



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

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

Dear Chairman Schatz:

The Native American Graves Protection and Repatriation Review Committee (Review Committee) asked me to forward to you their fiscal year 2023 Report to Congress. On November 1, 2023, the Review Committee held a public meeting and approved the report for distribution.

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

We appreciate your interest in the successful implementation of NAGPRA and look forward to working closely with you and other members of Congress on NAGPRA matters. If you have any questions regarding the Review Committee, please do not hesitate to contact the Review Committee's Designated Federal Officer, Melanie O'Brien, at Melanie_O'Brien@nps.gov or by phone at (202) 354-2204.

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

Sincerely,

SHANNON
ESTENOZ

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SHANNON ESTENOZ
Date: 2024.05.02
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Shannon Estenoz
Assistant Secretary
for Fish and Wildlife and Parks

Enclosure

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

Annual Report to Congress

NATIVE AMERICAN GRAVES PROTECTION & REPATRIATION REVIEW COMMITTEE

FY2023

October 1, 2022-September 30, 2023

November 1, 2023

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Executive Summary

The passage of the Native American Graves Protection and Repatriation Act (NAGPRA or the Act) on November 16, 1990, mandated the formation of a Federal advisory committee to "monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 3003, 3004 and 3005" of the Act.¹ One of the specific duties of the Native American Graves Protection and Repatriation Review Committee is to report to Congress annually regarding progress made and any barriers encountered in implementing the Act's provisions during the previous year.²

This report summarizes Review Committee activities and progress made and barriers encountered in implementation of NAGPRA during fiscal year (FY) 2023 (October 1, 2022-September 30, 2023). The Review Committee also offers specific recommendations to improve implementation of NAGPRA in the future. The following summary of the Review Committee's recommendations include references to where in this report they are described in greater detail. The Review Committee recommends that the Congress:

1. Amend sections of NAGPRA regarding the definitions of "sacred objects" (recommendation #1A), "Native American" (#1B and #7B), "Hui Malama I Na Kupuna O Hawai'i Nei (#1C), "Native Hawaiian organization" (#1D), "right of possession" (#1E), "aboriginal land" (#2A), review committee's responsibilities (#3), Native Hawaiian traditional religious leaders (#6), illegal trafficking (#7C); exemption from disclosure of culturally sensitive information (#8), administration of the NAGPRA program (#9), and scope of the review committee's report to Congress (#11).
2. Amend a section of the National Museum of the American Indian Act to grant the United States District Courts jurisdiction over violations of the Act and clarify the inventory process (recommendation #10).
3. Request that the Government Accountability Office complete evaluations of Federal agency compliance with the requirements of 25 U.S.C. 3002 (recommendation #2B), implementation of the civil penalty provisions (#4), NAGPRA grant program (#5A), and costs of proposed regulatory revisions (#5B).
4. Establish and fund an interagency investigative and prosecutorial effort to combat illegal trafficking of Native American cultural items (recommendation #7D).
5. Include \$3 million in the FY2025 and subsequent year budgets for

¹ 25 U.S.C. § 3006 (a).

² 25 U.S.C. § 3006 (h).

implementation of the Safeguard Tribal Objects of Cultural Patrimony Act (recommendation #7A).

- 6.** Authorize the National Park Service to rebury Native American human remains and funerary objects on NPS lands regardless of the original location of removal (recommendation 12).

Summary of Activities

NAGPRA affects Indian Tribes, Native Hawaiian organizations, lineal descendants, museums, and Federal agencies. The development of long-term positive collaborations and cooperation among these different communities as part of their compliance and involvement with the law is an important goal. Through its public meetings, oversight of implementation of the Act, review and recommendations regarding the resolution of disputes, and recommendations to the Secretary of the Interior, the Review Committee works to achieve the goals and objectives of the statute.

Review Committee Members Serving during FY2023

Nominated by Indian Tribes and Native Hawaiian organizations:

Domonique deBeaubien (appointed November 22, 2022)
Armand Minthorn (appointed October 7, 2022)
Toby Patrick (appointed June 1, 2023)

Nominated by national museum and scientific organizations:

Francis McManamon (term ended October 10, 2022)
Edward Halealoha Ayau (appointed November 22, 2022)
C. Timothy McKeown (appointed June 4, 2020)
Shelby Tisdale (appointed June 4, 2020)

Nominated by the Committee:

Angela Garcia-Lewis (appointed November 22, 2022)

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

Review Committee Meetings

In fiscal year 2023, the Review Committee held two public, telephonic meetings and one two-day face-to-face meeting.

During the FY2023 meetings, the Review Committee received reports from the National NAGPRA Program regarding implementation and compliance activities under the Act, provided recommendations to the Secretary of the Interior regarding the disposition of culturally unidentifiable human remains, heard presentations from NAGPRA constituents, and received public comments. The Review Committee also expressed serious concern about the delays in transmittal of the Committee's FY2019 annual report to Congress. The Review Committee conducted substantive discussions on the FY2022 annual report to Congress.

Attached to this Annual Report are statistics reported by the National NAGPRA Program for fiscal year 2023 regarding the implementation of NAGPRA, grants awarded under

the Act, and other important progress made.

There have been notable examples of progress made by Indian Tribes, Native Hawaiian organizations, museums, and Federal agencies in the implementation of NAGPRA. Regrettably, there are also longstanding barriers to swifter implementation of the law. In the body of this report, we present additional information on both the progress and the barriers.

Minutes and transcripts of past meetings can be accessed at:

<https://www.nps.gov/subjects/nagpra/meetings.htm>

The 83rd meeting of the review committee was held telephonically for two and a half hours on January 5th, 2023. During the meeting, the review committee:

- Reviewed a draft of its FY2022 Report to Congress.
- Reviewed a draft of its comments on the proposed regulations.
- Benefited from public comments from the Colville Tribe and several members of the public.

