

## Corps of Engineers, Northwestern Division

### **NAGPRA Status and Implementation Plan**

#### **I. Introduction and Required References.**

**A.** The 1990 Native American Graves Protection and Repatriation Act (25 U.S.C §§ 3001-3013) (NAGPRA) provides for the protection of specific types of Native American and Native Hawaiian cultural items. First, Section 3 of NAGPRA establishes the procedures to follow in the event of an inadvertent discovery of human remains, funerary objects, sacred objects, and objects of cultural patrimony from sites located on land owned or controlled by Federal or tribal governments. Section 3 also establishes the process for authorized removal of these items. 25 U.S.C. § 3002. Second, Sections 5, 6, and 7 require Federal agencies, museums, and other repositories receiving Federal funding who have possession or control over Native American human remains and cultural items to inventory, summarize and repatriate such items to the culturally affiliated Federally recognized Indian tribe or Native Hawaiian organization. 25 U.S.C. § §§ 3003-3005. This Status and Implementation Plan addresses only the agency responsibilities under Sections 5, 6, and 7. The five districts within Northwestern Division (Kansas City, Omaha, Portland, Seattle, and Walla Walla) have developed their own local plans for treating inadvertent discoveries on project lands under Section 3 of NAGPRA. Those existing plans will be followed, as necessary, and not addressed here.

The emphasis of NAGPRA is on consultation with Federally recognized Native American tribes and Native Hawaiian organizations and assurance that these entities play a major role in the treatment of human remains and specific cultural objects. Federal agencies, Federally funded museums, and other repositories must compile summaries of unassociated funerary objects, sacred objects, and objects of cultural patrimony (NAGPRA Section 6) and inventories of human remains and associated funerary objects (NAGPRA Section 5) currently under their possession or control. NAGPRA regulations (43 C.F.R. part 10) detail the consultation, documentation, and notification process that each agency and museum must follow before collections can be repatriated to the appropriate Native American tribe or Native Hawaiian organization.

**B.** Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013.

Native American Graves Protection and Repatriation Act Regulations, 43 C.F.R. part 10.

#### **II. Roles and Responsibilities.**

There are several key players in the NWD NAGPRA process, and these are listed below.

**A. U.S. Army Corps of Engineers (Corps) Mandatory Center of Expertise (MCX) for the Curation and Management of Archeological Collections (CMAC).** MCX-CMAC is part of the St. Louis District and serves as the centralized record-keeper for all Corps NAGPRA compliance materials. MCX-CMAC helps to ensure Corps-wide compliance with Sections 5 and 6 of NAGPRA, including the repatriation of Sections 5 and 6 items under Section 7 of the law. MCX-CMAC allocates annual Corps funding for compliance with Sections 5, 6, and 7 activities.

**B. Corps of Engineers Districts and Divisions.** Each Corps District is ultimately responsible for NAGPRA compliance. This includes consultation, research, and preparation of inventories and summaries of all NAGPRA collections for which they are responsible. However, this specific plan is only applicable to those Districts that comprise the U.S. Army Corps of Engineers, Northwestern Division: Kansas City District, Omaha District, Portland District, Seattle District, and Walla Walla District. The Northwestern Division (NWD) office provides oversight of the compliance process and serves as the clearinghouse for annual NAGPRA reports for the five districts.

**C. Federally Recognized Tribes.** NAGPRA regulations require Federal agencies, museums, and other repositories to consult with lineal descendants, Federally recognized tribes, Native Alaskans and Native Hawaiian organizations throughout the NAGPRA process. Lineal descendants or Federally Recognized Tribes participate in the consultation process and submit claims for NAGPRA collections directly to the appropriate Corps District office. Claims are normally submitted by tribes who can show cultural affiliation, cultural relationship, or on whose aboriginal lands the remains were located.

**D. Headquarters, U.S. Army Corps of Engineers.** Prepares budget submission to Congress and provides general policy guidance.

**E. National Park Service's National NAGPRA Program (NPS).** Federal agency whose National NAGPRA Program mission is to oversee the NAGPRA compliance process for Federal agencies and museums that receive Federal funding. All compliance documents, including summaries, inventories, notices of inventory completion, notices of intent to repatriate, and correction notices are reviewed by NPS prior to repatriation by Federal agencies and museums. NPS is responsible for publishing certain documents in the Federal Register prior to repatriation. NPS provides general guidance to Federal agencies and museums as they proceed through the NAGPRA compliance process.

**F. Repositories.** Most Corps of Engineers NAGPRA collections currently are held in museums and other curation facilities. The Corps Districts must coordinate regularly with these repositories to ensure that collections are appropriately curated, inventoried, and adequately prepared for transfer to appropriate tribes for repatriation. Repositories must work closely with the Corps Districts and tribes to ensure the process is well documented and proceeds smoothly.

