinchot National Forest ^b	3
Department of Defense, Naval Air Station Fallon	2
FWS, Sevilleta National Wildlife Refuge	2
Indian Arts and Crafts Board	1
FWS, Eufaula National Wildlife Refuge	unknown

Source: GAO analysis of National NAGPRA data and agency documents.

Note: TVA officials stated that they consider the cultural affiliations for the 320 human remains in the 1999 inventory for their NAGPRA items at the Alabama Museum of National History to be "preliminary" because the required consultations with the relevant Indian tribes has not been performed. The officials stated that TVA can not move forward with the publication of a notice of inventory completion in the *Federal Register* for these human remains until consultations have occurred and the inventory and the cultural affiliations have been finalized. According to TVA officials, TVA had preliminary discussions with federally recognized tribes regarding TVA's NAGPRA compliance in 2002 and 2007, but there has been no specific consultation with tribes regarding the preliminary cultural affiliations for these items.

^aHuman remains were counted using the "minimum number of individuals" method.

^bThe Gifford Pinchot National Forest has submitted a draft notice of inventory completion to National NAGPRA and it is working with the office on publication of the notice.

National NAGPRA and the Makah Indian tribe, with the National Association of Tribal Historic Preservation Officers, have conducted studies to identify culturally affiliated human remains and associated funerary objects listed in agency NAGPRA inventories but for which no notices of inventory completion have been published. However, our analysis has shown that none of these studies has been comprehensive and complete. National NAGPRA is currently in the process of reconciling all the inventories submitted with its electronic database in order to determine which culturally affiliated human remains and associated funerary objects have not been included in a notice of inventory completion. Program officials expect this effort to be completed by October 2010. Until federal agencies have published notices of inventory completion in the *Federal Register* for culturally affiliated human remains

and associated funerary objects that they have listed in inventories, items cannot be repatriated according to the provisions of NAGPRA. Although National NAGPRA will have more information on the level of compliance by federal agencies from the reconciliation of data, this may not lead to improved compliance because NAGPRA and its implementing regulations do not provide National NAGPRA or any other federal office with authority to ensure federal agency compliance with the act. See appendix III for a discussion of NAGPRA enforcement.

Federal Agencies Identified a Number of Challenges That Inhibit Their Efforts to Comply with NAGPRA

Officials with the eight agencies that we reviewed identified a number of challenges that their agencies have faced in complying with NAGPRA. First and foremost, officials at all of the eight key federal agencies that we spoke with and a December 2009 Interior Inspector General report all noted that the lack of funding is one of the most significant challenges to complying with NAGPRA. Officials noted that without funding, their cultural resources management programs have not been adequately staffed to comply with NAGPRA. For example, BIA has one curator for the estimated 5.7 million items in its collections across the entire agency, and FWS's Service Archaeologist estimated that it would cost \$35 million and take 28 years to properly review all of FWS's historical collections for NAGPRA items. Second, NAGPRA compliance for historical collections is generally a collateral duty among all the other tasks that agency cultural resource staff must perform, including section 3 NAGPRA responsibilities for new intentional excavations and inadvertent discoveries.⁴² Officials at almost all of the eight agencies we reviewed confirmed that compliance with sections 5 and 6 of NAGPRA for historical collections is a collateral duty for most federal agency staff that work in this area. For example, BLM staff stated that their state archaeologists prioritize compliance with section 3 of NAGPRA, section 106 of the National Historic Preservation Act,⁴³ and the National Environmental Policy Act.⁴⁴ Even the national-level

⁴²Federal agency officials told us that they generally place a higher priority on compliance with NAGPRA section 3 (new or inadvertent discoveries and intentional excavations) versus sections 5 and 6 (historical collections) for a variety of factors. First, unlike historical collections, section 3 does not allow human remains and objects to be classified as culturally unidentifiable, and it provides a priority order for determining ownership, control, and transfer of custody. Second, while substantial research may be required to determine the locations in which historical collections were originally excavated or found, agencies already have this information for new or inadvertent and intentional discoveries. Third, if discoveries are made during the course of major projects, such as construction, the project must be temporarily halted to comply with NAGPRA.

⁴³Pub. L. No. 89-665, 80 Stat. 915 (1966), *codified as amended at* 16 U.S.C. §§ 470 to 470x-6.

NAGPRA coordination staff at many agencies, such as BLM, BOR, FWS, and BIA, told us that they do not spend the majority of their time on NAGPRA compliance. Third, as discussed earlier, poor curation practices by agencies and repositories, in general, along with poor historical records and documentation, have also made NAGPRA compliance a challenge.

The Review Committee Has Monitored Compliance with NAGPRA Implementation, Made Recommendations with Mixed Success, and Continues to Face Challenges

To fulfill its responsibilities under NAGPRA, the Review Committee has monitored federal agency and museum compliance, made recommendations to improve implementation, and assisted the Secretary in the development of regulations. While the Review Committee's recommendations to facilitate the resolution of disposition requests involving culturally unidentifiable human remains have generally been implemented, recommendations to facilitate the resolution of disputes over the disposition of NAGPRA items have generally not been fully implemented. Moreover, some actions recommended by the Committee have exceeded NAGPRA's scope and, until recently, letters from the Designated Federal Officer informing parties of the Committee's recommendations did not clearly indicate whether the Secretary of the Interior had concurred with the Committee's recommendations after an independent assessment of the disposition request. In addition, the Review Committee has faced a number of challenges, in trying to effectively fulfill its role under the act.

The Review Committee Has Monitored Compliance with NAGPRA Implementation and Made Recommendations with Mixed Success

As part of its role in implementing NAGPRA, the Review Committee has (1) undertaken various activities, such as monitoring compliance with the act; (2) made recommendations on the disposition of culturally unidentifiable human remains; and (3) made recommendations on disputes.

The Review Committee Has Undertaken Various Activities in Its Role under NAGPRA

The Review Committee has undertaken various activities and provided information and advice to the Secretary and Congress on a wide range of NAGPRA issues:

- *Monitoring compliance.* Since its first meeting in 1992, the Review Committee has monitored agency and museum efforts to comply with NAGPRA using data provided by National NAGPRA and from status

⁴⁴Pub. L. No. 91-190, 83 Stat. 852 (1970), *codified at* 42 U.S.C. §§ 4321, 4331-4335.

reports presented by agency, museum, and tribal representatives at Review Committee meetings. National NAGPRA has provided periodic information to the Review Committee on the quantity of agency and museum submissions of summaries, inventories, and publications in the *Federal Register*. Also in two meetings in the late 1990s, the Review Committee heard reports from representatives of more than 13 federal departments and agencies about their efforts to comply with NAGPRA's requirements, consult with Indian tribes, and determine the cultural affiliation of human remains and objects. Officials from some agencies and museums, including NPS and the Forest Service have also regularly attended Review Committee meetings and provided updates on their efforts. The Review Committee has used this information in its annual reports to Congress and has noted that federal agency efforts to comply with NAGPRA have been uneven, complex to measure, and lacking in transparency.

- *Making recommendations to Congress.* In its annual reports to Congress, the Review Committee has recommended several amendments to NAGPRA but none have been enacted to date. For example, first, in its annual reports covering 2002 through 2008, the Review Committee recommended that Congress amend the definition of the term "Native American" to add the words "or was" so that the definition would read: "Native American means of, or relating to, a tribe, people or culture that is, *or was*, indigenous to the United States." [Emphasis added] The members wanted this change made in response to a court case.⁴⁵ While legislation has been introduced that would make this change, it has not yet been enacted. Similarly, in its annual reports to Congress covering 1995 through 2001, the Review Committee recommended that Congress amend NAGPRA to include language that would protect Native graves on state or private lands from grave robbing and destructive activities. An amendment adding this language to NAGPRA has not yet been enacted. Finally, to help eliminate some of the barriers to NAGPRA implementation, the Review Committee has made recommendations to Congress about appropriating

⁴⁵In this case, originally filed in 1996 and commonly known as the Kennewick Man case, recreational spectators found human skeletal remains outside of Kennewick, Washington, on land managed by the Corps. Four federally recognized tribes and one non-federally recognized tribe claimed the remains were of an ancestor. The court ruled that the statutory text was written in the present tense ("of, or relating to, a tribe, people, or culture that is indigenous") and thus unambiguously required that human remains bear some relationship to a presently existing tribe, people, or culture to be considered Native American. *Bonnichsen v. United States*, 367 F.3d 864 (9th Cir. 2004). The remains are currently held at the Burke Museum at the University of Washington.

funding for federal agencies, Indian tribes, Native Hawaiian organizations, and museums to implement the act's requirements.

- *Assisting in the development of regulations.* The Review Committee has assisted in developing regulations to implement NAGPRA. In its early years, the Review Committee, in conjunction with Interior's Office of the Solicitor spent substantial amounts of time developing the main rule. After assisting with the main rule, in 1997, the Review Committee turned its attention to providing input into the rule addressing the disposition of culturally unidentifiable human remains (see app. IV for a discussion of this rule), and in 2002 to the rules addressing civil penalties for noncompliant museums, and the future applicability rule for newly recognized tribes and other situations.

Most Review Committee Recommendations on the Disposition of Culturally Unidentifiable Human Remains Were Implemented, but Some Actions Recommended Exceeded NAGPRA's Scope

Through fiscal year 2009, the Review Committee has made recommendations to the Secretary on 61 disposition requests for culturally unidentifiable human remains. We found that 52, or about 85 percent, of the Committee's disposition recommendations had been fully implemented by the parties after the Secretary concurred with the Committee's recommendation.⁴⁶ Of the remaining 9 disposition recommendations, 3 have been partially implemented, 3 have been not implemented, and the status of 3 is unknown (see table 6). Twenty-two of the 61 requests involved federal agencies, and 19 of the 22, were fully implemented. Parties generally agreed in advance to their preferred manner of disposition and, in accordance with the regulations, came to the Review Committee to complete the process and obtain a final recommendation from the Secretary. The two most common recommendations made by the Review Committee were (1) disposition to a federally recognized tribe or group of tribes and (2) the need for additional consultation or documentation.

⁴⁶For additional information on our analysis of disposition requests for culturally unidentifiable human remains, see appendix I.

Table 6: Unresolved Cases of Culturally Unidentifiable Human Remains Brought before the Review Committee as of September 30, 2009

Year	Federal agency or museum	Review Committee recommendation ^a	Status of Review Committee recommendation
Partially implemented			
1997	Baylor University, Strecker Museum	Conduct additional consultation.	Museum attempted to consult with Indian tribe, but received no response.
1997	Henry County Historical Society, Indiana	Conduct additional consultation.	Museum attempted to consult with Indian tribes, but they indicated they were not interested in receiving the human remains.
1998	California Department of Parks and Recreation	Conduct additional consultation.	Museum attempted to consult with non-federally recognized Indian group, but received no response.
Not implemented			
1997	Oakland Museum, California ^b	Conduct additional consultation.	Museum did not attempt to conduct additional consultation with Indian tribes or non-federally recognized Indian groups.
1997	De Anza College, California ^b	Conduct additional consultation.	Museum did not attempt to conduct additional consultation with Indian tribes or non-federally recognized Indian groups.
1997	City of Santa Clara, California	Conduct additional consultation.	Museum determined that human remains were culturally affiliated to a non-federally recognized Indian group, but the human remains are still in the museum.
Status unknown			
1995	Department of Defense, U.S. Army, Fort Hunter-Leggett	Disposition to non-federally recognized Indian group.	Current staff at agency not aware of status.
1997	Department of Energy, Fernald Site	Agency should retain human remains until identification of mechanism for disposition.	Site closed down and agency office re-organized.
1998	NPS, Fort Clatsop National Memorial	Solicitation of letters of support from federally recognized Indian tribe.	Agency staff stated that non-federally recognized Indian group affiliated with the NAGPRA items declined to work with federally recognized Indian tribes

Source: GAO analysis and museum and federal officials.

^aRecommendations in this column relate directly to the recommended disposition of the NAGPRA items, and are not inclusive of all of the Committee's recommendations for these requests.

^bTwo requests where museums did not implement the Review Committee's recommendations—Oakland Museum, California, and De Anza College, California—involved the same collection of human remains.

In reviewing the recommendations made by the Review Committee, we noted that some of the actions recommended by the Review Committee

were outside the scope of NAGPRA (see table 7). These recommendations were made prior to the new regulation on the disposition of culturally unidentifiable human remains.⁴⁷

Table 7: Review Committee Recommended Actions for Disposition of NAGPRA Items That Fell Outside the Scope of NAGPRA, 1994 through 2008

Date ranges for when the recommendations were made	Recommendation outside the scope of NAGPRA	Number NAGPRA items
Between 1994 and 2001	Repatriate culturally unidentifiable human remains to non-federally recognized Indian groups. ^a	387 human remains ^b
Between 1998 and 2008	Repatriate culturally unidentifiable human remains to non-federally recognized tribal entities, such as coalitions of tribes. ^c	156 human remains ^b
Between 1994 and 2006	Repatriate funerary objects associated with culturally unidentifiable human remains. ^d	29 associated funerary objects

Source: GAO analysis of Review Committee recommendations.

^aIn *Bonnichsen v. United States*, the district court noted that “a non-federally recognized band is not a proper NAGPRA claimant” and that the Secretary of the Interior had acknowledged that. 217 F. Supp. 2d 1116, 1141 (D. Or. 2002). *Accord* Castro Romero v. Becken, 256 F.3d 349 (5th Cir. 2001). *Cf.* Abenaki Nation of Mississquoi v. Hughes, 805 F. Supp. 234, 251 (D. Vt. 1992) (holding that Abenaki Nation, which is not a federally recognized tribe, meets the definition of “Indian tribe” under NAGPRA, but failing to address the statutory phrase “which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians” appearing in NAGPRA’s definition of “Indian tribe”).

^bHuman remains were counted using the “minimum number of individuals” method.

^cIn *Bonnichsen v. United States*, the district court noted that the Secretary of the Interior’s conclusion that a coalition of tribes is a proper claimant contradicts the plain language of the statute, which identifies the appropriate recipient in the singular as the Indian tribe. 217 F. Supp. 2d 1116, 1141-2 (D. Or. 2002). The court noted that, although there may be instances in which two tribes both have valid claims, because, for example, they descended from the same identifiable earlier group and have a shared group identity, under any circumstance, the claims of coalition members must be independently meritorious. *Id.*

^dInterior has noted the statute’s silence regarding culturally unidentifiable associated funerary objects.

We found that the Review Committee recommended actions that fell outside the scope of NAGPRA for four primary reasons:

- Committee members were acting in accordance with the Review Committee’s principles of agreement, which outline the criteria that members are to use when considering requests for disposition of culturally unidentifiable human remains.⁴⁸ According to former Review Committee

⁴⁷75 Fed. Reg. 12378 (Mar. 15, 2010).

⁴⁸In June 2000, the Review Committee published its principles of agreement in the *Federal Register* after it had already made recommendations on 15 disposition requests involving culturally unidentifiable human remains. 65 Fed. Reg. 36462 (June 8, 2000).

members we spoke with, the principles of agreement stated that appropriate repatriation solutions included the return of human remains that were culturally unidentifiable for which there was a shared group identity with a non-federally recognized Indian group. The Review Committee had concluded that NAGPRA intended and did not prohibit funerary objects associated with culturally unidentifiable human remains from being repatriated.

- In instances where human remains were deemed culturally unidentifiable because they were culturally affiliated to non-federally recognized Indian groups, Review Committee members believed that it would be scientifically dishonest to recommend disposition to Native Americans not culturally affiliated with the human remains, thus they recommended dispositions to non-recognized Indian groups.
- Review Committee members recommended disposition of objects accompanying culturally unidentifiable human remains because they had heard from tribal representatives that it was culturally unacceptable to separate human remains from the objects buried with them.
- Some members lacked strong knowledge of the complexities of the law.

Although attorneys with Interior's Office of the Solicitor attend Review Committee meetings and provide legal advice, one attorney stated that the Solicitor's Office allowed Review Committee members wide leeway with regard to their recommendations because the Committee's recommendations are not binding.

Nevertheless, we found that the Review Committee has not recommended dispositions to a non-federally recognized Indian group since 2001, and the Review Committee, National NAGPRA, and Interior officials have generally addressed the issue of the Review Committee recommending actions that are outside the scope of NAGPRA. First, for the culturally unidentifiable associated funerary objects, since 2008, letters from the Designated Federal Officer to the affected parties informing them of the Review Committee's recommendations have included the stipulation that NAGPRA does not authorize disposition of these objects. The letters state that a federal agency or museum may choose to repatriate such objects under other authorities they may have. Under the recently issued rule on the disposition of culturally unidentifiable human remains, agencies may repatriate these objects if state or federal law does not preclude it. Further, an attorney with Interior's Office of the Solicitor reported advising the Review Committee of this in the late 1990s. Second, according

to National NAGPRA officials, since the fall of 2008, the Designated Federal Officer has requested that all parties seeking Review Committee consideration describe the issue that they wish to present. The officer reports using this information to help determine what type of issue is being presented and whether the issue is outside the scope of NAGPRA and therefore ineligible for consideration. In addition, with regard to tribal coalitions, attorneys with Interior's Office of the Solicitor told us that they believe NAGPRA authorizes repatriations to coalitions of tribes as long as agency or museum records indicate that actual repatriation was made to a federally recognized tribe.