The 84th meeting of the review committee was held telephonically for two and a half hours on January 8th, 2023. During the meeting, the review committee:

- Approved its FY2022 Report to Congress.
- Approved its comments on the proposed regulations.
- Benefited from public comments from the Gila River Indian Community and several members of the public.

The 85th meeting of the review committee was held June 7-8, 2023, in Bloomington, Indiana. During the meeting, the review committee:

- Recommended the disposition of culturally unidentifiable Native American human remains in the possession or control of Vassar College, Colorado College, Detroit Institute of Arts, and the Witte Museum.
- Benefited from presentations from Indiana University, Miami Tribe of Oklahoma, Illinois State Museum, University of Kentucky, Bureau of Land Management, Bureau of Indian Affairs, Tennessee Valley Authority, University of Missouri, and Field Museum, and comments from several members of the public.

Progress Made

Congress has charged the Review Committee with reporting annually on progress made and barriers encountered in NAGPRA implementation. We are pleased to report on the following progress in the implementation of NAGPRA.

- 1. Publication of a proposed revision of regulations implementing NAGPRA.** On October 18, 2022, the Department of the Interior published a proposal to revise

regulations implementing NAGPRA.³ The ninety-day comment period was later extended to January 31, 2023, during which 181 public comments were received. On January 10, 2023, the Review Committee submitted 25 pages of comments.⁴

2. Cooperation and collaboration by tribes and museums carrying out NAGPRA implementation. In FY2023, the Review Committee heard reports highlighting ongoing cooperation and collaboration among tribes and museums, Federal agencies, and organizations involved in implementing NAGPRA.

- Indiana University and the Miami Tribe of Oklahoma hosted the Review Committee’s June 7-8, 2023, meeting in Bloomington, Indiana, and informed the committee on their ongoing joint efforts to determine cultural and geographic affiliation and repatriate the remains of over 4,000 Native American individuals.
- Vassar College, Saginaw Chippewa Indian Tribe of Michigan, and Stockbridge Munsee Community, Wisconsin jointly requested the Review Committee’s recommendation for disposition of the remains of five Native American individuals for which the original burial location is unknown. The request was supported by the Delaware Nation, Oklahoma; Fort Belknap Indian Community; Monacan Indian Nation; Nottawaseppi Huron Band of the Potawatomi; Pawnee Nation; Pueblo of Pojoaque; Shawnee Tribe; Sokaogon Chippewa Community; and Osage Nation. The Review Committee unanimously recommended that the Secretary approve the disposition.
- The Colorado Springs Fine Arts Center at Colorado College, Hopi Tribe, and Southern Ute Indian Tribe jointly requested the Review Committee’s recommendation for disposition of the remains of two Native American individuals and two associated funerary objects for which the original burial location is unknown. The request was supported by the Pueblo of Acoma. The Review Committee unanimously recommended that the Secretary approve the disposition.
- The Detroit Institute of Art and Sault Ste. Marie Tribe of Chippewa Indians jointly requested the Review Committee’s recommendation for disposition of the remains of eleven Native American individuals and six associated funerary objects for which the original burial location is unknown. The request was supported by the Nottawaseppi Huron Band of the Potawatomi. The Review Committee unanimously recommended that the Secretary approve the disposition.
- The Witte Museum and Tap Pilam Coahuiltecan Nation (a non-Federally recognized Indian group) jointly requested the Review Committee’s recommendation for disposition of the remains of 31 Native American

³ Proposed rule: Native American Graves Protection and Repatriation Act: Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (Oct. 18, 2022). <https://www.regulations.gov/document/NPS-2022-0004-0001>

⁴ Comment from Native American Graves Protection and Repatriation Review Committee (Jan. 13, 2023). <https://www.regulations.gov/comment/NPS-2022-0004-0096>

individuals and one associated funerary object removed from various locations in Val Verde County, Texas, to be reburied pursuant to Val Verde County ordinance. The Review Committee unanimously recommended that the Secretary approve the disposition.

3. Increased Press Coverage of Repatriation Issues. In January 2023, ProPublica launched The Repatriation Project, including an online interactive tool to facilitate easy public search of information for over 100,000 Native American human remains held by roughly 600 Federally funded institutions.⁵ Since then, ProPublica has published over a dozen articles focusing on the repatriation efforts of various institutions, and its database and press guide have been used by reporters from many other news outlets in stories on the collections of institutions across the country. In August 2023, The Washington Post also did a series of articles on repatriation at the Smithsonian Institution.⁶ The Review Committee is appreciative of the press' efforts to keep the public informed.

4. Department of the Interior established administrative deadlines. On September 21, 2023, Rachel Tayler, the Department of the Interior Chief of Staff issued a memorandum to the heads of all Departmental bureaus and offices, in particular, the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, and National Park Service, directing them to prioritize and facilitate repatriation of 2,900 Native American individuals and 9,400 associated funerary objects, assure compliance with legal requirements, and demonstrate Interior's commitment to strengthening the government-to-government relationships with Indian Tribes and Alaska Native villages. A follow-up memorandum and action plan from Principal Deputy Assistant Secretary – Policy, Management, and Budget directed Departmental bureaus and offices to complete notices of inventory completion for all Native American human remains and associated funerary objects held by the Department by April 20, 2024, unless additional time is requested by Indian tribes.