### **III. Definitions.**

The following definitions are taken directly from the statute. 25 U.S.C. § 3001. For purposes of this plan, the term:

**A.** "cultural affiliation" means that there is 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.

**B.** "cultural items" means human remains and-

1. "associated funerary objects" which shall mean objects that, as a 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.

2. "unassociated funerary objects" which shall mean objects that, as a 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,

3. "sacred objects" which shall mean 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, and

4. "cultural patrimony" which shall mean an object 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.

**C.** "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

**D.** "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971.

**E.** "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.

**F.** "museum" means 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, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

**G.** "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

**H.** "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

**I.** "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.

**J.** "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. § 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were 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 is deemed to give right of possession to those remains.

**K.** "tribal land" means-

- 1.** all lands within the exterior boundaries of any Indian reservation;
- 2.** all dependent Indian communities;
- 3.** any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

#### **IV. NAGPRA Process.**

**A.** The Districts shall follow the process below when complying with NAGPRA Sections 5, 6, and 7.

- 1.** Identify all collections, including general content, for which you have stewardship responsibility. Through the compliance and consultation process, the Districts may be made aware of collections that are not currently under their control, but they will investigate their NAGPRA responsibilities as time and resources allow.
- 2.** Determine physical location for all collections, both records and artifacts.
- 3.** Determine which collections may contain human remains, associated funerary objects, unassociated funerary objects, sacred objects, and/or objects of cultural patrimony.
- 4.** Determine if the human remains and/or objects delineated above are likely to be Native American and subject to the provisions of NAGPRA.
  - (a.)** Review existing literature on archaeological site and human remains for information pertinent to the determination.
  - (b.)** If needed, inspect human remains for morphological features consistent with Native American populations.
  - (c.)** If needed, inspect material remains for features consistent with Native American archaeological sites.
  - (d.)** If needed, convene internal District meeting to discuss and review the totality of circumstances and evidence that have been compiled to answer the question:

Are the human remains and funerary items in question Native American? That is, are they "...of, or relating to, a tribe, people, culture that is indigenous to the United States?" Evidence should indicate a link between the human remains and a current Indian tribe, individual, or cultural group.
  - (e.)** Draft recommendations for District Engineer (DE).
  - (f.)** DE prepares formal memorandum regarding Native American determination.

**B. To Comply with NAGPRA Section 6**

- 1.** Prepare Section 6 Summary Letter.
- 2.** Send Section 6 Summary Letter to potentially affiliated Federally recognized tribes (copy to NPS and MCX-CMAC).

**3.** Consult with Federally recognized tribes and identify unassociated funerary objects, sacred objects, and objects of cultural patrimony.

**4.** Determine cultural affiliation of unassociated funerary objects, sacred objects, and objects of cultural patrimony.

**(a.)** Conduct cultural affiliation study.

**(b.)** If needed, convene internal District meeting to evaluate the totality of the circumstances and evidence that have been compiled to illustrate the connection between the claimant Federally recognized tribe and the human remains and associated funerary objects. Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains and associated funerary objects must be established by using the following types of evidence: geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

**(c.)** Draft recommendations for DE.

**(d.)** DE prepares formal memorandum regarding cultural affiliation decision.

**6.** If there is a valid claimant(s), prepare Notice of Intent to Repatriate unassociated funerary objects, sacred objects, and objects of cultural patrimony and submit to NPS.

**7.** NPS publishes Notice of Intent to Repatriate in *Federal Register*.

### **C. To Comply with NAGPRA Section 5**

If human remains and associated funerary objects are determined to be Native American, then perform the following steps.

**1.** Conduct consultation with federally recognized tribes, Alaskan Natives, or Native Hawaiians as necessary throughout the process.

**2.** Conduct physical inventory of human remains and associated funerary objects in accordance with NAGPRA Section 5.

**3.** Prepare draft Section 5 Inventory.

**4.** Submit draft Section 5 Inventory to potentially affiliated federally recognized Native American tribes, Alaskan Natives, or Native Hawaiians.

**5.** Determine cultural affiliation, if possible, for each set of human remains and associated funerary objects. The cultural affiliation process consists of the following steps:

- a. Conduct cultural affiliation study.
- b. If needed, convene internal District meeting to evaluate the totality of the circumstances and evidence that have been compiled to illustrate the connection between the claimant federally recognized tribe(s) and the human remains and associated funerary objects. Evidence of a kinship or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains and associated funerary objects must be established by using the following types of evidence: geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.
- c. Meet with tribes to discuss cultural affiliation findings.
- d. Draft recommendations for DE.
- e. DE prepares formal memorandum regarding cultural affiliation decision.