We also found that, through January 2007, letters from the Review Committee's Designated Federal Officer to the parties receiving a recommendation did not clearly indicate whether the Secretary of the Interior's recommendation was the result of an independent assessment of the facts, NAGPRA, and the Review Committee's recommendations. The importance of whether the Secretary's recommendation is the result of Interior's independent assessment of the request is two-fold. First, the Review Committee is advisory and its recommendations cannot bind the Department or the parties. Second, NAGPRA regulations require that agencies and museums retain possession of culturally unidentifiable human remains pending promulgation of an applicable regulation, unless legally required to do otherwise, or recommended to do otherwise by the Secretary.⁴⁹ An attorney with Interior's Office of the Solicitor confirmed to us that the Secretary's recommendation reflects Interior's independent assessment of the disposition requests for culturally unidentifiable human remains, and the Review Committee's recommendations. However, we found that letters sent between 1994 and January 2007 did not clearly state that the Secretary had considered the facts or whether the Secretary had independently assessed the requests in concurring with the Review Committee recommendation. Letters sent since January 2007 have clarified the Secretary's independent assessment of and concurrence with the Review Committee's recommendations and in two cases stated that Interior disagreed in part with the Review Committee's recommendation and did not recommend disposition.⁵⁰

⁴⁹43 C.F.R. § 10.9(e)(6).

⁵⁰In these two instances, Interior did not concur with the Review Committee's determination that the human remains were more likely than not Native American.

Few Review Committee Recommendations on Disputes Were Fully Implemented

In contrast to the amicable nature of disposition requests, disputes are generally contentious and the Review Committee's recommendations have had a low implementation rate. Through the end of fiscal year 2009, the Review Committee had considered 12 disputes brought by Indian tribes and Native Hawaiian organizations—three against federal agencies and nine against museums. We found agencies and museums usually did not implement some elements of the recommendations in disputes. In particular, the Review Committee recommended four times that agencies and museums revise the cultural affiliation of human remains or the classification of objects, but these recommendations were never implemented. Of the 12 disputes that we reviewed, the Review Committee's recommendations were fully implemented for 1 dispute, partially implemented in 3 others, not implemented for 5, and the status of 3 cases is unknown. Furthermore, three of these cases have resulted in lawsuits, which further illustrates the Review Committee's difficulties in fulfilling its statutory responsibility to facilitate the resolution of disputes. See appendix V for more information on the status of the Review Committee's recommendations on the 12 disputes.

The Review Committee Faces a Number of Challenges in Fulfilling Its Responsibilities under NAGPRA

According to officials of museums and scientific organizations, the Review Committee and its annual reports, the Committee has faced a number of challenges in fulfilling its NAGPRA responsibilities. These challenges fall into the following four categories:

- *Perception that the Review Committee favors tribal interests.* Officials from museums and scientific organizations and some Committee members themselves that we spoke with said that the Review Committee favors tribal interests over the interests of the museum and scientific community. This has led some to question the Committee's objectivity. One official representing a museum that had previously been a party to a dispute considered by the Review Committee stated that she considered engaging with the Committee as one of the least preferred methods to achieve resolution on NAGPRA issues because of the perceived lack of balance. At the same time, some Committee members told us that the Review Committee acknowledges there may be some bias and regarded it as understandable because they believe the intent of NAGPRA was to serve Native American interests and overcome years of bias against tribal interests by museums and scientific organizations. Regardless, the issue of the Review Committee's actual and perceived objectivity is a concern because it could impact the Review Committee's ability to carry out its responsibilities. We have previously reported that to be effective, federal advisory committees must be—and, just as importantly, be perceived as—

independent and balanced as a whole.⁵¹ If federal agencies and museums perceive the Review Committee as lacking objectivity and heavily favoring tribal interests, they may disengage from the process.

- *Lack of data on federal agency compliance.* In its annual reports to Congress from 2006 through 2009, the Review Committee has cited the lack of data on federal agency compliance as a significant challenge. From 2006 through 2009, the Review Committee regularly reported that the lack of data prevented it from assessing whether required consultations between Indian tribes and federal agencies were taking place. Further, in its annual report covering 2008, the Review Committee requested that Congress hold open hearings for agencies, as well as museums and tribes to provide the Review Committee and other stakeholders with more information on the challenges that NAGPRA practitioners have encountered. National NAGPRA officials noted that in addition to the biennial reports provided to the Review Committee on the status of NAGPRA compliance, National NAGPRA also produced a 2006 report on the status of Native American human remains in the control of federal agencies.⁵²
- *Limited resources.* According to annual reports prepared by the Review Committee and Committee members that we spoke with, the Committee lacks the resources it needs to effectively fulfill its responsibilities under NAGPRA. According to these sources, the Committee's travel budget only allows it to hold two face-to-face meetings per year; therefore, it is unable to devote the attention needed to adequately cover all the agenda items. Two Review Committee members also told us that given their busy schedules, they have limited time to review particularly voluminous documents for disposition requests and disputes.
- *Lack of administrative support provided by National NAGPRA.* Several current and former Review Committee members expressed dissatisfaction with the level of administrative support provided by National NAGPRA to the Committee. For example, some stated that National NAGPRA did not provide Review Committee members briefing packets in a timely manner. These materials are essential for the proper preparation of meeting activities, particularly for complex disputes and disposition requests.

⁵¹GAO, *Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees*, [GAO-08-611T](#) (Washington, D.C.: Apr. 2, 2008).

⁵²U.S. Department of the Interior, NPS, National NAGPRA Program, *Federal Agency NAGPRA Statistics* (Washington, D.C.: Oct. 31, 2006).

National NAGPRA officials stated that they make efforts to provide the materials at least 15 days prior to the meeting. To accomplish this, they request that parties provide documents to National NAGPRA 30 days in advance, but, in some cases, presenters have come to the meetings with additional information that must then be provided to Committee members. In addition, two Committee members stated that in the past, National NAGPRA has been slow to reimburse the cost of travel to meetings, which has placed a financial burden on members.

National NAGPRA Has, in Some Cases, Not Effectively Carried Out Its Responsibilities

National NAGPRA has taken several actions to help the Secretary carry out responsibilities under NAGPRA. Overall, while most of the actions performed by National NAGPRA were consistent with the act, we did identify concerns with a few actions. Specifically, National NAGPRA has promulgated a number of regulations to implement NAGPRA, but failed to meet the statutory deadline for promulgation. In addition, National NAGPRA has developed a list of Indian tribes for the purposes of carrying out NAGPRA, but at various point in the last 20 years the list has not been consistent with BIA's policy or a Solicitor legal opinion analyzing the status of Alaska Native villages as Indian tribes. Also, National NAGPRA has not always properly screened nominations for the Review Committee and, in 2004, 2005, and 2006, inappropriately recruited nominees for the Review Committee and, in one case, recommended the nominee to the Secretary for appointment.

National NAGPRA Has Taken Actions Consistent with the Act, such as Publishing Notices, Administering a Grants Program, and Supporting the Review Committee

National NAGPRA has taken a number of actions that are consistent with the act. For example, National NAGPRA has published federal agency and museum notices in the *Federal Register*; increasing this number in recent years while reducing a backlog of notices awaiting publication. Furthermore, it has administered a NAGPRA grants program that from fiscal years 1994 through 2009 has resulted in 628 grants awarded to Indian tribes, Native Hawaiian organizations, and museums totaling \$33 million. Other actions include the development of publicly available databases and providing training and education materials to NAGPRA practitioners. See appendix VI for more details on these activities.

National NAGPRA, primarily through the Review Committee's Designated Federal Officer, has also assisted the Review Committee in several areas such as developing meeting agendas in concert with the Review

Committee Chair and maintaining a list of culturally unidentifiable human remains.⁵³ To assist parties that wish to bring issues before the Review Committee, National NAGPRA staff have produced templates for needed documents that, according to agency officials, help the parties organize materials for the review, focus presentations before the Review Committee, and simplify committee actions. Other activities have included publishing *Federal Register* notices of upcoming Review Committee meetings, issuing letters conveying Review Committee recommendations to affected parties, and providing logistical support to Review Committee members, such as reimbursing their travel expenses to attend Review Committee meetings. National NAGPRA has also administered the nomination process for Review Committee members.⁵⁴

Some Actions Taken by National NAGPRA Raise Concerns

We have concerns with (1) the time frames in which the regulations have been promulgated and the inclusion of ANCSA corporations as Indian tribes in National NAGPRA's list of Indian tribes for the purposes of carrying out NAGPRA at various points in the last 20 years, and (2) the screening of Review Committee nominations and questionable recruiting practices.

National NAGPRA Was Late in Promulgating NAGPRA Regulations and Treats ANCSA Corporations as "Indian Tribes" Contrary to BIA Policy and a Solicitor Legal Opinion

As shown in table 8, National NAGPRA has promulgated regulations to implement NAGPRA in four main sections. While section 13 of NAGPRA required the Secretary to promulgate regulations within 12 months of the law's enactment, the main body of the regulations was not published in final form until December 4, 1995; several years after the statutory deadline. Also, the regulations were not effective until January 3, 1996, which was after the 1993 and 1995 deadlines for the completion of summaries and inventories, respectively.

⁵³NAGPRA requires that the Review Committee maintain a list of culturally unidentifiable human remains. 25 U.S.C. § 3006(c)(5). The Review Committee tasked National NAGPRA with this responsibility and the office maintains an online searchable database.

⁵⁴Since NAGPRA's enactment, National NAGPRA has published 10 nomination solicitations for Review Committee members in the *Federal Register*; the first in August 1991 and the most recent in March 2010. National NAGPRA has also administered the nomination process for the consensus member. This does not require a solicitation in the *Federal Register* as the list of nominees is developed and consented upon by the other Review Committee members.

Table 8: NAGPRA Regulations and Related Information Published in the *Federal Register*, as of April 2010

Action	Date of publication in the <i>Federal Register</i>	<i>Federal Register</i> citation
Main rule		
Notice of proposed rulemaking	May 28, 1993	58 Fed. Reg. 31122
Final rule	Dec. 4, 1995	60 Fed. Reg. 62134
Correcting amendments to final regulations	Aug. 1, 1997	62 Fed. Reg. 41292
Final rule; technical amendment	Sept. 30, 2005	70 Fed. Reg. 57177
Correcting amendment	Apr. 3, 2006	71 Fed. Reg. 16500
Civil penalties for noncompliant museums		
Interim rule	Jan. 13, 1997	62 Fed. Reg. 1820
Final rule	Apr. 3, 2003	68 Fed. Reg. 16354
Rule regarding future applicability following statutory deadlines for summary and inventory completion		
Proposed rule	Oct. 20, 2004	69 Fed. Reg. 61613
Final rule	Mar. 21, 2007	72 Fed. Reg. 13184
Disposition of culturally unidentifiable human remains^a		
Draft Review Committee recommendations	June 20, 1995	60 Fed. Reg. 32163
Draft Review Committee recommendations	Aug. 20, 1996	61 Fed. Reg. 43071
Draft principles of agreement	June 23, 1999	64 Fed. Reg. 33502
Draft principles of agreement	July 29, 1999	64 Fed. Reg. 41135
Review Committee recommendations	June 8, 2000	65 Fed. Reg. 36462
Proposed rule	Oct. 16, 2007	72 Fed. Reg. 58582
Final rule with request for comments ^b	Mar. 15, 2010	75 Fed. Reg. 12378

Source: *Federal Register*.

^aIn addition to these actions published in the *Federal Register*, according to the preamble for the final regulation on the disposition of culturally unidentifiable human remains, the Review Committee also (1) sent comments to the Secretary of the Interior on the issue in 2000, 2003, and 2008; (2) considered drafts of the proposed rule at its May 31-June 2, 2002, and November 8-9, 2002, meetings; and (3) reviewed the actual proposed rule at its January 8, 2008, teleconference. 75 Fed. Reg. 12378 (Mar. 15, 2010).

^bThe rule became effective on May 14, 2010.

In addition, National NAGPRA must still promulgate regulations for two remaining sections—disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony (section 10.7) and failure to claim where no repatriation or disposition has occurred (section 10.15(b)). Furthermore, according to agency officials, National NAGPRA plans to revisit the NAGPRA regulations in their entirety, opening them up for public comment. However, the officials could not provide us with specific dates for when these additional rulemaking activities would occur.

In accordance with the regulations, National NAGPRA developed a list of Indian tribes for the purposes of carrying out NAGPRA that includes federally recognized tribes and, at various point in the last 20 years, ANCSA corporations. National NAGPRA's inclusion of ANCSA corporations in its list of Indian tribes does not appear to be consistent with Interior's legal and policy positions regarding the status of Alaska Native villages and ANCSA corporations. Specifically, the inconsistency stems from the inclusion of village, regional, group, and urban corporations established pursuant to ANCSA that are not on BIA's list of federally recognized Indian tribes or the modified ANCSA list of Alaska Native villages.

NAGPRA's enactment and National NAGPRA's original development of the list of Indian tribes for the purpose of carrying out NAGPRA coincided with an ongoing debate within Interior about the status of ANCSA corporations. Although BIA currently does not recognize any of the ANCSA corporations as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, at various times they have been included in BIA's list of federally recognized tribes. For example, in 1982—the first time Alaska Native entities were included in the BIA list—the ANCSA corporations were excluded because they are not governments. However, the 1988 BIA list included ANCSA corporations, raising a number of questions with respect to the effects of the list, as BIA later recognized. After a 1993 legal opinion by the Solicitor that concluded that ANCSA corporations do not qualify as Indian tribes for the purposes of federal law,⁵⁵ BIA published a revised list in 1993 that did not include any ANCSA corporations. Subsequent lists also have not included ANCSA corporations. Accordingly, BIA has not recognized and does not treat ANCSA corporations as federally recognized tribes.⁵⁶

Moreover, none of the ANCSA corporations are included in the modified ANCSA list of Alaska Native villages. The Solicitor has noted that a number of post-ANCSA statutes, such as NAGPRA, have included Alaska

⁵⁵Op. Sol. Int. M-36975 (Jan. 11, 1993).

⁵⁶Because the BIA list is limited to entities found to be Indian tribes, as that term is defined and used in 25 C.F.R. Part 83, it does not include a number of non-tribal Native entities in Alaska that contract with or receive services from BIA pursuant to specific statutory authority, including ANCSA village and regional corporations and various tribal organizations.

Native villages within their definition of Indian tribe by reference to the ANCSA definition of Native village and that these references are to this modified ANCSA list. Therefore, the inclusion of ANCSA corporations in National NAGPRA's list is at odds with the Solicitor's legal position that the Alaska Native villages on the modified ANCSA list are Indian tribes for purposes of federal law. Under this interpretation, the inclusion of Alaska Native villages in NAGPRA's definition of Indian tribe refers to the villages on the modified ANCSA list that were subsequently included in BIA's list of federally recognized tribes and not the ANCSA corporations.

However, because National NAGPRA's list of Indian tribes for purposes of carrying out NAGPRA has included ANCSA corporations, at various times over the past 20 years, the office as well as other federal agencies and museums, have considered them eligible to make nominations for Review Committee positions, receive NAGPRA grants, and request repatriation of NAGPRA items.

National NAGPRA Has Not Always Properly Screened Review Committee Nominations and Has Engaged in Questionable Recruiting Practices

We found that in its administration of the Review Committee nomination process, National NAGPRA has not always properly screened nominees to ensure that they were nominated by one of the required entities specified in NAGPRA. During the first several rounds of nominations, we found numerous instances of this. For example, in 1991, National NAGPRA forwarded to the Secretary the names of a number of nominees that were submitted by ineligible entities, such as individual university staff members, tribal consortia, a non-profit organization, and a federal agency official. We identified similar, albeit fewer, problems in the 1996 and 2000 nominating rounds. As a result of this improper screening, the Secretary has appointed members who were nominated by ineligible entities several times since 1991.

National NAGPRA has taken steps to improve the screening process. For example, in its April 2002 *Federal Register* notice soliciting nominations, National NAGPRA included the requirements for both nominators and nominees and required submission of additional information with nominations.⁵⁷ Specifically, the notice required (1) nominations submitted by Indian tribes or Native Hawaiian organizations to be signed by the leader of the tribe or organization and (2) that traditional religious leaders making nominations identify themselves as such. It also clearly stated that nominations from other individual tribal members could not be

⁵⁷67 Fed. Reg. 18033 (Apr. 12, 2002).

considered. Also, beginning in 2002, National NAGPRA began to confirm the status of Native American traditional religious leaders, both as nominators and nominees, by contacting both sources to verify this information. The June 2003 nomination notice further required that nominations from Indian tribes or museum and scientific organizations include a statement indicating that the official is authorized to make the nomination.⁵⁸ Moreover, it required that nominations from traditional Native American religious leaders include a statement by the nominator that the nominee is a traditional Native American religious leader. The August 2006 nomination notice further required that the nominator explain how he or she meets the definition of traditional religious leader.⁵⁹

Despite National NAGPRA's efforts to improve the screening process, some issues still remain. For example, two nominees forwarded to the Secretary recently were nominated by ineligible individuals or entities. In the first case, an individual was nominated by a tribe's director of cultural resources and the nomination letter did not include a statement that the director was authorized by the tribe to make the nomination. This individual was appointed by the Secretary and currently serves on the Review Committee. After we brought this issue to their attention, National NAGPRA officials contacted the tribe and obtained an official letter from the chairman of the tribe supporting the individual's nomination. In the other case, a nomination was made by a non-federally recognized tribe. Interior officials confirmed that nominations must be submitted by a federally recognized tribe. Again, we alerted National NAGPRA to this issue, and officials responded that although the individual's name was on the list sent to the Secretary, he was not actually considered because he was not eligible.

In addition to its lack of adequate screening of nominating entities, National NAGPRA has also bypassed the nomination process by essentially making its own nominations. In one case in 2004, National NAGPRA actively recruited a nominee and the nominee accepted the offer 6 months after the deadline for submitting nominations had passed. National NAGPRA then sought and received permission from a nominating entity to use a 7-year-old nomination for the current nominating round even though the entity had already nominated a different individual in response to the solicitation. The Secretary appointed the individual

⁵⁸68 Fed. Reg. 33964 (June 6, 2003).