5. Passage of the Safeguard Tribal Objects of Patrimony Act (STOP Act). On December 21, 2022, President Biden signed the STOP Act into law. The STOP Act amends NAGPRA to increase the maximum penalty for trafficking of Native American cultural items, establish mechanisms to stop illegal export of Native American cultural items, facilitate the international repatriation of Native American cultural items, and establish a Federal network to support the voluntary return of Native American cultural items to Indian Tribes and Native Hawaiian organizations. The STOP Act establishes a Native American Working Group and directs this Review Committee to make efforts to provide information and assistance to it to facilitate repatriations; protect tangible cultural heritage; improve Federal agency implementation of NAGPRA, ARPA, and other laws; and advise on the voluntary return of Native American cultural items and

⁵ ProPublica, The Repatriation Project: The Delayed Return of Native Remains, <https://www.propublica.org/series/the-repatriation-project>

⁶ Nicole Dungca, Claire Healy and Andrew Ba Tran, What we know about the Smithsonian's human remains Aug. 14, 2023). <https://www.washingtonpost.com/history/interactive/2023/takeaways-smithsonian-human-brains-remains-collection/>

elimination of illegal commerce of cultural items. The Review Committee looks forward to assisting the Native American Working Group in these tasks.

6. Introduction of the Federal Indian Boarding School Initiative Act. On May 18, 2023, Senator Elizabeth Warren and 26 original cosponsors introduced S. 1723 to establish a Truth and Healing Commission on Indian Boarding School Policies in the United States. Senators Rosen and Feinstein joined as cosponsors on May 30, 2023. On June 7, 2023, the Senate Committee on Indian Affairs held a business meeting to consider the bill. At Senator Warren's request, Chairman Schatz and Vice Chairman Murkowski filed an amendment in the nature of a substitute reflecting considerable feedback from Native peoples, organizations, and Indian tribes. The Committee agreed to five additional amendments filed by Senators Daines and Mullin. Part of the Commission's duties will be to help document and locate the graves of American Indian, Alaska Native, and Native Hawaiian children who died while attending Indian boarding schools or in neighboring hospitals, and to support identification of and disposition to the tribal nations from which these children were taken. The Review Committee supports this legislative initiative and looks forward to working with Congress and the Commission, once seated, to ensure the appropriate protection or disposition of student graves found on Federal lands, and that if excavation occurs, is carried out pursuant to Section 3 of NAGPRA.⁷ The Review Committee also looks forward to working with the Commission to ensure all remains of boarding school students and funerary objects excavated or removed from lands controlled by any relevant institution or state or local government agency that received Federal funds are repatriated to the appropriate lineal descendant or affiliated Indian tribe or Native Hawaiian organization pursuant to Sections 5, 6, and 7 of NAGPRA.⁸

Barriers to Overcome

Several barriers to full implementation of NAGPRA were identified in FY2023.

1. Continued resistance by some institutions. The Miami Tribe of Oklahoma reported that while most museums in its homelands of Indiana, Ohio, Illinois, southern Michigan, southern Wisconsin, the upper rim of Kentucky, Kansas, and Oklahoma have come to the table willingly and with intent, some continue to remain out of compliance, even posturing against any need or requirement of compliance with the law. The National NAGPRA Program indicates that during FY2023 it received thirteen allegations of failure to comply that are currently under review. The committee has also heard that some states insist on relying solely on state burial law regarding the disposition of Native American human remains and associated funerary objects under state control and ignore NAGPRA's repatriation requirements that also apply, as well as allegations that the U.S. Army ignores NAGPRA's requirements regarding the planned excavation of Native American human remains at the site of the U.S. Army War College in Carlisle, Pennsylvania.

⁷ 25 U.S.C. § 3002

⁸ 25 U.S.C. §§ 3003-3005

In addition, the Government Accountability Office over the years has made 55 recommendations to Federal agencies to improve implementation of NAGPRA. While most have been implemented, several remain unaddressed, including that:

- The Secretary of the Interior should direct the Directors of Bureau of Indian Affairs and the National Park Service to take steps to identify and obtain the information needed to target its efforts for analyzing and addressing risks to Native American cultural resources, including NAGPRA, and share any promising practices with the Departmental Consulting Archeologist.⁹
- The Attorney General should direct Justice's members of the interagency working group for protection of Native American cultural property, including Native American cultural items as defined by NAGPRA, to identify and externally communicate to tribes points of contact within the agency that are responsible for responding to tribes' requests for assistance with repatriating cultural items from overseas auctions.¹⁰
- The Assistant to the Secretary of Agriculture for Rural Development, Director of Civil Works of the Army Corps of Engineers, Secretary of Energy, and Administrator of the Federal Highway Administration should document in their agencies' tribal consultation policy how agency officials are to communicate with tribes about how tribal input from consultation was considered in agency decisions on proposed infrastructure projects.¹¹

The Government Accountability Office also recommended that Congress consider ways to expedite the Smithsonian's repatriation process including, but not limited to, directing the Smithsonian to make cultural affiliation determinations as efficiently and effectively as possible.¹²

2. Conflicting estimates of the cost of repatriation. The Review Committee has consistently requested that the Congress appropriate additional funding for implementation of NAGPRA since its first report to Congress in 1995. Representatives of Indian tribes, Native Hawaiian organizations, and museums have consistently expressed the need for additional funding. The Government Accountability Office's (GAO) report entitled Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act (GAO-10-768) identified a lack of resources within Federal agencies dedicated to NAGPRA implementation as

⁹ Government Accountability Office, Native American cultural resources: improved information could enhance agencies' efforts to analyze and respond to risks of theft and damage (Mar. 4, 2021). GAO 21-110 (recommendations 4 and 7).

¹⁰ Government Accountability Office, Native American cultural property: Additional agency actions needed to assist Tribes with repatriating items from overseas auctions (Aug. 6, 2018). GAO-18-537 (recommendation 7).