If human remains and associated funerary objects are determined to be culturally affiliated, then perform the following steps.

1. Submit Notice of Inventory Completion and Item by Item list of culturally affiliated items to Federally recognized tribes and NPS
2. Publish Notice of Inventory Completion in *Federal Register*.

If human remains and associated funerary objects are determined to be culturally unaffiliated, then perform the following steps.

1. Prepare an Item-by-Item list (Inventory) of culturally unidentifiable human remains and associated funerary objects.
2. Provide copy of Inventory of culturally unidentifiable human remains and associated funerary objects to NPS.
3. NPS provides Inventory of culturally unidentifiable human remains and associated funerary objects to NAGPRA Review Committee.
4. Retain custody of culturally unidentifiable materials until final regulations are published.

#### **D. To Comply with Section 7**

If human remains and associated funerary objects (Section 5) are culturally affiliated with a Federally recognized Indian tribe or Native Hawaiian organization and a Notice of Inventory completion has been published in the *Federal Register* and a District Engineer or a District has received a request from a known lineal descendant, or culturally affiliated tribe, or organization, then the remains and objects shall be repatriated expeditiously.

1. Return of these materials shall be in consultation with the requesting descendant, culturally affiliated tribe, or organization to determine the place and manner of repatriation of such items.
2. Repatriation of these cultural items cannot occur until at least 30 days after publication of the Notice of Inventory Completion in the *Federal Register*.

If unassociated funerary objects, sacred objects, or objects of cultural patrimony (Section 6) are culturally affiliated with a Federally recognized Indian tribe or Native Hawaiian organization and a District Engineer or a District has received a request from a known lineal descendant, tribe, or organization, then the objects shall be repatriated expeditiously.

Return of these materials shall be in consultation with the requesting descendant, culturally affiliated tribe, or organization to determine the place and manner of delivery of such items. Repatriation of these items cannot occur until at least 30 days after publication of the Notice of Intent to Repatriate in the *Federal Register*.

Exceptions to repatriation include the following:

1. NAGPRA materials are indispensable to the completion of a scientific study, the outcome of which is a major benefit to the United States. If materials are determined to fall within this category, consultation with the appropriate Native American tribe(s) will occur.
2. Multiple requests are made for items and the District cannot determine which party is the appropriate claimant.
3. Court of competent jurisdiction has ruled that the repatriation would result in a taking of property without just compensation within the meaning of the Fifth Amendment of the U.S. Constitution.

#### **IV. NAGPRA Plan.**

In order to ensure consistency, track compliance status, and plan for funding needs, the attached spreadsheets will be completed and regularly updated by each district NAGPRA coordinator within the five NWD districts. The update schedule will vary between districts but it is expected that the district NAGPRA coordinator will ensure that pertinent data is added when received so these records can be used for any status inquiry throughout the fiscal year. NWD will require

completion and submission of these updated spreadsheets at the end of each fiscal year along with the annual NAGPRA and Curation Questionnaire required by MCX-CMAC. The spreadsheets will be provided to a designated NAGPRA POC at NWD by September 30<sup>th</sup> annually. NWD will review the spreadsheets, identify any problem areas, and ensure that compliance is proceeding appropriately.

**4 Attachments:**

**Table 1 Reburial and Repatriation Actions (Prior to 1990)**

**Table 2 Section 5: Inventory of Human Remains and Associated Funerary Objects**

**Table 3 Section 6: Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

**Table 4 Section 7: Repatriation**



**TABLE 1**

**Reburial and Repatriation Actions (Prior to 1990)  
DISTRICT**

Site/Collection	Corps Project	Curation Facility	Minimum No. of Individuals (MNI)	No. of Assoc. Funerary Objects	No. of Unassoc. Funerary Objects	Tribe Repatriated To	Reburial Date & Location	Comments

*The purpose of this table is to document human remains and cultural items no longer in possession of the Corps. These items were transferred prior to the enactment of NAGPRA in 1990.*

*Site/Collection: If an official name or site number exists, include here.*

*Curation Facility: Include location*

*Tribe Repatriated To: Include location*

*Comment: Add report citation if available*

*Notes: If no data available, indicate ND.*

*If not applicable, indicate NA.*

*Do not leave any blank fields.*



9. *Repatriation.*

*Site/Collection: If an official name or site number exists, include here.*

*Curation Facility: Include location*

*Tribe Repatriated To: Include location*

*Comment: Add report citation if available*



*Site/Collection: If an official name or site number exists, include here.*

*Curation Facility: Include location*

*Tribe Repatriated To: Include location*

*Comment: Add report citation if available*