⁵⁹71 Fed. Reg. 47512 (Aug. 17, 2006).

recruited and recommended by National NAGPRA. According to an Interior official involved in this recruitment effort, National NAGPRA became involved in recruiting efforts because the *Federal Register* solicitations had garnered an inadequate pool of nominees,⁶⁰ and some National NAGPRA officials believed that the Review Committee had become too weighted toward the interests of the museum and scientific communities and was seeking an individual more favorable to tribal interests. In addition to this case, we identified two other instances in 2005 and 2006 where National NAGPRA recruited nominees. Both were appointed to the Review Committee. The National NAGPRA Program Manager pointed out that in these latter two instances, the nominees initiated the contact and pursued the position.

The lack of adequate screening and recruitment issues surrounding the nomination process has damaged the credibility of both National NAGPRA and the Review Committee and has contributed to the perception of a lack of objectivity cited by some museum officials and Review Committee members that we interviewed. For example, several Review Committee members said that the appointment process is not transparent and fair and some, referred to it as a “black box” because they are not aware of what happens to nominations once they are submitted to National NAGPRA. The National NAGPRA Program Manager clarified that current policy is to collect and forward all of the nomination submissions, to the NPS Policy Office and subsequently to the Secretary of the Interior for further review.

Many NAGPRA Items Have Been Repatriated, but Repatriations Are Not Tracked or Reported Governmentwide

According to agency data and our survey results, a total of 55 percent of human remains and 68 percent of associated funerary objects have been repatriated as of September 30, 2009. While agencies are required to permanently document their repatriations, they are not required to compile and report that information to anyone. Of the federal agencies that have published notices of inventory completion, only three have tracked and compiled agencywide data on their repatriations. These three agencies, however, along with other federal agencies that have published notices of inventory completion, do not regularly report comprehensive

⁶⁰In addition to publishing solicitations in the *Federal Register* for nominations to the Review Committee, National NAGPRA has, at times, also conducted other activities aimed at a broad audience to solicit nominations. For example, National NAGPRA has sent mailings to all Indian tribes eligible under NAGPRA to solicit nominations. We have no concerns with this process because it is broad-based and inclusive and allows for greater participation in the process.

data on their repatriations to National NAGPRA, the Review Committee, or Congress. Agency officials identified several reasons why some human remains and associated funerary objects have not been repatriated, including a lack of a repatriation request from a culturally affiliated entity, repatriation requests from disputing parties, a lack of reburial sites, and a lack of financial resources to complete the repatriation. Federal agencies have also published 78 notices of intent to repatriate covering 34,234 unassociated funerary objects, sacred objects, or objects of cultural patrimony.

Agencies Have Repatriated 67 Percent of Culturally Affiliated NAGPRA Items, but Repatriations Are Not Tracked or Reported on a Governmentwide Basis

Federal agencies reported repatriating 141,027 of the 209,626 NAGPRA items published in their notices of inventory completion, or 67 percent, as of the end of fiscal year 2009. The repatriation rates by agency ranged from 0 percent to 100 percent and they represent 55 percent of the human remains and 68 percent of the associated funerary objects in federal agencies' notices of inventory completion, according to agency reported data and our survey results (see table 9).⁶¹

⁶¹Federal agencies define repatriation as the transfer of control (legal title). Repatriation does not necessarily include the transfer of physical possession of the human remains and/or objects, as long the place and manner of repatriation is determined in consultation with the Indian tribe or Native Hawaiian organization making the repatriation request.

Table 9: Human Remains and Associated Funerary Objects Repatriated for Notices of Inventory Completion Published as of September 30, 2009

Agency	Human remains published in notices ^a	Human remains repatriated ^a	Percentage	Associated funerary objects published in notices	Associated funerary objects repatriated	Percentage
Agency reported data^b						
Forest Service	5,246	796	15.17	33,618	16,464	48.97
NPS	4,053	3,416	84.28	77,927	37,823	48.54
Corps of Engineers	722	623	86.29	40,869	40,340	98.71
GAO survey data^c						
Department of the Navy	3,397	1,802	53.05	7,734	7,127	92.15
BLM ^d	1,565	1,056	67.48	16,615	14,237	85.69
BOR	550	550	100.00	3,330	3,327	99.91
BIA	464	443	95.47	9,621	9,609	99.88
FWS	127	63	49.61	626	246	39.30
U.S. Army ^e	105	103	98.10	1,557	1,551	99.61
U.S. Air Force	38	29	76.32	85	61	71.76
National Museum of Health and Medicine	16	10	62.50	0	0	0
Department of Justice ^f	9	2	22.22	2	1	50.00
Department of Energy	6	6	100.00	1,340	1,340	100.00
Department of Homeland Security	2	2	100.00	0	0	0
Indian Arts and Crafts Board	2	0	0	0	0	0
Total	16,302	8,901	54.60	193,324	132,126	68.34

Source: Corps, Forest Service, and NPS databases and agency responses to GAO survey.

Note: The TVA and the Environment Protection Agency have not published any notices of inventory completion so they are not included in this table. The table also does not include any repatriations that federal agencies may have performed prior to the enactment of NAGPRA or for new or inadvertent discoveries and intentional excavations under section 3 of NAGPRA. For example, TVA reported that it repatriated 137 sets of human remains from the Tellico project prior to NAGPRA's enactment.

^aHuman remains are counted using the "minimum number of individuals" approach. The minimum number of individuals refers to the fewest possible number of people in a skeletal assemblage. This is often used in forensic anthropology and osteology to determine an estimate of how many individuals are represented in a cluster of bones. While there are formulae that can be applied to determining the minimum number of individuals, making this determination is essentially based on logic. Counts of the minimum number of individuals are based on age, sex, and repeat skeletal elements. For example, if there are three right humerus bones, that implies there were at least three individuals. If those all three happen to be male, and there is a clearly female skull, then that adds one more individual to the count. A count of one could be for a complete skeleton of over 200 bones or one fragment of a bone from one individual.

^bThese three agencies provided consolidated agencywide data on repatriations.

^cWe surveyed four of the eight key agencies that did not have consolidated repatriation data, as well as eight other federal agencies that had published notices of inventory completion. We did not survey TVA as it had not published any notices of inventory completion through fiscal year 2009.

^dBLM's California State Office survey response reported repatriating 18 unassociated funerary objects listed in a notice of inventory completion. These were not counted in our analysis because this type of object did not belong in an inventory.

^eThe U.S. Army survey response for Fort Kamehameha, Hawaii, reported 83 more human remains repatriated than the 9 that were published in the notice of inventory completion. An Army official explained that 82 human remains were actually excavated or discovered since November 16, 1990, NAGPRA's date of enactment. We deducted 82 from the total repatriated because they were returned under section 3 of NAGPRA and 1 other because it was not in a corrected notice.

^fThe Department of Justice's Federal Bureau of Investigation office in Louisville, Kentucky, did not respond to our survey with regard to two published notices that included five human remains and one associated funerary object.

Of the eight key agencies we reviewed, the Forest Service and FWS had the lowest repatriation rates for human remains among the key agencies with published notices of inventory completion. In addition, through fiscal year 2009, TVA has not published any notices of inventory completion and as a result, it has not repatriated any Native American human remains or associated funerary objects.

One of NAGPRA's purposes was to set up a process by which federal agencies and museums receiving federal funds would inventory their holdings and work with culturally affiliated Indian tribes and Native Hawaiian organizations to repatriate certain Native American human remains and objects in their historical collections. However, as noted in the data above only three of the eight key agencies with significant historical collections presently consolidate agencywide data on the extent of their repatriations. In addition, as they are not required to do so, these agencies and others generally do not regularly report comprehensive repatriation data by notice to National NAGPRA, the Review Committee, or Congress.⁶² Therefore, policymakers do not have an overall sense of how federal agency repatriation of NAGPRA items is progressing. Similarly, Indian tribes and Native Hawaiian organizations do not have readily available information on which human remains and objects have been culturally affiliated with them but have not been repatriated. Regulations implementing NAGPRA require that federal agencies and museums must permanently document the content and recipients of all repatriations, but do not require museums and agencies to compile these data and make them available to the public or to National NAGPRA.

⁶²Forest Service officials stated that it and some other federal agencies have periodically presented aggregate repatriation data at Review Committee meetings. The information presented to the Review Committee would also be available to National NAGPRA.

Because neither National NAGPRA nor the Review Committee receive this information, they cannot include it in their annual reports. Without repatriation data, we believe that National NAGPRA, the Review Committee, and Congress are lacking valuable information on the progress of NAGPRA implementation toward the overall goal of returning control of human remains and objects to affiliated groups.

The 2008 report on NAGPRA implementation by the Makah Indian tribe and the National Association of Tribal Historic Preservation Officers found that Congress has no means of periodically assessing the effectiveness of NAGPRA implementation. The report recommended that federal agencies and National NAGPRA compile information on all completed repatriations reported by agencies and that National NAGPRA develop a database to hold this information.

National NAGPRA has started a “Culturally Affiliated Native American Inventories Database,” which is to provide a snapshot on the current status of human remains and associated funerary objects that have been culturally affiliated as a result of consultation with Indian tribes and Native Hawaiian organizations. National NAGPRA reports that all the human remains and objects that are eventually listed in this database should be represented in a notice of inventory completion. National NAGPRA reported that the database was 75 percent complete as of April 1, 2010, and expected it to be fully populated by summer 2010. Completion of the database would provide reports on the minimum number of individuals culturally affiliated but not yet in notices. Because data on completed repatriations of culturally affiliated remains and objects are already being documented by federal agencies, and National NAGPRA already tracks the number of human remains and objects listed in each notice, National NAGPRA staff told us that they could include the repatriation status of the items appearing in each inventory and notice in their database. National NAGPRA staff could collect voluntary repatriation data from all agencies to provide a consolidated report, but there were no specific plans or time frames for this.

Some NAGPRA Items Have Not Been Repatriated Due to a Lack of Tribal Requests, Tribal Disputes, and Availability of Reburial Sites

A total of 7,401 human remains and 61,198 associated funerary objects published in a notice of inventory completion had not been repatriated as of September 30, 2009. Repatriations did not occur for a variety of reasons.

The most common reason that repatriations did not occur is that the culturally affiliated Indian tribe(s) or Native Hawaiian organization(s) did not make a request for the return of the human remains and associated

funerary objects, according to agency NAGPRA program officials and our survey results. For example, Forest Service NAGPRA staff told us that the most significant challenge to repatriations has been the lack of requests from culturally affiliated entities. They noted that tribes are often not prepared to deal with repatriation for a variety of reasons. In some cases, Forest Service, NPS, and tribal officials told us that tribes lack cultural protocols to deal with NAGPRA, and specific cultural protocols and new ceremonies need to be developed before a request or transfer of human remains and objects can be made. Responses to our survey of 12 agencies to obtain the repatriation status of human remains and associated funerary objects included in 147 notices of inventory completion show that the lack of a request from culturally-affiliated Indian tribes and Native Hawaiian organizations has prevented repatriations of human remains in 25 percent of the cases.

Another reason repatriations did not occur is because, in some cases, multiple competing repatriation requests were received, and the federal agency could not clearly determine which requesting party is the most appropriate. Section 7(e) of NAGPRA provides that in these situations the federal agency may retain the item until the requesting parties reach agreement on its disposition or the dispute is resolved under NAGPRA's provisions or in court.⁶³ For example, in a case involving human remains that represent approximately 1,400 individuals removed from the Tonto National Forest in Arizona, there is a disagreement among some of the culturally affiliated tribes over the place and manner of the final disposition of the human remains. According to the Forest Service, because this involves differing cultural views among culturally affiliated tribes, it is leaving the matter to the tribes to resolve. As a result, the repatriation cannot proceed until the disagreement is resolved.

The availability of an acceptable burial site is also an important reason why some repatriations were not completed promptly. This has been challenging, in part, due to the federal agencies' reburial policies on their lands, which have varied over time. Most of the key federal agencies that manage land where NAGPRA items were found currently have policies that allow the reburial of the remains and objects on the land they manage (see table 10). BOR does not allow reburial on land that it manages. Tribes have cited the lack of reburial sites as a challenge to repatriation.

⁶³25 U.S.C. § 3005(e).

Table 10: Reburial Policies for Eight Key Federal Agencies

Agency	Reburial policy	Source of policy	Effective date
BIA	BIA does not have a policy because the federal government holds the land in trust for the benefit of the tribal or individual Indian landowners, who make decisions about reburial on their lands. BIA reported it does not play an active part in these decisions other than to ensure that all landowners are in agreement with the reburial and that an appropriate environmental review is done, if necessary.	No written policy	Not applicable
BLM	Current guidance allows for NAGPRA materials encountered during the course of disturbance activities to be reburied as close as possible to the site. The guidance also states that reburial of NAGPRA items repatriated from BLM collections may be made on the public lands. This is a discretionary authority and reburial proposals are evaluated on a case-by-case basis.	BLM Instruction Memorandum No. 2007-002	Oct. 11, 2006
BOR	BOR does not allow burials on BOR facilities, lands, or water bodies.	43 C.F.R. § 423.28	Dec. 11, 2008
Corps of Engineers	A 2000 act allows the Secretary of the Army to identify and set aside areas at civil works projects for the reburial of Native American human remains, at federal expense, when the remains were discovered on project land initially.	Pub. L. No. 106-541, § 208 (2000), <i>codified at</i> 33 U.S.C. § 2338	Dec. 11, 2000
Forest Service	The Forest Service policy is to support, where appropriate, requests from Indian tribes or lineal descendants for reburial of human remains and objects on Forest Service lands. The Forest Service will provide an explanation to the affected Indian tribe or lineal descendant for any request that is denied.	Pub. L. No. 110-246, Subtitle B, § 8103 (2008), <i>codified at</i> 25 U.S.C. § 3053; and Forest Service Manual Interim Directive 1560-2009-1	June 18, 2008 (Law) and June 30, 2009 (Interim Directive)
FWS	There is no specific policy regarding reburials, but FWS said that its Compatibility Policy on the uses of a national wildlife refuge will allow reburials on a case-by-case basis.	FWS Compatibility Policy	Nov. 17, 2000
NPS	Reburial of Native American human remains in the same park unit from which they were removed may be permitted under current NPS policy.	Management Policies 2006, 5.3.4 and 6.3.8	Aug. 31, 2006
TVA	TVA reported that it has no written policy on reburial of NAGPRA items on TVA land but it has entered into discussions with Indian tribes on the issue. TVA also noted that it has allowed the reburial of newly discovered or intentionally excavated NAGPRA items (section 3 of NAGPRA) to be reburied on federal land that it manages.	No written policy	Not applicable

Source: Documents from and interviews with each agency.

The lack of financial resources may also prevent or delay repatriations. Repatriations may involve a variety of expenses, including preparing a reburial site, transporting the items from their present location to the reburial site, access roads, grave markers and security measures, preparation of remains, and travel expenses of tribal officials involved with the reburial. For example, officials from the Confederated Tribes of

the Umatilla Reservation said that funding for repatriation work is their largest challenge. They said that one of the few sources of relief is National NAGPRA grants, but that these grants are difficult to get. The Caddo Nation historic preservation staff also told us that their office relies on federal grants to carry out NAGPRA repatriation work and said more funding is needed. In their 2008 report on NAGPRA implementation, the Makah Indian tribe and the National Association of Tribal Historic Preservation Officers recommended Congress provide more funding at the federal and tribal levels. They found that many Indian tribes or Native Hawaiian organizations do not have resources for training or repatriation activities. As previously mentioned, the Review Committee has also recommended additional funding for the grant program. The National NAGPRA program has awarded an average of \$53,893 annually in repatriation grants to Indian tribes and Native Hawaiian organizations. On average about six tribes per year receive these grants to help with expenses associated with repatriating NAGPRA items from museums. Repatriation grants are not available to tribes for repatriations from federal agencies, according to National NAGPRA staff.

The key federal agencies that we reviewed had different policies on the extent to which they would fund repatriation expenses and reburial of items from their historical collections (see table 11). For example, the Corps' policy includes a specific list of allowed expenditures, while BIA and FWS have no formal policy but will fund some expenses on a case-by-case basis. BOR will fund only tribal activities, such as consultation, that occur prior to repatriation.

Table 11: Policies or Practices for Funding Tribal Repatriation and Reburial Expenses by Eight Federal Agencies for Their Historical Collections

Agency	Funding available?	Allowed purposes	Written policy, if any
BIA	Yes	<ul style="list-style-type: none"> Case-by-case basis 	No written policy
BLM	Yes	<ul style="list-style-type: none"> Preparation and packaging of items being repatriated Transportation of items being repatriated. 	Multiple BLM instruction memoranda and handbooks
BOR	Yes	<ul style="list-style-type: none"> BOR policy allows compensation of lineal descendants, tribes, and organizations for activities, such as consultation, that occur prior to repatriation. 	Guidelines for Payment of Consultation Fees Relating to Native American Graves Protection and Repatriation Act, Aug. 7, 1995

Agency	Funding available?	Allowed purposes	Written policy, if any
Corps of Engineers	Yes	<ul style="list-style-type: none"> • Food and water in very limited situations. • Reimbursement of travel expenses when invited by the federal government to retrieve items or attend reburial ceremony. • Determination and preparation of burial site. • Access roads, grave markers, and security measures. • Preparation of remains. 	Director of Civil Works Memorandum endorsed July 7, 2009, Northwestern Division Policy on “Costs Associated with Repatriation and Reburial”
Forest Service	Yes	<ul style="list-style-type: none"> • In all regions, except Region 3, the Forest Supervisors have the discretionary authority to cover tribal expenses for repatriations. In Region 3 the Regional Forester has the authority. 	Forest Service Handbook 1509.13 - American Indian and Alaska Native Relations Handbook. Chapter 10 - Consultation With Tribes, Mar. 3, 2004
FWS	Yes	<ul style="list-style-type: none"> • Although there is no funding set aside for repatriation expenses, it may be available on a case-by-case basis by refuge managers. No formal policy or allowed purposes available. 	None
NPS	Yes	<ul style="list-style-type: none"> • Tribal repatriation expenses, including consultation costs, covered whenever possible and as appropriate. 	No written policy
TVA	No	<ul style="list-style-type: none"> • To date, TVA has not funded tribal expenses specifically for repatriations because they have not yet repatriated any items under NAGPRA. 	None

Source: Documents from and interviews with officials from each agency.