¹¹ Government Accountability Office, Tribal consultation: Additional Federal actions needed for infrastructure projects (Mar. 20, 2019). GAO-19-22 (recommendations 6, 7, 10, and 14).

¹² Government Accountability Office, Smithsonian Institution: Much work still needed to identify and repatriate Indian human remains and objects (Mar. 25, 2011). GAO-11-515.

"one of the most significant challenges" to compliance with the Act. However, the Department of the Interior recently reported estimates that are largely consistent with current appropriations, and have indicated that proposed regulations requiring museums and Federal agencies to complete or revise inventories in consultation with Indian tribes and Native Hawaiian organizations for over 100,000 Native American human remains and associated funerary objects within a 30 month period will not impose a significant economic impact on a substantial number of small entities.¹³ The Review Committee feels there is a need for accurate, impartial, and comprehensive assessment of the overall costs of compliance with NAGPRA by museums, Federal agencies, Indian tribes, and Native Hawaiian organizations.

3. Sensitive information is currently unprotected. Of critical importance, sensitive information shared during NAGPRA consultations by lineal descendants, Indian Tribes, and Native Hawaiian organizations and in the possession of a Federal agency or museum may be released under the Freedom of Information Act. For example, it is not in the spirit of the law to create open opportunities for looters by disclosing specific information on burial locations. Ceremonial information could be shared in a consultation session but should not be released to the general public. The inability to keep sensitive information confidential should be considered a significant barrier to repatriation.

4. Staff Support. NAGPRA requires the Secretary of the Interior "to provide reasonable administrative and staff support necessary for the deliberations of the committee." The Review Committee's repeated requests for copies of the 85 comments on a draft proposal to revise existing regulations that were provided to the Department by Indian tribes and Native Hawaiian organizations and 10 comments provided by Federal agencies on the proposed rule were denied. The Review Committee's deliberations on the draft proposed regulations were cut short after only reviewing two sections.

5. Native Hawaiian organizations. When NAGPRA was enacted in 1990 it defined "Native Hawaiian organization" to include two organizations namely, Hui Malama I Na Kupuna O Hawai'i Nei and the Office of Hawaiian Affairs. In 2015, Hui Malama I Na Kupuna O Hawai'i Nei ceased to exist. Thereafter, the organization Hui Iwi Kuamo'o was established by former Hui Malama I Na Kupuna O Hawai'i Nei members to continue repatriation efforts. The Review Committee recognizes the need to address this confusion and supports the replacement of Hui Malama I Na Kupuna O Hawai'i Nei with Hui Iwi Kuamo'o throughout the Act and regulations.

¹³ National Park Service, Cost-benefit and regulatory flexibility threshold analyses: Native American Graves Protection and Repatriation Act proposed revisions (Sept. 2022). <https://www.regulations.gov/document/NPS-2022-0004-0002>

Recommendations to Congress

Based on its experience with both barriers and examples of progress, the Review Committee recommends the following Congressional actions (proposed revisions of statutory text shown with **redline** and **strikeout**).

1. Definitions (25 U.S.C. § 3001)

A. **Sacred Objects (25 U.S.C. § 3001 (3)(C))**. The Act defines “sacred objects” in terms of traditional Native American religions only. There is a need to expand the definition to make the important distinction that some practices are religious in nature and some are familial spiritual practices and not organized formally amongst the larger community or considered stately religions. For Hawaiians, these are ‘aumākua practices, which are ike pāpālua (spiritual communications) with deceased family members that were not considered part of the stately religion that were overthrown in circa 1819-1820 following the defeat of ‘aikapu (sacred eating). We request the Congress to amend the definition of “sacred objects” by adding this simple language as follows:

(C) “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 or family spiritual practices by their present day adherents, and

B. **Native American (25 U.S.C. § 3001 (9))**. The most problematic definition in the Act is that of “Native American.” NAGPRA defines the term to mean “of, or relating to, a tribe, people, or culture that is indigenous to the United States.” However, in 2004, the United States Court of Appeals for the Ninth Circuit interpreted the term “Native American” to require that human remains and other cultural items “must bear a significant relationship” to a **presently existing** Tribe, people, or culture to be considered Native American.¹⁴ Not only was this incorrect opinion antithetical to the purpose and policy underlying NAGPRA, it necessitated passage of separate legislation to enable reburial of the 9,000-year-old human remains at issue in the case, and it created ambiguity which, in at least one case, has led to an acquittal in a NAGPRA trafficking case.¹⁵ In order to address this issue, the Committee recommends that Congress amends NAGPRA’s definition of “Native American” to read as follows:

(9) “Native American” means of, or relating to, a tribe, people, or culture that is or was indigenous to any geographic area that is now located within the boundaries of the United States.

C. **Hui Malama I Na Kupuna O Hawai‘i Nei (25 U.S.C. § 3001 (6))**. NAGPRA names and defines “Hui Malama I Na Kupuna O Hawai‘i Nei” as a Native Hawaiian organization qualified to conduct repatriation on behalf of Native Hawaiians. In January 2015, the organization voluntarily and formally dissolved itself under the laws of the State of Hawai‘i, as directed by the organization’s founder. The organization was succeeded by the Native Hawaiian organization Hui Iwi Kuamo‘o whose leadership and membership is the same as the leadership of Hui Malama I Na Kupuna O Hawai‘i Nei. We request that the Congress repeal all references to this organization from the NAGPRA and replace it with “Hui Iwi Kuamo‘o,” its successor organization.

¹⁴ *Bonnichsen v. United States*, 367 F.3d 864, 878 (9th Cir. 2004) (emphasis in original).

¹⁵ *U.S. v. Deluca*, No. 00 CR 387 (N.D. Ill. Mar. 6, 2002).

The definition should read as follows:

(6) "Hui Iwi Kuamo'o" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawai'i by that name on July 21, 2022, for the purpose of succeeding to Hui Mālama I Nā Kūpuna O Hawai'i Nei and thereby providing guidance, expertise and ceremonial practice in Native Hawaiian cultural issues, particularly repatriation and reburial issues.

D. **Native Hawaiian Organization (25 U.S.C. § 3001 (11)).** We request the Congress amend this definition to replace "Hui Malama I Na Kupuna O Hawai'i Nei" with "Hui Iwi Kuamo'o," and add a provision prohibiting any museum or government agency from asserting itself as a Native Hawaiian organization, as follows:

(11) "Native Hawaiian organization" means any organization which—
(A) serves and represents the interests of Native Hawaiians,
(B) has as a primary and stated purpose the provision of services to Native Hawaiians, ~~and~~
(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and ~~Hui Malama I Na Kupuna O Hawai'i Nei~~ Hui Iwi Kuamo'o,
and
(D) does not include any museum or agency or subdivision of the State of Hawai'i or the United States.

E. **Right of Possession (25 U.S.C. § 3001 (13)).** The Act defines "right of possession" to apply to unassociated funerary objects, sacred objects, and objects of cultural patrimony and limits its application to human remains and associated funerary objects. There is a need to recognize that a funerary status is perpetual and cannot change. As long as an object is funerary, it cannot be owned by the living. It is also haumia (defiled) given its prior association with the dead. We request the Congress to amend the definition of "right of possession" to extend the limitation to unassociated funerary objects in addition to human remains and associated funerary objects, as follows:

(13) "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 3005(c) of this title, result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims 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, and unassociated 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.

2. **Ownership (25 U.S.C. § 3002)**

The ownership provisions apply to the discovery, removal, or excavation of Native American cultural items on Federal lands and Tribal lands after 1990. NAGPRA and its implementing regulations require persons who discover Native American human remains or other cultural items on Federal or Tribal lands to immediately stop any ongoing activity and provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal land manager. The Federal land manager then must notify the appropriate Indian Tribes or Native Hawaiian organizations and begin consultation about the disposition of cultural items and complete a plan of action. The activity that resulted in the inadvertent discovery may resume thirty days after certification by the Federal land manager of receipt of the written confirmation of notification, or sooner if a written, binding agreement is executed between the Federal agency and the appropriate Indian Tribes or Native Hawaiian organizations. Discovered human remains or other cultural items may only be removed or excavated after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, or, in the case of Tribal lands, with the consent of the appropriate Indian Tribe or Native Hawaiian organization. The excavation or removal of cultural items must also comply with the requirements of the Archaeological Resources Protection Act (ARPA). NAGPRA provides a detailed priority listing to determine the ownership or control of discovered or excavated Native American human remains and other cultural items based on lineal descent, Tribal land, cultural affiliation, and aboriginal land. To date, only 238 discoveries and excavations of Native American human remains and other cultural items had occurred on Federal lands,¹⁶ indicating that NAGPRA has been somewhat successful in fulfilling its grave protection mandate. NAGPRA sets standards for the disposition of human remains and other cultural items discovered on Federal lands that are recognized by a final judgement of the Indian Claims Commission or the United State Court of Federal Claims.¹⁷ This Committee has adopted this standard in its recommendations regarding the disposition of culturally unidentifiable human remains in museum or Federal agency collections, but elaborated on the basis for determining aboriginal lands. The current regulations allow aboriginal lands to also be determined by a treaty, Act of Congress, or Executive Order.¹⁸

A. In order to bring the ownership and repatriation provisions in line, we request that the Congress amend the provisions of 25 U.S.C. § 3002 (a)(2)(C) to read as follows:

if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order as the aboriginal land of some Indian Tribe—

The ownership section has proved the most prone to litigation, due in part to the brevity of the statutory provisions as well as the lack of any institutionalized form of alternative dispute resolution. The Committee has heard that in many cases Federal agency officials are failing to adequately consult with Indian Tribes following inadvertent discoveries and are failing to complete the plans of action required by regulation. In the draft proposed regulations, the Department of Interior proposed eliminating these requirements, but in the face of strong opposing commentary retained these requirements in the proposed rule.¹⁹

¹⁶ National NAGPRA Program, Fiscal Year 2022 Report. <https://www.nps.gov/subjects/nagpra/reports.htm>

¹⁷ 25 U.S.C. § 3002 (a)(2)(c).

¹⁸ 43 CFR § 10.11 (c)(1)(ii).

¹⁹ National Park Service, Response to Tribal Consultation on revisions to 43 CFR Part 10 Native American Graves Protection and Repatriation Act Regulations (Aug. 2022). <https://www.regulations.gov/document/NPS-2022-0004-0004at 30>.

B. To get a better grasp of Federal compliance with NAGPRA’s provisions protecting Native American graves and cultural items, we ask the Congress to:

request the Government Accountability Office to complete an evaluation of Federal agency compliance with the requirements of 25 U.S.C. § 3002 and its implementing regulations. In particular, the evaluation should explore whether all Federal land managing agencies have in place appropriate administrative procedures; whether the existing procedures are being followed regarding consultation, completion of plans of action and comprehensive agreements, and publication of notices of intended disposition administrative procedures to implement 25 U.S.C. 3002, particularly focusing on: consultation; completion of plans of action and comprehensive agreements; publication of notice of intended disposition; the disposition of so-called “unclaimed” cultural items; the protection of burial sites and cultural items located on private lands within the exterior boundary of an Indian Reservation or on lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86–3, including the required issuance of ARPA permits; and whether establishing a dedicated position to ensure compliance with these provisions at each agency would be beneficial.