Federal Agencies Have Published 78 Notices of Intent to Repatriate Covering 34,234 Objects

As of the end of fiscal year 2009, federal agencies had published 78 notices of intent to repatriate in the *Federal Register* covering 34,234 objects—unassociated funerary objects, sacred objects, or objects of cultural patrimony (see table 12). An agency official said that almost all of these repatriations will proceed because, in accordance with NAGPRA, the notices are based on the summaries, the agency already had consulted and culturally affiliated the items, and that an Indian tribe or Native Hawaiian organization had made a repatriation claim prior to the publication of the notice of intent to repatriate. In some cases, where multiple groups are affiliated with the items, the groups must reach consensus on who will receive the items before the repatriation can proceed.

Table 12: Objects Included in Notices of Intent to Repatriate as of September 30, 2009

Agency	Number of notices of intent to repatriate	Unassociated funerary objects	Sacred objects	Objects of cultural patrimony	Total number of objects
Department of the Interior					
BIA	6	24,200	3	0	24,203
NPS	26	3,352	2,470	2	5,824
BLM	3	408	0	0	408
FWS	9	4	0	94	98
BOR	1	74	0	0	74
Indian Arts and Crafts Board	1	0	0	0	0
Subtotal	46	28,038	2,473	96	30,607
Department of Defense					
Corps of Engineers	6	339	0	0	339
U.S. Army	1	8	0	0	8
Subtotal	7	347	0	0	347
Forest Service	19	1,793	201	620	2,614
Department of Energy	4	343	296	0	639
Department of Justice	2	26	1	0	27
Total	78	30,547	2,971	716	34,234

Source: National NAGPRA database.

Note: TVA and other federal agencies have not published any notices of intent to repatriate for summary items—unassociated funerary objects, sacred objects, and objects of cultural patrimony—as of September 30, 2009.

Conclusions

After passage of the act, many federal agencies faced a monumental task in trying to identify all of their NAGPRA items and culturally affiliating them, to the extent possible, within the statutory deadlines. The difficulty of the task was compounded at some agencies by overall poor management and oversight of their museum collections over the years. NAGPRA compliance was generally assigned to cultural resources staff as a collateral duty, and trying to resolve the status of an item that the agency may have had for over 100 years was frequently a low priority when weighed against more immediate deadlines. While the act authorizes the Secretary of the Interior to assess civil penalties against museums for noncompliance, no enforcement mechanism exists to ensure federal agency compliance except through litigation by private parties. Despite the fact that key federal agencies have now had almost 20 years to comply with the act, they still have not fully complied. Furthermore, it is difficult for policymakers to determine how much work the federal agencies have

left to achieve full compliance because the agencies generally do not have an estimate of the remaining work nor their needs for staff and resources to complete their NAGPRA activities for their historical collections.

In the cases where the federal agencies have completed inventories with culturally affiliated human remains and associated funerary items, much of the compliance work has already been accomplished. However, for a variety of reasons, over the years, the publication of notices of inventory completion for some of these items in the *Federal Register* did not occur. Until agencies publish notices of inventory completion for the remaining culturally affiliated human remains and associated funerary objects in the *Federal Register*, they cannot be repatriated.

NAGPRA's enactment and National NAGPRA's original development of the list of Indian tribes for the purpose of carrying out NAGPRA coincided with an ongoing debate within Interior about the status of ANCSA corporations. However, Interior's Solicitor has since clarified the status of the ANCSA corporations, and they are no longer on BIA's list of federally recognized tribes. Accordingly, the rationale for National NAGPRA continuing to include them as Indian tribes for the purpose of carrying out NAGPRA is unclear.

Because repatriation involves addressing both the interests of Native Americans who want the remains of their ancestors and their cultural and sacred objects returned to them and the scientific and research interests of museums, it is important that all sides continue to be fully engaged in the process and it is important that the Review Committee and National NAGPRA be viewed as objective, balanced, and fair. In setting up the Review Committee with three members nominated from each side, the act tried to balance the interests of Native Americans and museums. However, actions by National NAGPRA have fueled concerns about not only its but also the Review Committee's objectivity and transparency, especially through the inappropriate interference in the nomination process and failing to ensure that all the nominations considered for appointment meet the act's requirements.

In addition, data on repatriations are not centrally tracked and reported or readily available to affected Indian tribes and Native Hawaiian organizations. As a result, neither National NAGPRA nor the Review Committee can report this information in their annual reports to Congress. Without this information, policymakers cannot assess the overall effectiveness of the act. Furthermore, not making this information readily accessible to Indian tribes and Native Hawaiian organizations is an

impediment to repatriation because a list of published items not yet repatriated would allow tribes to easily identify items that have been affiliated to them and allow them to request more information and, in turn, perhaps request repatriation.

Recommendations for Executive Action

We are making the following five recommendations to improve NAGPRA implementation:

To enhance federal agency NAGPRA compliance, we recommend that the Secretaries of Agriculture, Defense, and the Interior, and the Chief Executive Officer of the Tennessee Valley Authority direct their cultural resource management programs to develop and provide to Congress

- a needs assessment listing specific actions, resources, and time needed to complete the inventories and summaries required by NAGPRA sections 5 and 6 for their historical collections; and
- a timetable for the expeditious publication in the *Federal Register* of notices of inventory completion for all remaining Native American human remains and associated funerary objects that have been culturally affiliated in inventories.

To clarify which entities are eligible under NAGPRA, we recommend that National NAGPRA, in conjunction with Interior's Office of the Solicitor, reassess whether ANCSA corporations should be considered as eligible entities for the purposes of carrying out NAGPRA given the Solicitor's opinion and BIA policy concerning the status of ANCSA corporations.

To improve the confidence in the Review Committee and its support among NAGPRA practitioners, we recommend the Secretary of the Interior direct National NAGPRA to strictly adhere to the nomination process prescribed in the act and, working with Interior's Office of the Solicitor as appropriate, ensure that all Review Committee nominations are properly screened to confirm that the nominees and nominating entities meet statutory requirements.

To provide policymakers with information to assess the overall effectiveness of the act and to provide Indian tribes and Native Hawaiian organizations readily accessible information on items that are available for repatriation, we recommend that the Secretaries of Agriculture, Defense, the Interior, and the Chief Executive Officer of the Tennessee Valley Authority direct their cultural resource management programs to report

their repatriation data to National NAGPRA on a regular basis, but no less than annually, for each notice of inventory completion they have or will publish. Furthermore, National NAGPRA should make this information readily available to Indian tribes and Native Hawaiian organizations and the Review Committee should publish the information in its annual report to Congress.

Agency Comments and Our Evaluation

We provided a draft of this report for review and comment to the Departments of Agriculture, Defense, and the Interior as well as TVA. In their written comments, officials from Agriculture's U.S. Forest Service, Interior, and TVA agreed with the report's conclusions and recommendations. Their written comments are reprinted in appendixes VII, VIII, and IX, respectively. Interior and TVA also provided technical comments, which we incorporated into the report as appropriate. The Department of Defense did not provide comments.

Interior's comments also included specific responses to each of the five recommendations in the report, and identified actions that it either has underway or will undertake in the future to implement four of the recommendations. However, regarding the recommendation involving ANCSA corporations specifically; Interior's response did not reflect the long-standing nature of our concern. The definition of "Indian tribe" in the NAGPRA regulations published in 1995 included ANCSA corporations, even though Interior's Solicitor and BIA had previously determined that the ANCSA corporations are not federally recognized tribes. Moreover, at various points in the past 20 years, ANCSA corporations have been included in National NAGPRA's list of Indian tribes for the purposes of carrying out NAGPRA and have been treated as eligible to make nominations for the Review Committee, receive NAGPRA grants, and make repatriation requests and claims. For example, on October 27, 1997, National NAGPRA updated its list and ANCSA corporations were included in it. In addition, prior to that list's publication, ANCSA corporations had made nominations for the Review Committee, received NAGPRA grants, and been the recipients of at least four separate repatriations. Following publication of the 1997 list, ANCSA corporations continued to make nominations for the Review Committee, receive NAGPRA grants, and have items repatriated to them. As of March 30, 2010, the list maintained by National NAGPRA did not contain ANCSA corporations but they were added in April 2010. After we discussed the issue with National NAGPRA and the Interior's Office of the Solicitor, National NAGPRA removed the ANCSA corporations from the list in May 2010. However, a notice of inventory completion published on May 4, 2010, stated that repatriation of

human remains to an ANCSA corporation would proceed unless other claimants came forward. To the extent that federal agencies and museums continue to treat ANCSA corporations as eligible “Indian tribes” for NAGPRA purposes, we believe that our recommendation remains valid.

We are sending copies of this report to the appropriate congressional committees; the Secretaries of Agriculture, Defense, and the Interior; the Chief Executive Officer of the Tennessee Valley Authority; and other interested parties. In addition, this report is available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or mittala@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix X.



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Appendix I: Objectives, Scope, and Methodology

This appendix details the methods we used to examine the implementation of the Native American Graves Protection and Repatriation Act (NAGPRA). We were asked to determine:

- (1) the extent to which federal agencies have complied with NAGPRA's requirements for their historical collections;
- (2) the activities taken by the Review Committee to fulfill its role under NAGPRA and what challenges, if any, it faces;
- (3) the actions taken by National NAGPRA to fulfill its responsibilities under NAGPRA; and
- (4) the extent to which federal agencies reported repatriating Native American human remains and objects.

We examined NAGPRA implementation in detail for eight federal agencies with significant historical collections: the Department of the Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS); the U.S. Army Corps of Engineers (Corps); the Department of Agriculture's U.S. Forest Service; and the Tennessee Valley Authority (TVA). We reviewed NAGPRA and its implementing regulations in 43 C.F.R. Part 10 and the final rule on the disposition of culturally unidentified human remains published recently in the *Federal Register*.¹ For each agency we reviewed records on NAGPRA compliance, such as inventories, summaries, *Federal Register* notices, consultations, and agreements with Indian tribes or Native Hawaiian organizations, collection records and repatriation forms or letters, other correspondence, agency databases, if any, and the National NAGPRA database and paper files. To check the reliability of the data on published notices in the National NAGPRA database (officially called "NAGPRA 20"), we compiled this data into one table and compared it to actual notices of inventory completion and notices of intent to repatriate published in the *Federal Register*. Of the 419 notices contained in the table we created using NAGPRA 20 data, we found a small number of data entry errors that we corrected. This data provides the basis for overall statistics on the program and the universe of notices for which we needed to seek

¹75 Fed. Reg. 12378 (Mar. 15, 2010).

repatriation data because not all of the agencies involved tracked and reported it.

Considering that NAGPRA implementation happens at field locations around the country as well as at headquarters, we planned visits to some of these locations. We compiled a list of agency field locations with significant NAGPRA collections and activities. Based on these lists, we selected a judgmental sample of six areas for site visits that would allow us to visit as many of the key agencies as possible. Table 13 identifies the geographic areas and the levels of agency officials we met with in each location as well as tribal and museum officials.

Table 13: Types of Federal, Tribal, and Museum Officials That GAO Met with During Site Visits

Site visit location	Agencywide NAGPRA coordinator	Regional, district, or state-level staff	Local or field office staff	Tribal cultural resource management staff	Multi-tribe listening sessions	Museum officials
St. Louis, MO and Springfield, IL	Corps	Corps	None			✓
Knoxville, TN	TVA	None	None			✓
Albuquerque and Pecos, NM	Forest Service	Forest Service	Forest Service and NPS	✓	✓	
Denver area and Loveland, CO	NPS and BOR	BOR, BLM, and FWS	BOR			
Phoenix and Tucson, AZ	None	BIA, BLM, and NPS	Forest Service and BOR	✓	✓	✓
Portland, OR area and Centralia, WA	None	Corps, Forest Service, BLM, NPS, and FWS	Forest Service and NPS	✓	✓	

Source: GAO summary of site visit locations and meetings.

In total we met with the national-level NAGPRA coordination staffs for each of the eight key agencies in our review, as well as staff with NAGPRA responsibilities at either regional, state, district, local, or field levels for the key agencies, as applicable. Because we selected a judgmental sample of locations to visit, the information we obtained during these visits may not be generalized to all federal agencies and jurisdictions across the country. However, because we selected a variety of locations, the information we obtained at these locations provided us with a good perspective on the actual NAGPRA implementation efforts by federal agencies.

During our review we interviewed officials from Indian tribes, tribal organizations, museums, and scientific organizations as well as current and former Review Committee members. During our interviews with these officials we asked questions regarding one or more of our objectives. During our review we maintained an open door policy and we accommodated any Indian tribe, museum, organization, or Review Committee member that wanted to meet with us or provide information in writing. As a result, our methodology was supplemented by meetings with additional Indian tribes, museums, and Review Committee members that approached us on an ad hoc basis. While we had specific discussion topics for each of these interviews related to one or more of our four objectives, we did not impose a limit on the topics that could be discussed. The interviews and visits for this review included:

- We interviewed officials from Indian tribes and tribal organizations either in conjunction with on our site visits, in Washington, D.C., or by telephone, including, the Caddo Nation of Oklahoma, the Four Southern Tribes (Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Ak-Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; and Tohono O’odham Nation of Arizona), the Navajo Nation of Arizona, New Mexico and Utah; the Santa Clara Pueblo of New Mexico; Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Seneca Nation of New York; Confederated Tribes of the Umatilla Reservation, Oregon; and the Western Apache NAGPRA Working Group (San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona, White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona); the Affiliated Tribes of Northwest Indians; the Inter Tribal Council of Arizona, Inc.; the Morning Star Institute; the Native Association of Tribal Historic Preservation Officers; and the Native American Rights Fund.
- We visited nonfederal entities (museums) serving as repositories for federal archeological collections in Illinois (Illinois State Museum), Tennessee (Frank H. McClung Museum at the University of Tennessee), and Arizona (Arizona State Museum at the University of Arizona in Tucson, Arizona). In addition, we interviewed other officials from museums and scientific organizations either in conjunction with our site visits, in Washington, D.C., or by telephone, including the American Museum of Natural History in New York, New York; the Field Museum in Chicago, Illinois; the Phoebe A. Hearst Museum of Anthropology at the University of California in Berkeley, California; the Peabody Museum of

Archaeology and Ethnology at Harvard University in Cambridge, Massachusetts; the Heard Museum in Phoenix, Arizona; the American Association of Physical Anthropologists; and the Society for American Archeology. Since the focus of our report was on federal agencies' implementation of NAGPRA, these interviews provided background information and we did not attempt to interview a representative sample of museum officials.

- We selected nine current and past members of the Review Committee for interviews through a network analysis based on four factors: (1) the entity that nominated them, (2) the length of their tenure on the Committee, (3) the period during which they served, and (4) whether they chaired the Committee. One of the selected members declined to be interviewed. We interviewed two additional members during the course of our review.

Also related to all four of our objectives, we reviewed our prior reports on agency archeological resource preservation, relevant Interior Inspector General reports, academic sources, and the 2008 report by the Makah Indian tribe and the National Association of Tribal Historic Preservation Officers on NAGPRA implementation. We also attended the Arizona State University conference "Repatriation at Twenty" in January 2010.

For our first objective, to determine the extent to which federal agencies have complied with their NAGPRA requirements for their historical collections, we obtained data from the NAGPRA 20 database on the federal agencies' notices of inventories and summaries as published in the *Federal Register* notices through the end of fiscal year 2009. The database contained the dates that National NAGPRA received inventories and summaries from federal agencies and museums. To assess whether summaries and inventories were generally prepared on time by agencies we did the following. We determined that because the NAGPRA database did not contain the date that the documents were prepared, it was only partially useful for determining compliance with the statutory deadlines. Therefore, if the summaries and inventories were received by National NAGPRA before and near the statutory deadline, we determined that the documents had been completed in compliance with the act. We also reviewed agency files and interviewed agency officials in the eight key agencies involved in our review for information on timeliness. We used all of these sources to assess whether summaries and inventories were generally prepared on time by agencies.

We analyzed the NAGPRA 20 database for reliability and verified all of the database information on notices of inventory completion, notices of intent

to repatriate, and corrections of this information contained in the database. In addition, we assessed the reliability of relevant fields in the tables for summaries and inventories in the database by electronically testing for obvious errors in accuracy and completeness, reviewing information about the data and the system that produced them, and interviewing National NAGPRA officials knowledgeable about the data. When we found logical inconsistencies in the data, we clarified these with National NAGPRA officials before conducting our analyses. We determined that the data were sufficiently reliable for the purposes of using several fields related to when agencies submitted inventories and summaries. However, we found the database to be unreliable for purposes of tracking culturally unidentifiable human remains and objects because the items entered into the culturally unidentifiable portion of the NAGPRA 20 database are not deleted when they are affiliated. Rather, in some cases, a notation is made in the notes field. We analyzed text recorded in the notes fields of the inventory data to assess whether human remains and objects listed as culturally unidentifiable had been culturally affiliated.

In addition to Inspector General, and other reports, we considered relevant reports identified in literature searches or recommended by NAGPRA experts, including a study by a National NAGPRA intern, the Corps' Mandatory Center for Expertise for the Curation and Management of Archeological Collections, several academic journal articles and other materials concerning the curation of archeological collections, NAGPRA implementation, and cultural resource management.