3. Repatriation of Cultural Items in Federal Agency and Museum Collections (25 U.S.C. §§ 3003-3008)

The repatriation provisions of NAGPRA require Federal agencies and museums that receive Federal funds to prepare written summaries of cultural items and more detailed inventories of Native American human remains and associated funerary objects in their possession or control, consult with Indian Tribes and Native Hawaiian organizations and, upon request, repatriate cultural items. To date, nearly 209,000 Native American ancestors have been inventoried, of which museums and Federal agencies have indicated a willingness to repatriate approximately 48%.²⁰ One of the responsibilities of this Committee was to compile an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommend specific actions for developing a process for disposition of such remains. After long discussions, development of several drafts, and extensive public consultation, this Committee issued its recommendations in 2000.²¹ The Committee noted that although the legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed in NAGPRA, the statute does not prohibit their voluntary repatriation by museums or Federal agencies to the extent allowed by Federal law. Regulations implementing the Committee’s recommendations were promulgated in 2010.²² The regulations require museums and Federal agencies that cannot prove right of possession to offer to transfer control of culturally unidentifiable human remains to the Indian Tribe or Native Hawaiian organization from whose Tribal land, at the time of the excavation or removal, the human remains were removed, or to the Indian Tribe or Tribes that are recognized as aboriginal to the area from which the human remains were removed. The regulations also recommend that a

²⁰ National Park Service, 2022 Native American Graves Protection and Repatriation Act. https://public.tableau.com/app/profile/nationalnagpra/viz/2022NativeAmericanGravesProtectionandRepatriationAct/1_Reported (accessed November 29, 2022).

²¹ Recommendations Regarding the Disposition of Culturally Unidentifiable Native American Human Remains, 65 Fed. Reg. 36462 (June 8, 2000).

²² See 43 CFR § 10.11- Native American Graves Protection and Repatriation Act Regulations—Disposition of Culturally Unidentifiable Human Remains; Final Rule, 75 Fed. Reg. 12377 (Mar 15, 2010).

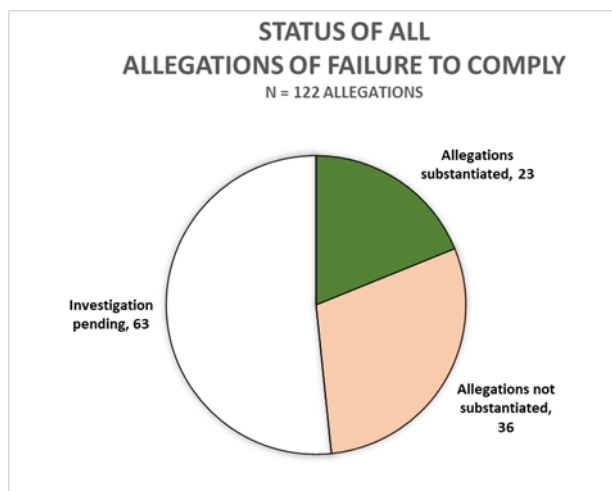
museum or Federal agency transfer control of funerary objects that are associated with culturally unidentifiable human remains if Federal or State law does not preclude it. The Committee feels strongly that Native American funerary objects in museum or Federal agency collections should be returned along with Native ancestors with which they were lovingly buried.

We request that the Congress amend the Committee’s responsibilities at 25 U.S.C. § 3006 (c) as follows to explicitly authorize a requirement that human remains and associated funerary objects be returned together:

(5) compiling an inventory of culturally unidentifiable human remains and associated funerary objects that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains and objects;

4. Civil Penalties

NAGPRA authorizes the Secretary of the Interior to assess civil penalties on museums that fail to comply with the repatriation provisions of the Act. Information finally provided by the National Park Service after a five year hiatus shows that, as of September 30, 2022,²³ 20 museums have failed to comply, three twice, and that \$59,111.34 in penalties were collected. For ten of the allegations the penalty was waived. The National Park Service also indicates there is a backlog of allegations against another 63 museums that have not been investigated. No failures to comply have been determined since 2016.



The Committee is very concerned that civil enforcement of NAGPRA has been carried out without any degree of public scrutiny, that the penalties assessed are typically mitigated or unknown, and that since 2016 it appears to have completely stopped. We ask the Congress to:

request the Government Accountability Office to complete an evaluation of the implementation of the civil enforcement provisions of NAGPRA and its implementing regulations, particularly focusing on ensuring that all allegations are adequately investigated in a timely manner, that the full range of penalties detailed in statute are

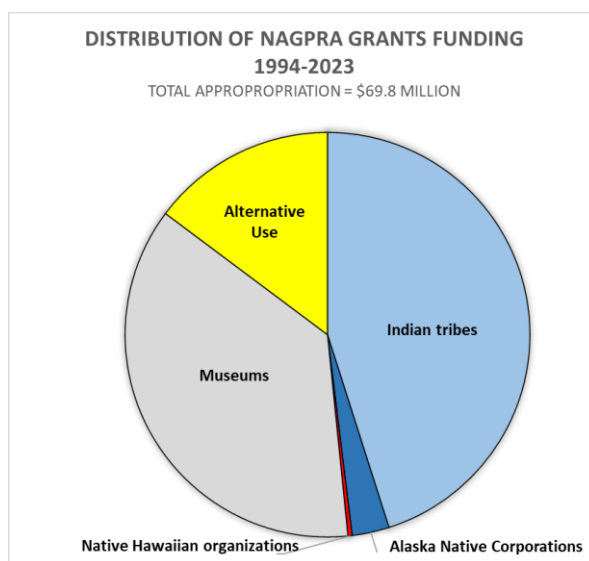
²³ The National NAGPRA Program has not yet provided the committee with updated information for FY2023.

considered, whether the alternative method for calculation and mitigation of penalties outlined in the current regulations has been effective, and that the results of these investigations are publicly known.