To track agency compliance with NAGPRA, we reviewed each agency's records at headquarters and the field, such as inventories, summaries, *Federal Register* notices, and other documents. On our site visits, we interviewed national, regional, state, and local agency staff about their implementation of NAGPRA, in particular about the procedures they followed to identify their historical NAGPRA collections, to determine their level of confidence with their identification of NAGPRA items in their archeological collections. Our analysis is based both on the testimonial evidence and documents from agencies supplemented by Inspector General reports. In addition, we interviewed selected tribal and museum officials for their views on these efforts.

In order to identify cases in which human remains and associated funerary objects that were culturally affiliated in agency inventories, but not yet published in *Federal Register* notices, we examined information from three sources: (1) the June 2008 report by the Makah Indian tribe and the National Association of Tribal Historic Preservation Officers, (2) a report

on the topic by a National NAGPRA intern, and (3) inventory data from NPS's "NAGPRA 20" database. We could not rely on National NAGPRA data alone because it was incomplete. We created a list of federal agency units mentioned in two or three of these reports, and then examined records at National NAGPRA offices, including the original inventories and published notices of inventory completion, to determine which units had in fact not published the relevant notices. In order to reduce the risk of undercounting, we examined the full agency-submitted inventories for each of the agency units listed in our examples. Through our analysis, we discovered that some agency units were listed erroneously in previous reports because of typing errors, or because the affiliated human remains had actually been correctly published in notices of intended disposition.²

To address our second objective to determine the actions taken by the Review Committee to fulfill its role under NAGPRA and the challenges it faces, we analyzed the Committee's annual reports to Congress, meeting minutes, and reports by National NAGPRA. We reviewed documentation outlining Review Committee policies and procedures including Review Committee charters. We reviewed the Federal Advisory Committee Act and regulations, and our prior reports on the topic to understand the Review Committee's role as a federal advisory committee.³ We interviewed current and former Review Committee members and National NAGPRA officials to learn more about the Review Committee's activities and the extent and quality of the support provided by National NAGPRA. We attended two Review Committee meetings (Seattle, Washington, in May 2009, and Sarasota, Florida, in October 2009) and observed an online training course on the role of the Review Committee in February 2010.

To understand primary functions of the Review Committee—recommendations in cases of (1) requests for dispositions of culturally unidentifiable human remains and in (2) disputes—we reviewed files maintained by National NAGPRA on behalf of the Review Committee.

²Notices of intended disposition are published in certain newspapers by the federal agencies responsible for NAGPRA items that were intentionally excavated or inadvertently discovered on federal lands after NAGPRA's enactment. Unlike notices of inventory completion and notices of intent to repatriate, they are not published in the *Federal Register*.

³GAO, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance*, [GAO-04-328](#) (Washington, D.C.: Apr. 16, 2004); and GAO, *Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees*, [GAO-08-611T](#) (Washington, D.C.: Apr. 2, 2008).

We reviewed *Federal Register* notices describing the Review Committee's findings of fact and recommendations with regard to these disputes and requests for disposition of culturally unidentifiable human remains. We interviewed officials with Interior's Office of the Solicitor and National NAGPRA about the role of the Review Committee on behalf of the Department of the Interior. With respect to dispositions, we examined letters from the designated federal officer informing interested parties of the Committee's recommendations to determine the extent of the department's independent review of and concurrence with the recommendations. Based on the sources above, we determined that for dispositions, the Review Committee issued distinct recommendations regarding particular culturally unidentifiable human remains in 61 cases. National NAGPRA reports that the Committee considered 66 requests related to culturally unidentifiable human remains as of September 30, 2009. National NAGPRA listed some of these requests with additional subparts because the Committee considered the facts of the request at more than one meeting. In one case, the Committee issued distinct recommendations for each of two subparts, so we counted that request as two cases. We reviewed all the requests and subparts and determined that the Committee issued distinct recommendations 67 times. To focus our analysis on requests related to the disposition of particular culturally unidentifiable human remains we excluded 6 requests from our analysis. In 2 of these, the Committee recommended approval of a protocol, and no particular culturally unidentifiable human remains were involved. In 3 of these, the Committee deferred issuing a recommendation, and 1 request involved only objects (no human remains). Thus, we analyzed 61 cases where the Review Committee made distinct recommendations regarding the disposition of particular culturally unidentifiable human remains. We determined the status of Review Committee recommendations in disposition cases, and disputes by contacting officials with the involved museums and federal agencies, and reviewing documents they provided.

We identified challenges that the Review Committee faces and the perceptions of the Review Committee through interviews of current and former Review Committee members, officials from museum and scientific organizations, Indian tribes, and tribal organizations.

To address our third objective to determine the actions National NAGPRA has taken to facilitate federal agency implementation of NAGPRA, we reviewed the act and its implementing regulations for the duties assigned to National NAGPRA, as delegated to it by the Secretary of the Interior. We interviewed National NAGPRA staff, including the Program Manager and staff responsible for publishing notices, administering the Review

Committee, running the grants program, and developing and maintaining National NAGPRA's databases. To learn more about Interior's decision to include Alaska Native corporations in the definition of Indian tribe, as provided for in the regulations, we interviewed staff from Interior's Office of the Solicitor, reviewed Review Committee meeting minutes and transcripts, and analyzed National NAGPRA's "List of Indian tribes for the purposes of carrying out NAGPRA and Native Hawaiian organizations that have appeared in notices." With regard to National NAGPRA's actions regarding the nomination process we reviewed files on the 14 times nominations were solicited for Review Committee openings since NAGPRA was enacted.⁴

We reviewed NPS budget justifications for the NAGPRA program as well as National NAGPRA annual reports. We reviewed a table developed by National NAGPRA that provided information on 79 draft notices withdrawn by museums (55) and federal agencies (24). We used this information, along with supporting documents, to determine the status of the 24 draft notices withdrawn by federal agencies. We obtained and reviewed data on the grants program and interviewed three grants panelists to understand the grants process. We determined that the grants data was sufficiently reliable to provide a table with key grants data over time by Indian tribe and museum, including numbers of applications submitted and awarded and the funding requested and awarded. We attended two online training courses (i.e., webinars) presented by National NAGPRA—one on notices provided in January 2010 and one on the Review Committee provided in February 2010—and discussed students' training evaluations with National NAGPRA staff to learn more about the training program. In addition, we attended the NAGPRA Basics day-long training sessions before the Review Committee's meeting in Seattle, Washington, (May 2009) and Sarasota, Florida, (October 2009). We reviewed information contained on the National NAGPRA Web site, including the various databases provided.

For our fourth objective to determine the extent to which federal agencies have reported repatriating Native American human remains and objects

⁴Of the 14 nominations, 10 were published in the *Federal Register* because National NAGPRA was seeking to fill positions that required the nomination by an Indian tribe, a Native Hawaiian organization, or a traditional Native American religious leader, or national museum or scientific organization. Because the remaining four positions were filled by the Secretary appointing an individual from a list developed and approved by the other Review Committee members, a *Federal Register* notice was not required.

for notices of inventory completion published in the *Federal Register*, we obtained data from the three agencies that track their repatriations—the Corps, the Forest Service, and NPS. For the other five key federal agencies and others publishing NAGPRA notices of inventory completion, we determined that there were no readily available sources of data on their repatriations. We have examined the reliability of the data from the three agencies that reported on repatriations and the data from National NAGPRA database. We interviewed agency staff that compiled the data on their methods and checks for accuracy to assess reliability of the data.

We deployed a survey asking contacts in four key agencies and eight other agencies with published notices that did not collect data about whether the number of human remains or associated funerary objects included in each notice of inventory completion had actually been repatriated through fiscal year 2009, and if not, why not. We did not survey TVA because they had not published any notices of inventory completion through fiscal year 2009. We sent initial notification emails to test e-mail addresses. We also notified agency contacts by e-mail on how to access the survey and asked for responses within 2 weeks. After the survey had been available for 2 weeks, we reminded respondents by e-mail to complete surveys, and followed the e-mail with personal phone calls beginning a few days later. Through these efforts we obtained a 99 percent response rate. Respondents filled in surveys on 145 of 147 published notices of inventory completion. Because this survey was not based on a sample, there were no sampling errors. However, the practical difficulties of conducting any survey may introduce errors, commonly referred to as non-sampling errors. For example, difficulties in how a particular question is interpreted, in the sources of information that are available to respondents, or in how the data were entered into a database or were analyzed can introduce unwanted variability into the survey results. We took steps in the development of the questionnaire, the data collection, and the data analysis to minimize these non-sampling errors. For instance, a survey specialist designed the questionnaire in collaboration with GAO staff that have subject-matter expertise. Further, the draft questionnaire was pretested with a number of agency officials to ensure that the questions were relevant, clearly stated, and easy to comprehend. When the data were analyzed, a second, independent analyst checked all computer programs.

We also sought information on the challenges to repatriation of human remains or objects through interviews and documents from agency officials, and from representatives of Indian tribes and Native Hawaiian organizations. In addition, we asked agency officials for their policies on reburial of human remains and objects on their lands and the extent to

which the agency would assist tribes with the expenses of repatriation—as both were identified as factors affecting the ability of native groups to accept repatriations and reburial remains and objects. We sought data on the extent of National NAGPRA grants to tribes for the purposes of repatriation.

We conducted this performance audit from July 2009 to July 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: List of 28 New and Restored Indian Tribes Since NAGPRA Was Enacted

The regulation on future applicability, which became effective on April 20, 2007, in part, established deadlines for federal agencies and museums to prepare summaries and inventories for new tribes added to BIA's official list of federally recognized tribes.¹ Specifically, agencies and museums have 6 months to prepare a summary and 2 years to prepare an inventory after the new tribe's placement on the BIA list, or after the effective date of the future applicability rule, whichever is later.

In November 2001, we reported on BIA's process for recognizing new tribes.² At that time, we identified 47 newly recognized tribes and 37 restored tribes, for a total of 84 newly recognized or restored tribes since 1960. While our November 2001 report contained detailed information on the 47 newly recognized tribes in a table on pages 25 to 26, it did not contain similar information on the 37 restored tribes. We provided detailed information on the 37 restored tribes in a table on pages 13 to 14 of an October 2006 report.³ In the October 2006 report, we also updated the cumulative number of newly recognized and restored tribes. While no additional tribes were restored between our November 2001 report and our October 2006 report, the Delaware Tribe of Indians of Oklahoma—a newly recognized tribe—was removed from BIA's official list of federally recognized tribes during that time period and the Cowlitz Indian Tribe in the state of Washington was added as a newly recognized tribe. By deleting one tribe and adding another, in our October 2006 report, the total number of newly recognized or restored tribes remained at 84—47 newly recognized tribes and 37 restored tribes.

Since our October 2006 report, the Delaware Tribe of Indians of Oklahoma has been added back on the list, the Mashpee Wampanoag Tribe in the state of Massachusetts has been newly recognized, and the Wilton Rancheria in California has been restored. These actions bring the total of new or restored tribes since 1960 to 87—49 newly recognized tribes and

¹43 C.F.R. § 10.13(c)(1).

²GAO, *Indian Issues: Improvements Needed in Tribal Recognition Process*, [GAO-02-49](#) (Washington, D.C.: Nov. 2, 2001).

³GAO, *Indian Issues: BLM's Program for Issuing Individual Indian Allotments on Public Lands Is No Longer Viable*, [GAO-07-23R](#) (Washington, D.C.: Oct. 20, 2006).

**Appendix II: List of 28 New and Restored
Indian Tribes Since NAGPRA Was Enacted**

38 restored tribes—as of BIA’s last official list of federally recognized tribes published on August 11, 2009.⁴

Twenty-eight of the 87 new or restored tribes have been recognized or restored since NAGPRA was enacted on November 16, 1990 (see table 14).

Table 14: List of 28 New and Restored Indian Tribes Since NAGPRA Was Enacted

Tribe	Newly recognized or restored	Date recognized or restored	How the tribe was recognized or restored
Guidiville Rancheria of California	Restored	Sept. 6, 1991	Federal court restoration, <i>Scotts Valley Band of Pomo Indians of the Sugar Bowl Rancheria v. United States</i> , No. C-86-3660-WWS (N.D. Cal. 1991) ^a
Lytton Rancheria of California	Restored	Sept. 6, 1991	Federal court restoration, <i>Scotts Valley</i> ^a
Scotts Valley Band of Pomo Indians of California	Restored	Sept. 6, 1991	Federal court restoration, <i>Scotts Valley</i> ^a
Aroostook Band of Micmac Indians of Maine	Newly recognized	Nov. 26, 1991	Congressional recognition, Pub. L. No. 102-171, 105 Stat. 1143 (1991)
Mechoopda Indian Tribe of Chico Rancheria, California	Restored	Apr. 17, 1992	Federal court restoration, <i>Scotts Valley</i> ^b
Catawba Indian Nation	Restored	Oct. 27, 1993	Congressional restoration, Pub. L. No. 103-116, 107 Stat. 1118 (1993)
Ione Band of Miwok Indians of California	Newly recognized	Mar. 22, 1994	Decision by Interior’s Assistant Secretary-Indian Affairs
Mohegan Indian Tribe of Connecticut	Newly recognized	May 14, 1994	Administrative recognition under 25 C.F.R. pt. 83
Pokagon Band of Potawatomi Indians, Michigan and Indiana	Newly recognized	Sept. 21, 1994	Congressional recognition, Pub. L. No. 103-323, 108 Stat. 2152 (1994)
Little River Band of Ottawa Indians, Michigan	Newly recognized	Sept. 21, 1994	Congressional recognition, Pub. L. No. 103-324, 108 Stat. 2156 (1994)
Little Traverse Bay Bands of Odawa Indians, Michigan	Newly recognized	Sept. 21, 1994	Congressional recognition, Pub. L. No. 103-324, 108 Stat. 2156 (1994)
United Auburn Indian Community of the Auburn Rancheria of California	Restored	Oct. 31, 1994	Congressional restoration, Pub. L. No. 103-434, 108 Stat. 4533 (1994)
Central Council of the Tlingit & Haida Indian Tribes	Newly recognized	Nov. 2, 1994	Congressional recognition, Pub. L. No. 103-454, 108 Stat. 4792 (1994)

⁴74 Fed. Reg. 40218 (Aug. 11, 2009). On June 18, 2010, BIA published its final determination to acknowledge the Shinnecock Indian Nation. 75 Fed. Reg. 34760 (June 18, 2010). Two interested parties requested reconsideration of the final determination by the Interior Board of Indian Appeals so the determination is not yet effective.

**Appendix II: List of 28 New and Restored
Indian Tribes Since NAGPRA Was Enacted**

Tribe	Newly recognized or restored	Date recognized or restored	How the tribe was recognized or restored
Paskenta Band of Nomlaki Indians of California	Restored	Nov. 2, 1994	Congressional restoration, Pub. L. No. 103-454, 108 Stat. 4793 (1994)
Jena Band of Choctaw Indians, Louisiana	Newly recognized	Aug. 29, 1995	Administrative recognition under 25 C.F.R. pt. 83
Huron Potawatomi, Inc., Michigan	Newly recognized	Mar. 17, 1996	Administrative recognition under 25 C.F.R. pt. 83
Samish Indian Tribe, Washington	Newly recognized	Apr. 26, 1996	Administrative recognition under 25 C.F.R. pt. 83
Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan	Newly recognized	Aug. 23, 1999	Administrative recognition under 25 C.F.R. pt. 83
Snoqualmie Tribe, Washington	Newly recognized	Oct. 6, 1999	Administrative recognition under 25 C.F.R. pt. 83
Shawnee Tribe, Oklahoma	Newly recognized	Dec. 27, 2000	Congressional recognition, Pub. L. No. 106-568, 114 Stat. 2913 (2000)
Federated Indians of Graton Rancheria, California	Restored	Dec. 27, 2000	Congressional restoration, Pub. L. No. 106-568, 114 Stat. 2939 (2000)
Lower Lake Rancheria, California	Newly recognized	Dec. 29, 2000	Decision by Interior's Assistant Secretary-Indian Affairs (reaffirmation of recognition)
King Salmon Tribe	Newly recognized	Dec. 29, 2000	Decision by Interior's Assistant Secretary-Indian Affairs (reaffirmation of recognition)
Sun'aq Tribe of Kodiak	Newly recognized	Dec. 29, 2000	Decision by Interior's Assistant Secretary-Indian Affairs (reaffirmation of recognition)
Cowlitz Indian Tribe, Washington	Newly recognized	Jan. 4, 2002	Administrative recognition under 25 C.F.R. pt. 83
Mashpee Wampanoag Tribe, Massachusetts	Newly recognized	May 23, 2007	Administrative recognition under 25 C.F.R. pt. 83
Delaware Tribe of Indians, Oklahoma	Newly recognized	May 27, 2009	Direct government-to-government relations were reestablished with the Delaware Tribe of Indians through its reorganization under the Oklahoma Indian Welfare Act. The reorganization of its tribal government, separate from that of the Cherokee Nation, Oklahoma, was pursuant to a Memorandum of Agreement between the two tribes. ^c
Wilton Rancheria, California	Restored	June 8, 2009	Federal court restoration, <i>Wilton Miwok Rancheria and Dorothy Andrews v. Salazar</i> , No. C-07-02681 (JF) (PVT), and <i>Me-Wuk Indian Community of the Wilton Rancheria v. Salazar</i> , No. C-07-05706 (JF) (N.D. Cal. 2009) ^d

Source: GAO-02-49, GAO-07-23R, and the *Federal Register*.

Note: On June 18, 2010, BIA published its final determination to acknowledge the Shinnecock Indian Nation. 75 Fed. Reg. 34760 (June 18, 2010). Two interested parties requested reconsideration of the final determination by the Interior Board of Indian Appeals so the determination is not yet effective.

^a57 Fed. Reg. 5214 (Feb. 12, 1992).

^b57 Fed. Reg. 19133 (May 4, 1992).