5. Grant Funding

NAGPRA authorizes the Secretary of the Interior to make grants to Indian Tribes and Native Hawaiian organizations for the purpose of assisting such Tribes and organizations in the repatriation of Native American cultural items, and to museums for the purpose of assisting the museums in conducting the inventories and summaries.²⁴ NAGPRA further stipulates that “this Act shall not be construed to be an authorization for the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.”²⁵ In 1990, the Congressional Budget Office estimated that NAGPRA would cost the Federal Government between \$20 and \$50 million over five years.²⁶

The Congress first appropriated funds for NAGPRA grants FY1994, and over the next 29 years appropriated \$68.9 million, of which \$57.3 million was awarded to Indian tribes, Native Hawaiian organizations, and museums.²⁷ Yet, after nearly three decades the remains of 102,708 Native American ancestors still sit on museum and Federal agency shelves.²⁸



This Committee has consistently recommended in its Report to Congress that funding for NAGPRA grants be increased. Indian tribes, Native Hawaiian organizations, and museums assert

²⁴ 25 U.S.C. § 3008.

²⁵ 25 U.S.C. § 3003 (b)(2).

²⁶ Letter from Robert D. Reischauer, director, Congressional Budget Office to Representative Morris Udall (October 15, 1990).

²⁷ From FY1994 through FY2014, the National Park Service regularly diverted a portion of the grant appropriation to cover grants administration costs. In FY2005, part of the grant appropriation was used to satisfy court ordered payment of attorney fees. Alaska Native Corporations received NAGPRA grant funding from FY1994 through FY2010.

²⁸ National Park Service, 2023 Native American Graves Protection and Repatriation Act.

https://public.tableau.com/app/profile/nationalnagpra/viz/2022NativeAmericanGravesProtectionandRepatriationAct/1_Reported (accessed October 31, 2023).

that the actual cost of complying with NAGPRA far exceed the available grant appropriation and the maximum grant cap ensures that progress towards repatriation is piecemeal and slow. In FY2023, the Review Committee specifically asked museums with large remaining collections of Native American human remains to estimate how much it costs them per year to comply with NAGPRA, and how much it is expected to cost to comply with the proposed regulations if implemented as written:

- Indiana University, which holds the remains of 4,838 Native American individuals, reported expenditures to comply with the current regulations of \$535,940.04 for calendar year 2022 and estimated that the proposed regulations will require \$3 million per year for three years.²⁹
- University of Kentucky, which holds the remains of 4,366 Native American individuals, reported that over the past four years it has devoted approximately \$860,000 to comply with the current regulations (an average of \$215,000 per year) and estimated that the proposed regulations will require an additional \$890,000 over the next three years (an average of \$296,666 per year).³⁰
- University of Missouri, which holds the remains of 2,451 Native American individuals, reported expenditures of \$127,769 for calendar year 2023 and estimated that the proposed regulations will require approximately \$187,699 per year for the next three years.³¹
- Field Museum, which holds the remains of 1,324 Native American individuals, reported expenditures to comply with the current regulations of \$333,315 in calendar year 2022 and estimated that the proposed regulations will require approximately \$666,630 per year for three years.³²
- Tennessee Valley Authority, which holds the remains of 3,284 Native American individuals, reported that during FY2023 it budgeted \$200,000 for compliance with NAGPRA's repatriation provisions, plus salaries for two NAGPRA employees, a tribal liaison, and site protection activities.³³
- Bureau of Indian Affairs, which holds the remains of 1,112 Native American individuals, reported expenditures to comply with the current regulations of approximately \$210,000 per year.³⁴
- U.S. Forest Service, which holds the remains of 770 Native American individuals, reported expenditures to comply with the current regulations of \$334,000 in fiscal year 2023, and estimated that the proposed regulations will conservatively require at least \$48,000,000 (an average of \$16,000,000 per year).
- U.S. Army Corps of Engineers, which holds the remains of 1,352 Native American individuals, reported expenditures to comply with the current regulations of \$1,249, 578 in fiscal year 2023, and estimated that the proposed regulations will require at least \$2,500,000 for staff labor, excluding any other expenditures that they would typically cover in the course of repatriation.

The cost information the Review Committee obtained from these museums stands in sharp contrast with estimates compiled by the Department of the Interior to support the proposed

Message from Jayne-Leigh Thomas, Indiana University. <https://irma.nps.gov/DataStore/Reference/Profile/2301099>

³⁰ <https://irma.nps.gov/DataStore/DownloadFile/691769> at 208.

³¹ Message from Candace Sall, University of Missouri. <https://irma.nps.gov/DataStore/Reference/Profile/2301099>

³² Message from Ann Metcalf, Field Museum. <https://irma.nps.gov/DataStore/Reference/Profile/2301099>

³³ Native American Graves Protection and Repatriation Review Committee meeting transcript, Bloomington, IN (June 7-8, 2023). <https://irma.nps.gov/DataStore/DownloadFile/691769> at 222.