**Appendix II: List of 28 New and Restored
Indian Tribes Since NAGPRA Was Enacted**

⁶In 1996, BIA published a notice (1) retracting the 1979 determination that the Department would engage in government-to-government relations with the Delaware Tribe only through the Cherokee Nation and (2) recognizing the Delaware Tribe. These actions were overturned in court. See *Cherokee Nation of Oklahoma v. Norton*, 389 F.3d 1074 (10th Cir. 2004), *cert. denied* 126 S. Ct. 333 (2005). As a result, in 2005, the Delaware Tribe of Indians was removed from the BIA's list of federally recognized tribes published in the *Federal Register*. See 70 Fed. Reg. 71194 (Nov. 25, 2005).

⁴74 Fed. Reg. 33468 (July 13, 2009). The district court's jurisdiction to enter into the stipulated agreement restoring the tribe is the subject of a current appeal to the 9th Circuit. If the 9th Circuit Court of Appeals finds that the district court lacked jurisdiction, the stipulated agreement and restoration is void.

Federal agencies and museums were required to prepare summaries and inventories for the 25 tribes that were recognized or restored after NAGPRA's enactment and before the effective date of the future applicability rule by October 20, 2007, and April 20, 2009, respectively. For the three most recent newly recognized or restored tribes—the Mashpee Wampanoag Tribe, the Delaware Tribe of Indians, and the Wilton Rancheria—the deadline for summaries was 6 months after the tribe was included in BIA's list of federally recognized tribes and for inventories is 2 years after the tribe's inclusion in the BIA list. The Mashpee Wampanoag Tribe was first included in the BIA list published on April 4, 2008; the Delaware Tribe and the Wilton Rancheria were first included in the August 11, 2009, list.⁵

⁵73 Fed. Reg. 18553 (Apr. 4, 2008); and 74 Fed. Reg. 40218 (Aug. 11, 2009).

Appendix III: National NAGPRA's Lack of Authority to Ensure Federal Agency Compliance with NAGPRA

National NAGPRA is charged with assisting federal agencies and others with the NAGPRA process. NAGPRA and its implementing regulations do not provide National NAGPRA or any other federal entity with tools to encourage or ensure that federal agencies within or outside of the Department of the Interior comply with the act. The civil penalties established in section 9 of NAGPRA do not apply to federal agencies; only to museums. Absent such tools, there are limited options for holding agencies that are not in compliance with the act accountable. In addition, the mechanism that NAGPRA specifically provides to ensure federal agency compliance—lawsuits by nonfederal parties, such as Indian tribes, against federal agencies—is rarely used.

In contrast to its role vis-à-vis federal agency compliance, National NAGPRA does have authority to encourage and ensure museum compliance.¹ Through fiscal year 2009, 248 counts of alleged failure to comply with NAGPRA had been made against 43 museums. The number of allegations has increased substantially in recent years. In fiscal years 2008 and 2009 alone, 141 counts were alleged. National NAGPRA, in coordination with the NPS Law Enforcement Program, has investigated 126 of the 248 counts and has found over three-quarters of those investigated—108—to be unsubstantiated. At the end of fiscal year 2009, there was a significant backlog of 122 counts to be investigated. These investigations have resulted in penalties totaling \$38,490 levied against six museums through fiscal year 2009. The first notice of failure to comply was served on a museum in 2006 and, according to National NAGPRA officials, has resulted in museums taking compliance more seriously and also in the increase in allegations.

There has been some discussion over where to house National NAGPRA or whether to create a new compliance oversight office all together. As discussed in the background section of this report, amid conflict of interest concerns, the Secretary separated the functions of National NAGPRA into Park NAGPRA, to handle NPS compliance, and National NAGPRA, to facilitate NAGPRA implementation governmentwide. After this separation, National and Park NAGPRA were housed in different places within NPS and reported up a separate chain of command. Some believe there is still a conflict of interest in having National NAGPRA housed within NPS, as it is also an agency that must comply with the act. They have suggested it be removed from NPS, eliminating any conflict

¹25 U.S.C. § 3007.

**Appendix III: National NAGPRA's Lack of
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issues, and elevated in stature by, for example, placing it within the Office of the Secretary of the Interior. The June 2008 report by the Makah Indian tribe and the National Association of Tribal Historic Preservation Officers suggested an even greater elevation, recommending the establishment of an Inter-Agency NAGPRA Implementation Council within the executive branch—possibly within the Office of Management and Budget—that would assure federal agency compliance, among other things. This continues to be an issue of some debate.

Appendix IV: Information on the Recent Regulation Addressing Disposition of Culturally Unidentifiable Human Remains

Section 8(c)(5) of NAGPRA made the Review Committee responsible for recommending specific actions for developing a process for the disposition of culturally unidentifiable human remains in the possession or control of museums and federal agencies. The Review Committee published its first draft of recommendations regarding the disposition of culturally unidentifiable human remains and associated funerary objects for public comment in June 1995. In response to comments, the Committee published a revised draft for public comment in August 1996. Subsequently, the Committee published draft principles of agreement regarding the disposition of culturally unidentifiable human remains in 1999. The Committee published its final recommendations in June 2000. (See table 8 in the body of the report for the citations for these actions.) In addition, the Review Committee submitted comments to the Secretary in 2000, 2003, and 2008.

In October 2007, Interior published a proposed rule for public comment regarding the disposition of culturally unidentifiable human remains. The proposed rule generated over 100 comments from various interested parties, such as Indian tribes, museums, and museum or scientific organizations. Many have noted that the proposed rule departed from the Review Committee's final 2000 recommendations. While some commenters—both tribes and museums—were generally supportive of the proposed rule and welcomed its publication, some commenters also raised concerns with the proposed rule that resulted in Interior making extensive revisions to the rule before issuing a final rule on March 15, 2010. For example, several commenters were concerned by the proposed rule's requirement for museums and federal agencies to consult with and offer to transfer control of culturally unidentifiable human remains under certain circumstances to the Indian tribe or Native Hawaiian organization with a cultural relationship to the region from which the human remains were removed. The final rule does not contain this requirement.

Given the rulemaking's long history and the volume of comments Interior received on the proposed rule, this appendix describes certain provisions of the final rule, presents certain comments Interior received on the proposed rule that are available on www.regulations.gov, and provides Interior's response to the comments. This appendix does not and is not intended to serve as a summary of all the comments Interior received on the proposed rule; the preamble to the final rule discusses all of the comments.

Statutory Authority

Several museums and scientific organizations' comments argued that Interior lacked authority to promulgate this rule for two reasons. First, they argued that section (8)(c)(5) is a clear instruction for the Review Committee to make recommendations to Congress for possible future legislative action, but does not authorize Interior to take any regulatory action itself. They note that the committee report accompanying the version of the bill debated on the House floor stated that the House Committee on Interior and Insular Affairs looks forward to the Review Committee's recommendations on the process for disposition of culturally unidentifiable human remains.¹ Second, museums and scientific organizations argued that NAGPRA clearly limited repatriation to human remains that could be culturally affiliated because the act balanced the interests of Indian tribes and Native Hawaiians with those of museums and scientists. In their view, the rule impermissibly expands the scope of the act.

Indian tribes either did not comment on Interior's statutory authority or stated that they believed the rule was authorized. One tribe noted that 25 U.S.C. § 9 authorizes the President to prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs and that Congress has routinely delegated broad authority to the Executive Branch to manage Indian affairs. Based on these other laws and NAGPRA's language and structure, this tribe argued that the culturally unidentifiable rule is authorized as long as the rule was consistent with and not precluded by the plain language of the act. Furthermore, the tribe stated that the culturally unidentifiable rule was plainly designed to carry out the act, reasonably related to the act's purposes, and not precluded by the act.

Interior contends that section 13 of NAGPRA, which authorizes Interior to promulgate regulations implementing the act, provides the statutory authority for the rule. The preamble to the final rule explains that section (8)(c)(5) of the act made the Review Committee responsible for recommending specific actions for developing a process for disposition of culturally unidentifiable human remains because Congress anticipated that not all items could be geographically or culturally affiliated with an Indian tribe or Native Hawaiian organization. Therefore, Interior interpreted the intent of Congress as authorizing the Secretary of the Interior to promulgate regulations governing the disposition of culturally

¹H.R. Rep. 101-877, at 16 (1990).

unidentifiable human remains after considering the Review Committee's recommendations.

Interior has noted that an earlier version of the bill that became NAGPRA directed the Review Committee to provide its recommendations regarding the disposition of culturally unidentifiable human remains to the Secretary and Congress. However, the language regarding the Secretary and Congress was subsequently stricken from the bill. Interior has interpreted this sequence of changes and the act's requirement that the Secretary consult with the Review Committee in the development of regulations as authorizing Interior to promulgate regulations governing the disposition of culturally unidentifiable human remains after considering the Review Committee's recommendations on the matter. Moreover, Interior has stated that even if Congress did not expressly delegate authority or responsibility to implement a particular provision or fill a particular gap in the act, it can still be apparent from an agency's generally conferred authority and other statutory directives that Congress would expect the agency to be able to speak with the force of law when the agency addresses ambiguities in the statute or fills a gap in the enacted law.

In addition, Interior notes that 25 U.S.C. § 9 authorizes the Secretary to make such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian Affairs. Interior argues that "because NAGPRA is Indian law, the Secretary may promulgate any regulations needed to implement it under the broad authority to supervise and manage Indian affairs given by Congress."²

Consultation

The final rule, among other things, requires museums and federal agencies to consult with (1) an Indian tribe(s) or Native Hawaiian organization(s) that makes a disposition request for culturally unidentifiable human remains and (2) with federally recognized Indian tribes and Native Hawaiian organizations from whose tribal or aboriginal lands the remains were removed before offering to transfer control of the culturally unidentifiable human remains.³ Some museums questioned the imposition of this extra burden of consultation because National NAGPRA's online database of culturally unidentifiable human remains contains sufficient information for Indian tribes and Native Hawaiian organizations to submit

²75 Fed. Reg. 12378, 12398 (Mar. 15, 2010) (citations omitted).

³43 C.F.R. § 10.11(b)(1), (2).

requests. Interior has said that this provision restates the consultation required under section 5 of the act and 43 C.F.R. § 10.9, which requires museums and federal agencies to consult with Indian tribes from whose tribal lands the human remains and associated funerary objects originated, that are or are likely to be culturally affiliated to the remains and objects, and from whose aboriginal lands the humans and objects originated while preparing their inventories. Therefore, Interior has said that museums and federal agencies that consulted with Indian tribes and Native Hawaiian organizations about the culturally unidentifiable human remains while compiling their inventories are not required by this new rule to consult again unless a disposition request is made.

Right of Possession and Transfer of Control

If the museum or federal agency cannot prove that it has a right of possession, the final rule also requires them to offer to transfer control of the culturally unidentifiable human remains in accordance with the priority order listed in the regulation.⁴ NAGPRA defines right of possession as “possession obtained with the voluntary consent of an individual or group that had authority of alienation.”⁵ Museums and federal agencies have right of possession for Native American human remains that were originally acquired, excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization.

Museums and scientific organizations generally commented that right of possession could never be established for culturally unidentifiable human remains because neither the next of kin or an appropriate culturally affiliated Indian tribe or Native Hawaiian organization could have consented to the original acquisition. Museums argued that NAGPRA’s definition of right of possession ignores state property laws that give museums legal title to human remains and items removed from private property with the consent of landowners. Because museums have legal title to these human remains and items, these groups argue that the return of culturally unidentifiable human remains would violate the Takings Clause of the Constitution.⁶ Museums and scientific organizations also

⁴43 C.F.R. § 10.11(c)(1).

⁵25 U.S.C. § 3001(13).

⁶U.S. Const., amend. V.

note that this rule would deprive the world of scientific information on the biological and cultural development of humans and would impact many museums' ability to educate the public about these issues.

Interior has noted that NAGPRA's definition of right of possession created an ownership presumption and that as a federal law it would preempt any state property law on the same subject matter under the Supremacy Clause of the Constitution.⁷ Interior also observed that the regulatory requirement to offer to transfer control of culturally unidentifiable human remains did not apply in circumstances where a court of competent jurisdiction has determined that the repatriation of the human remains in the possession or control of a museum would result in a taking of property without just compensation within the meaning of the Fifth Amendment.

In addition to the right of possession issue, some museums and scientific organizations also assert that the final rule requires museums and federal agencies to offer to transfer control of culturally unidentifiable human remains absent any request or claim from an Indian tribe or Native Hawaiian organization. These museums and scientific organizations state that this requirement is inconsistent with NAGPRA and greatly exceeds the statute's scope because the act's requirement to repatriate culturally affiliated human remains and objects is triggered only upon a request being made. According to Interior, the requirement to offer to transfer control is not triggered until an Indian tribe or Native Hawaiian organization listed in the priority order makes a disposition request. Absent such a request, Interior said that museums and federal agencies are not required to offer to transfer control of culturally unidentifiable human remains, however, Interior noted that 43 C.F.R. § 10.11(b)(ii) allows museums and federal agencies to initiate the repatriation process without a request, especially if they identify the tribes that occupied the land from which the remains originated.

Non-federally Recognized Tribes

If none of the Indian tribes or Native Hawaiian organizations in the priority order agrees to accept control, the final rule allows museums and federal agencies to transfer control of the culturally unidentifiable human remains to other Indian tribes or Native Hawaiian organizations or to non-federally recognized Indian tribes, if the Secretary of the Interior recommends the

⁷U.S. Const., Art. VI, cl. 2.

transfer.⁸ In their comments, some tribes objected to this provision because it makes the transfer of control voluntary and at the discretion of the museum or federal agency. These tribes wanted the rule to require museums and federal agencies to transfer control to non-federally recognized tribes from whose tribal or aboriginal lands the remains were removed.

At least one Indian tribe, however, only wanted the rule to permit repatriation of culturally unidentifiable human remains to federally recognized Indian tribes. Museum and scientific organizations echoed this comment by questioning Interior's authority in requiring museums to obtain the Secretary's prior recommendation when the Secretary lacked authority over non-federally recognized Indian tribes or noting the difficulty museums and federal agencies would have in identifying which non-federally recognized tribes had a legitimate claim.

Interior responded by noting that it followed the lead of Congress in expanding the possible recipients of culturally unidentifiable human remains to include non-federally recognized tribes both in assuring that the remains went to the Indian group that had the closest cultural connection to the remains, even if that group is not federally recognized, and in maintaining the priority position of the government-to-government relationship, by not making disposition to non-federally recognized tribes mandatory. In addition, Interior acknowledged that mandating the return of culturally unidentifiable human remains to non-federally recognized Indian tribes would be contrary to the terms of NAGPRA and the government-to-government relationship between the United States and federally recognized tribes, but that nothing in the act prohibited the voluntary transfer of human remains to non-federally recognized tribes with appropriate safeguards for the rights of federally recognized tribes. Interior has said that the Secretary will continue the current practice of asking the Review Committee for a recommendation on disposition requests from non-federally recognized Indian tribes.

Associated Funerary Objects

The final rule allows museums and federal agencies to transfer control of funerary objects associated with culturally unidentifiable human remains and recommends that such transfers occur if not precluded by federal or state law.⁹ Several museums and scientific organizations objected to this

⁸43 C.F.R. § 10.11(c)(2).

⁹43 C.F.R. § 10.11(c)(4).

provision because it lacked a statutory basis and stated that this “recommendation” inappropriately pressured museums and agencies to divest themselves of objects in their collection that do not have any demonstrated cultural affiliation with NAGPRA claimants.

Tribes requested that the final rule require museums and federal agencies to transfer control of the associated funerary objects belonging to culturally unidentifiable human remains. Tribes argued that funerary objects represent offerings intended as gifts and spiritual offerings to the deceased and are understood to be the property of the deceased. For Indian tribes, separation of the human remains from the funerary objects is a grievous spiritual injury to the deceased and grievous emotional injury to Native Americans. One tribe said that requiring museums and federal agencies to transfer control of associated funerary objects reflects the canons of construction for Indian laws—that the law be liberally construed in favor of Indians and all ambiguities resolved in favor of the Indians. Tribes also argued that some museums would never return the associated funerary objects unless required to do so.

Section (8)(c)(5) of the act, which is the only provision in the act that refers to or uses the term culturally unidentifiable, makes the NAGPRA Review Committee responsible for recommending specific actions for developing a process for disposition of culturally unidentifiable human remains but does not mention associated funerary objects. Interior has said that it did not consider it appropriate to make the provision to transfer culturally unidentifiable associated funerary objects mandatory because of the statute’s silence, common law regarding human remains and associated funerary objects, and the right of possession and takings issues that a mandatory disposition of associated funerary objects would raise which are not clearly resolved in the statute or legislative history.

Appendix V: Status of Review Committee Recommendations Made in 12 Disputes

Year	Federal agency or museum	Indian tribe, group, or Native Hawaiian organization that brought the dispute	Review Committee finding ^a	Review Committee recommendations	Status of Review Committee's recommendations
1993	P.A. Hearst Museum UCLA-Berkeley	Hui Malama I Na Kupuna O Hawai'i Nei	A relationship of shared group identity can be reasonably traced between present day Native Hawaiian organizations and the human remains.	Museum should revise determination of cultural affiliation for human remains and notify Native Hawaiian organizations directly and by <i>Federal Register</i> notice that the human remains are available for repatriation.	<i>Partially implemented.</i> Museum published a <i>Federal Register</i> notice and repatriated the human remains. We did not determine whether the museum changed the cultural affiliation determination.
1993	P.A. Hearst Museum UCLA-Berkeley	Hui Malama I Na Kupuna O Hawai'i Nei	The Committee was unable to determine that the preponderance of the evidence indicates that there is a relationship of shared group identity that can be reasonably traced between present day Native Hawaiian organizations and the human remains.	Museum should transfer the human remains to a museum in Hawaii for future consideration of cultural affiliation and care.	<i>Fully implemented.</i> Museum transferred the human remains to the Bishop Museum. Subsequently, the Bishop Museum determined there was a shared group identity and subsequently repatriated the remains.
1997	City of Providence, RI	Hui Malama I Na Kupuna O Hawai'i Nei, and the state of Hawaii's Office of Hawaiian Affairs	The object is a sacred object and a relationship of shared group identity can be reasonably traced between the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei and the Native Hawaiians who created and used it.	Museum should reconsider its determination of the object's classification. The object should be considered a sacred object. Museum should repatriate the object to a Native Hawaiian organization.	<i>Status unknown.</i> The museum did not publish a <i>Federal Register</i> notice and we did not determine whether the museum reconsidered its determination of the object's classification or whether the museum repatriated the object. Dispute resulted in litigation.
1999	NPS's Chaco Culture National Historical Park	Hopi Tribe of Arizona	Tribes were not given adequate opportunity to consult on a one-to-one basis and make concerns known outside of a public forum. Agency applied a looser criterion of cultural relationship to geographical place as a basis for determining cultural affiliation than it should have. Agency needs to do more to evaluate and weigh evidence pertaining to cultural affiliation.	Agency should withdraw its published notice and reassess its determination of cultural affiliation. Agency should not use collective consultation in lieu of individual tribal consultation when requested by an Indian tribe.	<i>Not implemented.</i> Agency declined to withdraw its published notice and reassess its determination of cultural affiliation. ^b

**Appendix V: Status of Review Committee
Recommendations Made in 12 Disputes**

Year	Federal agency or museum	Indian tribe, group, or Native Hawaiian organization that brought the dispute	Review Committee finding^a	Review Committee recommendations	Status of Review Committee's recommendations
2001	BLM's Nevada State Office	Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada	State Office has not given fair and objective consideration and assessment of all the available information and evidence in the dispute. The preponderance of the evidence indicates a relationship of shared group identity that can be reasonably traced between the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada, and the human remains and associated funerary objects from Spirit Cave in Nevada.	Agency should repatriate human remains and associated funerary objects.	<i>Not implemented.</i> Agency has not repatriated the human remains. We did not determine whether agency repatriated the objects. Dispute resulted in litigation.
2002	Denver Art Museum	Western Apache NAGPRA Working Group	The information and statements submitted and presented by the Museum and the Working Group is sufficient to establish by a preponderance of the evidence that the items are both sacred objects and objects of cultural patrimony. Further, they are culturally affiliated with the constituent tribes of the Working Group.	Museum should consider the oral testimony provided by the Working Group, consult anthropological literature, re-evaluate the determination for repatriation, and inform the Committee of the museum's findings within 90 days.	<i>Not implemented.</i> Museum published a notice of intent to repatriate in the <i>Federal Register</i> describing the items as sacred objects to which the museum holds the right of possession. Although an official from the Western Apache Working Group reported that the museum followed the letter of the recommendation by considering the Group's oral testimony and consulting anthropological literature, the museum did not follow the spirit of the recommendations which was, according to the official, to reclassify the object.
2003	Bishop Museum	Royal Hawaiian Academy of Traditional Arts	Museum's repatriation process for the items was flawed and is incomplete. The place and manner of the return of the items was not consistent with NAGPRA. Museum is responsible for the completion of the repatriation process for the items.	Museum should recall the loan of the items to Hui Malama I Na Kupuna O Hawai'i Nei, make the items available to all consulting parties, and renew the consultation process for repatriation.	<i>Not implemented.</i> According to an official with the Royal Hawaiian Academy of Traditional Arts, Hui Malama I Na Kupuna O Hawai'i Nei denied the Bishop Museum's request for the items. Dispute led to litigation. ^c Funerary objects were removed from cave and are in possession of the Bishop Museum.

**Appendix V: Status of Review Committee
Recommendations Made in 12 Disputes**

Year	Federal agency or museum	Indian tribe, group, or Native Hawaiian organization that brought the dispute	Review Committee finding^a	Review Committee recommendations	Status of Review Committee's recommendations
2005	Bishop Museum	Hui Malama I Na Kupuna O Hawai'i Nei	The Review Committee declines to come to a finding about whether the objects are objects of cultural patrimony. Further, the Committee believes that the current location of the objects is appropriate.	Museum and Hui Malama o Mo'omomi should work together to revise memorandum of agreement to require consent of Hui Malama o Mo'omomi prior to the removal of the objects from the Island of Molokai.	<i>Status unknown.</i> Items are still under the control of the Bishop Museum.
2005	Bishop Museum	Hui Malama I Na Kupuna O Hawai'i Nei	Museum failed to overcome the inference that the museum did not have the right of possession to the object. Museums and federal agencies must repatriate cultural items within 90 days of receipt of a written request for repatriation that satisfies NAGPRA requirements.	Museum should continue process of consultation to determine appropriate claimant(s) for unassociated funerary objects. Once repatriation has taken place, the transaction must be documented in a way consistent with Hawaii state law.	<i>Status unknown.</i> Items are still under the control of the Bishop Museum.
2005	NPS's Hawaii Volcanoes National Park	Hui Malama I Na Kupuna O Hawai'i Nei	Agency has been very slow in going through the NAGPRA process. The number of potential claimants for the items has grown over time. Agency has not sufficiently investigated right of possession. Agency should expand the involvement of Native Hawaiian participation and testimony.	Agency should initiate consultation with all claimants and interested parties, investigate the right of possession issue, and take steps to complete repatriation by 2005.	<i>Partially implemented.</i> According to an agency official, the agency has conducted consultation and has considered the right of possession issue. Further the agency has issued a notice of intent to repatriate, but repatriation has not taken place because claimants disagree on disposition and agency cannot determine the most appropriate claimant.
2006	Field Museum	White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	The items are consistent with the definition of object of cultural patrimony. Museum has not presented evidence sufficient to overcome the inference that the museum does not have a right of possession to the items.	Museum should consider the oral testimony and written evidence provided by the White Mountain Apache Tribe and change its determination of the items to recognize their status as objects of cultural patrimony. Museum should acknowledge that it lacks right of possession to the items.	<i>Not implemented.</i> Museum did not change its determination of the items and did not state that it lacked right of possession.

**Appendix V: Status of Review Committee
Recommendations Made in 12 Disputes**

Year	Federal agency or museum	Indian tribe, group, or Native Hawaiian organization that brought the dispute	Review Committee finding^a	Review Committee recommendations	Status of Review Committee's recommendations
2008	New York State Museum	Onondaga Nation of New York	The preponderance of the evidence shows a relationship of shared group identity between the Onondaga Nation (and the greater Haudenosaunee Confederacy, of which the Nation is a member-nation) and the human remains.	Museum should expeditiously repatriate human remains to the Onondaga Nation. Further, museum should reevaluate the cultural affiliation of all Native American human remains in its possession or under its control that had been determined to be culturally unidentifiable using the preponderance of the evidence to determine cultural affiliation.	<i>Partially implemented.</i> Museum repatriated the human remains. A museum official said that it has been and continues to be a policy of the museum to use a preponderance of all evidence as the standard for deciding cultural affiliation. However, it is unclear whether the museum has reevaluated the cultural affiliation of all of its culturally unidentifiable Native American human remains.

Source: GAO analysis based on discussions with federal agency, museum, Native American, and National NAGPRA officials; and *Federal Register* notices.

Note: This appendix contains the status of Review Committee recommendations on 12 disputes brought before the Review Committee as of September 30, 2009. As part of our review, we did not assess whether agencies or museums reassessed or re-evaluated cultural affiliations for NAGPRA items when the Review Committee recommended they do so. For our analysis, we relied on National NAGPRA information provided to the Review Committee on the status of disputes, *Federal Register* notices stating the Review Committee's recommendations and findings of fact for each dispute and any notices that resulted from the dispute.

^aFindings in this column relate directly to the Review Committee's recommendations and are not inclusive of all the Review Committee's findings for these disputes.

^bIn this dispute, National NAGPRA data indicates that the items have been repatriated.

^cIn the legal settlement, among other things, the court directed that (1) the 83 items to be removed from the cave; (2) the Bishop Museum be given possession of the items; and (3) the Bishop Museum restart consultation and repatriation.

Appendix VI: Other Activities Conducted by National NAGPRA

In addition to promulgating regulations and providing administrative support to the Review Committee, National NAGPRA has conducted a number of activities to carry out the responsibilities assigned by NAGPRA to the Secretary of the Interior. This appendix summarizes these other activities.

Inventories, Summaries, and *Federal Register* Notices

National NAGPRA has received federal agency and museum inventories and summaries and published notices in the *Federal Register*, as NAGPRA's implementing regulations require. According to its Fiscal Year 2009 Annual Report, from fiscal years 1992 through 2009, National NAGPRA received inventories from 1,317 federal agencies and museums and summaries from 1,551 federal agencies and museums and has entered some of this information into a database. Along with the inventories, federal agencies and museums also submit draft notices of inventory completion and draft notices of intent to repatriate, which National NAGPRA prepares for publication. National NAGPRA's Annual Report also states that, during this same period, it published 1,295 notices of inventory completion and 477 notices of intent to repatriate in the *Federal Register* for federal agencies and museums.

National NAGPRA has increased the number of notices it has published in the *Federal Register* in recent years. Specifically, the number of notices published in the *Federal Register* increased to 180 in fiscal year 2008 and to 200 in fiscal year 2009 compared to about 100 per fiscal year in 2003 through 2007. Furthermore, according to the National NAGPRA Program Manager, notice publications have increased with fewer staff—there has been only one staff person dedicated to publishing notices from 2005 through 2009 while there have been multiple staff assigned to this task in previous years. In our interviews with federal agency officials and Review Committee members, a number of them complimented National NAGPRA on its increased efficiency in publishing notices.

In addition to recent increases in the number of notices published, National NAGPRA has reduced a backlog of notices that were awaiting publication. In 2004, the year the current National NAGPRA Program Manager started in her position, there were about 300 draft notices awaiting publication, some of which had been submitted close to a decade earlier. These notices needed some action by the originator before they could proceed to publication. Prior National NAGPRA management had an “on-hold” category for such notices and had taken them out of the publication process, in a sense leaving them in limbo. In 2005, National NAGPRA eliminated the “on-hold” status and set out to clear this backlog

by contacting the originating entity of each notice and requesting that they contact National NAGPRA to resolve it. National NAGPRA's correspondence further stated that notices would be considered withdrawn if the originating entity did not respond within a specified time frame. Through fiscal year 2009, over 220 had been published, 21 were awaiting publication, and 79 were withdrawn—24 by federal agencies (see table 15). Notices were withdrawn by agencies and museums for a variety of reasons, including:

- the items had already been included in a published notice;
- the agency or museum had revised the cultural determination to culturally unidentifiable; and
- the agency or museum was actually not in control of the items.

The withdrawal of these notices has been controversial and was the subject of discussion at a congressional hearing in October 2009.

Table 15: Draft *Federal Register* Notices Withdrawn by Federal Agencies and their Status as of June 2010

Federal agency	Human remains in the draft notices ^a	Date draft notice received for publication processing	Date draft notice removed from publication processing	Status as of June 2010
National Park Service (NPS)				
San Juan Island National Historic Park	unknown	Nov. 16, 1995	June 3, 2008	Items covered in a published notice
Tumacacori National Historic Park	24	Nov. 16, 1995	Nov. 27, 2007	Items covered in a published notice
Dinosaur National Monument	8	Nov. 16, 1995	Apr. 4, 2006	Revised determination to culturally unidentifiable
Hawaii Volcanoes National Park	1	Nov. 16, 1995	July 5, 2006	Other ^b
Canyon de Chelly National Monument	193	Nov. 16, 1995	Nov. 30, 2007	No new notice submitted for publication ^c
El Morro National Monument	17	Nov. 16, 1995	Nov. 27, 2007	No new notice submitted for publication ^c
Glen Canyon National Recreation Area	about 10	Nov. 16, 1995	Nov. 27, 2007	No new notice submitted for publication ^c
Grand Canyon National Park	28	Nov. 16, 1995	Nov. 30, 2007	Requested disposition of culturally unidentifiable remains at October 2009 Review Committee meeting

**Appendix VI: Other Activities Conducted by
National NAGPRA**

Federal agency	Human remains in the draft notices^a	Date draft notice received for publication processing	Date draft notice removed from publication processing	Status as of June 2010
Hovenweep National Monument	4	Nov. 16, 1995	Nov. 27, 2007	Items covered in a published notice
Lake Mead National Recreation Area	33	Nov. 6, 1995	Nov. 30, 2007	No new notice submitted for publication ^c
Mesa Verde National Park	unknown	Nov. 16, 1995	Jan. 27, 2006	Items covered in a published notice
Montezuma Castle National Monument	11	Nov. 16, 1995	Nov. 30, 2007	No new notice submitted for publication ^c
Petrified Forest National Park	7	Nov. 16, 1995	Nov. 27, 2007	No new notice submitted for publication ^c
Tuzigoot National Monument	about 412	Nov. 16, 1995	Nov. 30, 2007	No new notice submitted for publication ^c
Walnut Canyon National Monument	34	Nov. 16, 1995	Nov. 27, 2007	No new notice submitted for publication ^c
Wupatki National Monument	60	Nov. 16, 1995	Nov. 27, 2007	No new notice submitted for publication ^c
Bureau of Reclamation (BOR)				
Mid-Pacific Region	36	Oct. 1, 1998	Feb. 1, 2008	BOR not in control
Mid-Pacific Region	9	Aug. 31, 1999	Feb. 1, 2008	No new notice submitted for publication
Mid-Pacific Region	4	June 30, 2000	Feb. 1, 2008	No new notice submitted for publication
Mid-Pacific Region	1	Nov. 20, 1995	Nov. 21, 2008	BOR not in control
U.S. Army				
Aberdeen Proving Ground	5	Feb. 17, 1999	Sept. 2, 2008	Revised determination to culturally unidentifiable
Waianae Army Recreation Center	unknown	Oct. 26, 1999	Aug. 3, 2006	Other ^d
BIA	not applicable	Dec. 6, 2001	June 19, 2007	Items covered in a published notice
Forest Service's Siuslaw National Forest	1	Mar. 21, 2001	Feb. 20, 2008	New notice submitted is pending publication

Source: National NAGPRA.

Note: All of the notices were notices of inventory completion except for the BIA notice which was a notice of intent to repatriate.

^aHuman remains were counted using the "minimum number of individuals" method.

^bAccording to a National NAGPRA official, the human remains listed in the draft notice of inventory completion were actually incorporated into an unassociated funerary object. The official said that, as such, they are not a "human remains" under NAGPRA, but rather an unassociated funerary object. Because of this, the draft notice should have been for a notice of intent to repatriate. However, no claim had been made and, therefore, the Hawaii Volcanoes National Park removed it from the publication process. In commenting on a draft of this report, NPS stated that the original inventory was submitted in error and that this unassociated funerary object was subsequently published in a notice of intent to repatriate

⁶In commenting on a draft of this report, NPS stated that although NPS has not submitted a new notice for publication, the park unit has received NAGPRA project funds, hired interns, and/or utilized park funds in support of tribal consultation, updating the inventory, and finalizing and publishing the notice of inventory completion.

⁷According to a National NAGPRA official, the human remains were part of an ongoing interment that began prior to NAGPRA enactment. The Waianae Army Recreation Center subsequently reinterred the human remains according to an agreement that had been reached prior to NAGPRA and in the same place as the other remains.

National NAGPRA's Grants Program

National NAGPRA has administered a grants program to assist Indian tribes, Native Hawaiian organizations, and museums in conducting consultations and repatriations. Since the inception of the grants program through fiscal year 2009, National NAGPRA has received 1,341 grant applications from tribes, Native Hawaiian organizations, and museums and awarded 628 grants totaling about \$33 million. Of the total awarded, \$22.4 million, or about 68 percent, has gone to tribes and Native Hawaiian organizations and \$10.5 million, or about 32 percent, has gone to museums (see table 16). Further, 513 grants worth about \$31.8 million have been awarded for consultation grants and 115 grants worth about \$1.2 million have been awarded for repatriation grants.

Table 16: NAGPRA Grant Applications Submitted by and Awarded to Tribes and Native Hawaiian Organizations and Museums, Fiscal Years 1994 through 2009

Fiscal year	Tribes and Native Hawaiian organizations				Museums			
	Number of applications submitted	Amount requested	Number of applications awarded	Amount awarded	Number of applications submitted	Amount requested	Number of applications awarded	Amount awarded
1994	103	\$5,917,848	15	\$986,200	113	\$6,698,044	25	\$1,116,800
1995	62	3,769,680	24	1,387,925	56	2,408,169	19	854,075
1996	53	3,416,799	20	1,150,985	33	1,530,039	19	946,905
1997	54	3,148,112	27	1,425,600	20	1,055,915	10	550,650
1998	62	3,552,820	29	1,562,700	23	1,025,062	16	775,720
1999	57	3,296,265	32	1,648,220	22	2,251,416	11	687,780
2000	84	4,814,432	31	1,629,170	28	1,276,775	14	622,830
2001	53	3,048,378	33	1,802,180	20	1,042,261	13	635,820
2002	57	3,460,873	31	1,708,268	16	961,775	9	537,552
2003	60	3,681,184	31	1,690,502	12	668,730	9	497,806
2004	41	2,369,685	29	1,535,659	17	1,037,649	11	646,341
2005	41	2,404,899	20	918,560	17	1,060,299	8	471,669
2006	53	3,074,228	29	1,500,965	16	750,172	10	393,893
2007	36	2,092,697	23	1,312,868	16	815,239	12	548,825

Appendix VI: Other Activities Conducted by National NAGPRA

Fiscal year	Tribes and Native Hawaiian organizations				Museums			
	Number of applications submitted	Amount requested	Number of applications awarded	Amount awarded	Number of applications submitted	Amount requested	Number of applications awarded	Amount awarded
2008	29	1,694,314	20	1,091,687	12	557,579	11	488,164
2009	47	2,630,918	24	1,092,787	28	1,709,913	13	753,809
Total	892	\$52,373,131	418	\$22,444,276	449	\$24,849,037	210	\$10,528,639

Source: National NAGPRA.

The grants program has been controversial in part due to confusion over how much funding was actually available for grants. NPS has allocated a portion of the NAGPRA grants budget request line item to cover a portion of National NAGPRA’s operating expenses (another portion has been provided by NPS’s Cultural Resources Program), but did not indicate this in its budget justifications until fiscal year 2011. Two investigations by Interior’s Office of Inspector General on the alleged improper use of NAGPRA funds found a lack of clarity over the use of the grants budget request line item. Specifically, the Inspector General responded to allegations that (1) NPS had illegally diverted millions in grant funding for purposes not covered by NAGPRA and (2) the National NAGPRA Program Manager had improperly reprogrammed grant funds for administrative purposes. Both investigations found no wrongdoing, stating that NPS and National NAGPRA had discretion to use the funds as it did. NPS’s fiscal year 2011 budget justification has addressed this issue by moving the operating expenses out of the grants budget request and into the NPS Cultural Resources Program budget request, thus separating the funding for grants and operating expenses. Table 17 shows the enacted line item for grants and NPS’s use of it for grants and operating expenses from fiscal years 1994 through 2009.

Table 17: Enacted NAGPRA Grants Funding, Amount Used for Grants, and Their Difference, Fiscal Years 1994 through 2009

(Dollars in thousands)

Fiscal year	Enacted NAGPRA grant budget request line item in NPS’s annual budget justification ^a	Amount NPS used for grants	Difference
1994	\$2,300 ^b	\$2,103	\$197
1995	2,296 ^b	2,242	54
1996	2,296 ^c	2,098	198
1997	2,296 ^c	1,976	320
1998	2,496 ^c	2,338	158

Appendix VI: Other Activities Conducted by National NAGPRA

(Dollars in thousands)

Fiscal year	Enacted NAGPRA grant budget request line item in NPS's annual budget justification^a	Amount NPS used for grants	Difference
1999	2,496 ^c	2,336	160
2000	2,472 ^c	2,252	220
2001	2,467	2,438	29
2002	2,467	2,246	221
2003	2,451	2,188	263
2004	2,437	2,182	255
2005	2,403	1,390	1,013 ^d
2006	2,368	1,895	473
2007	2,368	1,862	506
2008	2,331	1,580	751 ^e
2009	2,331	1,847	484

Source: NPS Budget Justifications and National NAGPRA.

Note: According to National NAGPRA's Annual Reports for fiscal years 2005 through 2009, NPS provided funds annually for National NAGPRA operating expenses from its Cultural Resources Program budget ranging from \$162,000 to \$350,000. Also, in fiscal year 2009, NPS Law Enforcement provided an additional \$45,000 for enforcement support and training.

^aIn addition to the grant budget request line item, NPS's annual budget justification includes a separate budget request line item for grant administration that has ranged from about \$150,000 to about \$190,000 annually.

^bThis figure is the amount enacted to date provided in the budget justification.

^cThis figure is the estimate provided in the budget justification.

^dIn fiscal year 2005, Interior used \$667,800 of NAGPRA funding to pay Department of Justice legal fees in its defense for *Bonnichsen v. United States*, also known as the "Kennewick Man" case.

^eThis amount includes \$300,000 that NPS had originally allocated to grants but instead used for a cooperative agreement for the development of video and training and associated technical support. According to National NAGPRA's Fiscal Year 2008 Annual Report and the National NAGPRA Program Manager, the funding was shifted away from grants because the grants recommended by the NAGPRA grants panel for funding were less than the amount available and because of a strong recommendation from the NAGPRA grants panel to use the funds to build tribal and museum grant writing capacity. In addition, according to a grants panelist and the National NAGPRA Program Manager, a number of applications in 2008 were of relatively low quality.

National NAGPRA Databases

National NAGPRA has made progress in making data available to tribes, museums, federal agencies, and the general public. It currently maintains six online searchable databases, such as a Native American consultation database and databases for published notices, and has plans to develop a summaries database. According to the National NAGPRA Program Manager, National NAGPRA had developed only one database as of 2005. While these databases are providing more information to NAGPRA practitioners, some federal agencies and museums have complained about

the databases containing incorrect information. The National NAGPRA Program Manager told us that she is aware of this issue and is working to correct the problems. The program manager explained that part of this problem stems from earlier efforts to expedite the publication of notices, but without reconciling data. Specifically, NPS staff as well as contract employees hired in 2000 to publish notices did not reconcile the numbers of human remains and objects listed in the notices with those listed in inventories and summaries, and this left data inaccuracies. For example, an agency or museum might have listed human remains as culturally unidentifiable in an inventory, but later affiliated and repatriated those remains and not informed National NAGPRA so they could update their database. By not reconciling this information, data in the culturally unidentifiable database would be incorrect.

National NAGPRA Training and Educational Materials

National NAGPRA has provided training to and developed educational materials for Indian tribes, museums, and federal agencies to improve NAGPRA implementation. Course titles include Determining Cultural Affiliation and Writing and Managing a Successful Grant. A NAGPRA Basics course is typically offered the day before the beginning of each Review Committee meeting. These courses are taught by National NAGPRA staff as well as contractors and are offered in various locations across the country, as posted on National NAGPRA's Web site. Also, starting in June 2009, National NAGPRA began offering "webinars," which are interactive online courses. Participants follow the course online as well as via telephone and can ask questions either orally or by submitting them on the Web site. In fiscal year 2009, National NAGPRA and its contractors provided 15 courses to 612 participants. According to a National NAGPRA official, feedback obtained on these courses has generally been positive and has been used to improve training. For example, based on feedback that its NAGPRA Basics course was too simplistic for some and too complex for others, National NAGPRA now plans to offer two basics courses—one for newcomers and one for more experienced NAGPRA practitioners.

In terms of educational materials, National NAGPRA is developing a series of videos to create a training series on NAGPRA-related issues. National NAGPRA has conducted about 50 interviews with tribal, museum, and federal agency officials and Review Committee members to create a historic archive of resources on consultation, notices, and repatriation,

among other things. Also, in 2009, National NAGPRA published a brochure on the history of the grants program that included data as well as stories about specific grants and what they accomplished.¹

Despite National NAGPRA's training efforts, we found a general lack of knowledge about NAGPRA requirements among federal agencies. For example, TVA completed inventories prior to consulting with potentially affiliated Indian tribes; whereas NAGPRA requires that consultation be conducted prior to completing inventories.² Further, Corps and FWS officials stated that, in some instances, their agencies had only begun developing notices of inventory completion after receiving a repatriation request from an Indian tribe for remains or associated funerary objects that had been culturally affiliated in the agency's inventory; whereas NAGPRA requires publication of these notices regardless of whether a repatriation request has been received.³

¹U.S. Department of the Interior, National Park Service, *Journeys to Repatriation: 15 Years of NAGPRA Grants, 1994-2008* (Washington, D.C.: August 2009).

²25 U.S.C. § 3003(b)(1)(A).

³NAGPRA requires agencies to notify Indian tribes and Native Hawaiian organizations that have been culturally affiliated with human remains and/or associated funerary objects within 6 months after the completion of the inventory. 25 U.S.C. § 3003(d)(1). A copy of the notice must be provided to National NAGPRA for publication in the *Federal Register* (a notice of inventory completion). 25 U.S.C. § 3003(d)(3).

Appendix VII: Comments from the Department of Agriculture



Forest Service
Washington Office

1400 Independence Avenue, SW
Washington, DC 20250

File Code: 2300/1420

Date:

JUL 15 2010

Ms. Anu K. Mittal
Director, Natural Resources and Environment
Government Accountability Office
441 G. Street, NW
Washington, DC 20548

Dear Ms. Mittal:

We appreciate the opportunity to review and comment on the draft Government Accountability Office (GAO) report, GAO-10-768, "Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act." In general, the Forest Service agrees with the findings, conclusions and recommendations in the report.

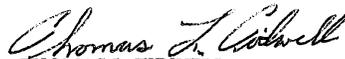
We appreciate and note careful consideration given by the GAO auditors to all of our suggestions on technical corrections and clarifications of facts. As a result, we do not need to burden this response with those matters.

We appreciate your recognition in your report that the Forest Service is one of the agencies that did the most extensive work to identify NAGPRA items.

We find the proposed executive actions to be reasonable, and our agency anticipates fully implementing those proposed executive actions.

If you have any questions, please contact Donna M. Carmical, Chief Financial Officer, at 202-205-1321 or dcarmical@fs.fed.us.

Sincerely,


THOMAS L. TIDWELL
Chief

cc: Michael Kaczor, Sandy T Coleman, Frank E Wozniak, Kathleen A Clemens



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Appendix VIII: Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



JUL 20 2010

Ms. Anu K. Mittal
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Mittal:

Thank you for providing the Department of the Interior the opportunity to review and comment on the draft Government Accountability Office 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).

The Department appreciates the diligent work of the Government Accountability Office (GAO) team that prepared the report and collected a large amount of data. We believe GAO has produced an informative summation of the complex issues associated with the Native American Graves Protection and Repatriation Act Program (NAGPRA).

The Department generally concurs with the recommendations. Please find enclosed the actions that have already been taken and that are underway to address GAO's recommendations. Also enclosed are bureau-specific comments and technical comments that should be considered for the final report.

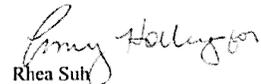
It is important to recognize the substantial progress of the Federal agencies within Interior to step up NAGPRA compliance activities including progress in training and consultation with tribes and Native Hawaiian organizations. A full analysis of compliance with the Act should include the past and current programs, as well as processes and policies that an agency has in place for responding to the Acts requirements.

As the GAO states, the Federal agencies acknowledge that they still have more work to do. We are committed to fully complying with NAGPRA. Because of the complexities of the activities required by the Act, our progress towards compliance with NAGPRA will be a focused and on-going effort. The varied and interrelated complexities of NAGPRA—completion of inventories and summaries, consultation with tribes and Native Hawaiian organizations, determination of affiliation, analysis of claims to identify the most appropriate claimant, handling items newly discovered in collections or other museums, consultation and dealing with inadvertent discoveries, etc., require an on-going process for Federal land managers.

**Appendix VIII: Comments from the
Department of the Interior**

For additional information, please contact the NAGPRA Program Director, Sherry Hutt,
at (202)354-1479.

Sincerely,



Rhea Suh
Assistant Secretary
Policy, Management and Budget

Enclosure

Government Accountability Office Draft Report
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)

Status of Recommendations:

Recommendation 1: Direct the cultural resource management programs to develop and provide Congress a needs assessment listing specific actions, resources, and time needed to complete the inventories and summaries required by NAGPRA sections 5 and 6 for their historical collections.

Response: This is underway in most of the bureaus within Interior. Interior is committed to completing this process. However, one of the greatest challenges in completing summaries and inventories of all NAGPRA items is locating collections and acquiring information from repositories. Federal collections are curated in public museums, universities, and other repositories at the direction of the Antiquities Act of 1906 and the Archaeological Resources Protection Act of 1979 (ARPA). Museums are also in possession of collections from public lands that were not collected under permit or were moved from the repository originally designated in the permit, and therefore not traceable through the federal permit records. These instances illustrate the importance of repositories notifying agencies upon discovery of Federal collections in their possession.

The NAGPRA needs assessment components that necessitate coordination with non-federal repositories curating DOI museum collections must be integrated with the DOI corrective action plan. The corrective action plan was developed in response to the findings in the Office of the Inspector General's (OIG) report entitled, *Department of the Interior Museum Collections: Accountability and Preservation (C-IN-MOA-0010-2008)*.

In addition to the requisite resources, the needs assessment should recognize that the completion of NAGPRA summaries and inventories of all Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in DOI control will only be possible with the cooperation and assistance of repositories that possess DOI collections and with effective, responsive consultation with Indian tribes and Native Hawaiian organizations.

Recommendation 2: Direct the cultural resource management programs to develop and provide Congress a timetable for expeditious publication in the Federal Register of notices of inventory completion for all remaining Native American human remains and associated funerary objects that have been culturally affiliated in inventories.

Response: Interior bureaus are at varied levels of completion based on the respective size of their collections. As the lack of sufficient resources is a challenge, Interior will

develop a timetable that considers this challenge in completing the needs assessment and in meeting any timetable.

Recommendation 3: To clarify the list of Indian tribes eligible under NAGPRA, the National NAGPRA in conjunction with Interior's Office of the Solicitor, reassess whether ANCSA corporations should be considered as eligible entities for the purposes of carrying out NAGPRA given the Solicitor's opinion and BIA policy concerning the status of ANCSA corporations.

Response: The ANCSA corporations were put on the National NAGPRA Program list of tribes for consultation in April 2010, and they were removed in May 2010.

Recommendation 4: To improve the confidence in the Review Committee and its support among NAGPRA practitioners, National NAGPRA should strictly adhere to the nomination process prescribed in the act and, working with Interior's Office of the Solicitor as appropriate, ensure that all Review Committee nominations are properly screened to confirm that the nominees and nominating entities meet statutory requirements.

Response: The Review Committee nomination procedures were revised in 2008 to ensure full transparency. Interior will ask the Solicitor's Office to review these procedures.

Recommendation 5: To provide policymakers with information to assess the overall effectiveness of NAGPRA and provide Indian tribes and Native Hawaiian organizations readily accessible information on items available for repatriation, the GAO recommends that the Secretaries of Agriculture, Defense, and the Interior, and the Chief Executive Officer to the Tennessee Valley Authority direct their cultural resource management programs to report their repatriation data to National NAGPRA on a regular basis, but no less than annually, for each notice of inventory completion they have published or plan to publish.

Response: After review and acceptance of an annual reporting template from National NAGPRA, DOI bureaus will work toward completing an annual report beginning in 2011. National NAGPRA will then compile an annual summary report of agency data.

Appendix IX: Comments from the Tennessee Valley Authority



Tennessee Valley Authority, 400 W. Summit Hill Drive, Knoxville, Tennessee 37902

Anda A. Ray
Senior Vice President
Environment and Technology

July 15, 2010

Ms. Anu K. Mittal
Director, Natural Resources and Environment
U. S. Government Accountability Office
441 G Street Northwest
Washington, DC 20548

Dear Ms. Mittal:

We appreciate the opportunity to provide comments on draft report (GAO-10-768), prepared by the General Accountability Office, entitled, *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*. Our substantive and technical comments on this draft report are provided in the enclosure to this letter.

The Tennessee Valley Authority (TVA) agrees with the conclusions and recommendations of the draft report, subject to a few reservations noted in the enclosed comments. The assessment of needs to complete the inventories and summaries required under sections 5 and 6 of the Native American Graves Protection and Repatriation Act (NAGPRA), and the development of a timetable for the publication of notices for inventory completion would help the agency in its efforts to establish the cultural affiliation of the NAGPRA items in TVA's collection. Determining the cultural affiliations will, in turn, facilitate the repatriation of these items. We have listed below some of TVA's accomplishments in moving towards the goal of repatriating the NAGPRA items in its collection.

- While work still remains in establishing cultural affiliations, TVA has high confidence in the identification of a vast majority of the NAGPRA items in its collections at museums in Alabama, Kentucky, and Tennessee.
- TVA hosted a Tribal Consultation Workshop in May 2002, at which the contents of TVA's NAGPRA collections were discussed with representatives of federally recognized tribes with interest in the Southeastern United States.
- TVA hosted a second Tribal Consultation Workshop in May 2007 to further consult with tribes regarding the contents of the NAGPRA collection; the tribal representatives were provided a compact disc of the preliminary NAGPRA inventory.
- TVA contributed funds for the creation of a digital base of the NAGPRA items curated in the University of Tennessee's McClung Museum.
- TVA created a database of NAGPRA items from written records supplied by the Alabama Museum of Natural History at the University of Alabama.

Ms. Anu K. Mittal
Page 2
July 15, 2010

- TVA staff traveled to North Carolina and Oklahoma during FY 2005 to conduct face-to-face meetings with representatives of nine federally recognized tribes.
- TVA staff traveled to Alabama, Louisiana, Missouri, Mississippi, Oklahoma, and Texas during FY 2006 to conduct face-to-face meetings with representatives of 11 federally recognized tribes.
- TVA assigned an employee in 2005 to serve part-time as the Native American Liaison; subsequently, a full time position of Native American Liaison was created in May 2009.
- In April 2009, TVA created a new position of senior specialist whose primary function is NAGPRA coordination.
- TVA has conducted multiple dispositions (post-1990) of Native American human remains that were either inadvertent discoveries or the result of intentional excavations.
- For FY 2010, as of June 2010, TVA has spent approximately \$55,000 on NAGPRA compliance.
- Prior to the enactment of NAGPRA, TVA repatriated 137 sets of human remains from its Tellico project.

We respectfully request that the GAO modify the draft report to accommodate TVA's comments as outlined herein or include this letter (and enclosure) in the appendix of the final report.

If there are questions, please contact Wayne R. Gildroy, Assistant General Counsel, at (865) 632-7361.

Sincerely,



Anda A. Ray

Enclosure

Appendix X: GAO Contact and Staff Acknowledgments

GAO Contact

Anu K. Mittal at (202) 512-3841 or mittala@gao.gov

Staff Acknowledgments

In addition to those named above, Jeffery D. Malcolm, Assistant Director; Allison Bawden; Pamela Davidson; Catherine Hurley; Mark Keenan; Jill Lacey; David Schneider; John Scott; Ben Shouse; Jeanette Soares; and Maria Soriano made key contributions to this report.

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