³⁴ Bureau of Indian Affairs Presentation, June 7, 2023, NAGPRA Review Committee Meeting, Bloomington, Indiana.

regulatory revision. In FY2022, the Department of the Interior submitted estimates to the Office of Management and Budget indicating that the annual burden to all museums would only be \$223,304,³⁵ and that the burden to museums to meet the requirements outlined in the proposed regulations published on estimates the total of all costs, including dealing with excavations and discoveries on Federal and tribal lands; consulting, completing summaries and inventories, and publishing repatriation notices; and the functions of the review committee, at \$2,438,032 per year.³⁶

Some tribes have also expressed concern that museums may be using grant money to acquire and preserve additional scientific information on human remains and associated funerary objects. In 2022, the National Park Service confirmed these suspicions by stating that a Notice of Funding Opportunity allowing the acquisition and preservation of additional scientific information on human remains and associated funerary objects and destructive analysis, with some restrictions, somehow overcomes Congress' clear statutory restriction.³⁷ The Review Committee also heard from one museum that received nearly \$450,000 in grant funding from FY2017-FY2023 but has published only one notice of inventory completion (for the remains of a single individual and 207 associated funerary objects) during the same period.

In order to get a better grasp of the true costs of complying with NAGPRA, we ask the Congress to request the Government Accountability Office to:

A. complete a comprehensive evaluation of the NAGPRA grant program, particularly, reviewing: whether all grants were awarded to appropriate recipients and exploring reasons why some Indian tribes, Native Hawaiian organizations, and museums are not applying for these grants; and whether the activities carried out under each grant were consistent with the statutory authorization as well as whether the statutory prohibition precluded funding of any activities. This evaluation would focus on directing executive administration of the grants program as well as consider the need for amending the Congressional authorization to make it more effective and efficient.

B. compile data from all Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to get a realistic estimate of the actual costs of implementing the proposed regulations.

6. Native Hawaiian Traditional Religious Leaders (25 U.S.C. 3006 (b)(1))

NAGPRA mandates the Secretary of the Interior to establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities and sets criteria for nominations to come from Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders; national museum organizations and scientific organizations; and from the Review Committee members themselves. An apparent drafting

³⁵ Office of Management and Budget, Information Collection Review 202202-1024-0144, Supporting Statement A for Paperwork Reduction Act Submission (April 11, 2022).

³⁶ National Park Service. Cost-Benefit and Regulatory Flexibility Threshold Analyses: Native American Graves Protection and Repatriation Act Proposed Revisions (2022).

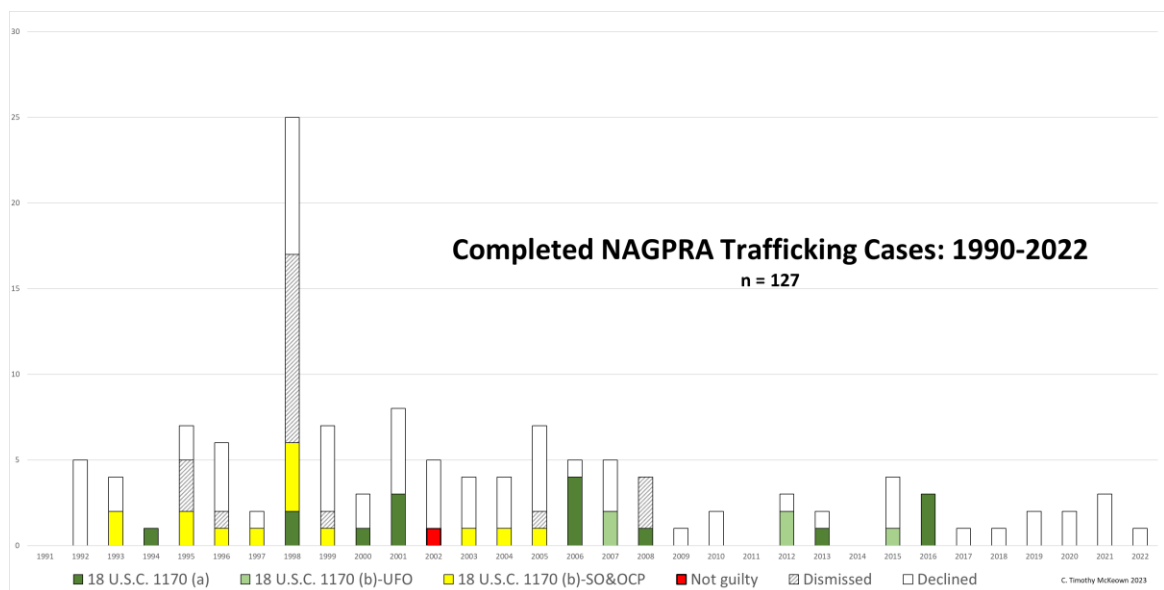
³⁷ Response to Tribal Consultation on revisions to 43 CFR Part 10 Native American Graves Protection and Repatriation Act Regulations (Aug. 2022). <https://www.regulations.gov/document/NPS-2022-0004-0004>, at 42.

error has been interpreted by the Department of the Interior to yield the absurd result that Native Hawaiian organizations may nominate traditional religious leaders from Indian tribes, but not their own Native Hawaiian traditional religious leaders. We request that the Congress amend the criteria at 25 U.S.C. § 3006 (b)(1)(A) to allow Native Hawaiian traditional religious leaders to be considered by the Secretary for appointment to the Review Committee:

(b) Membership. (1) The Committee established under subsection (a) shall be composed of 7 members, (A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional ~~Indian~~ Native American religious leaders;

7. Illegal Trafficking in Native American Human Remains and Cultural Items (18 U.S.C. § 1170)

The criminal provisions of NAGPRA make it a crime to knowingly sell, purchase, use for profit, or transport for sale or profit Native American human remains or cultural items under certain conditions. For human remains, law enforcement must prove beyond a reasonable doubt that the financial incident occurred without the right of possession, meaning that the defendant cannot show that the human remains were obtained with the voluntary consent of an individual or group that had authority of alienation. Proving illegal trafficking of cultural items is more complicated. Law enforcement must prove beyond a reasonable doubt that the financial incident violated NAGPRA, meaning that the cultural items were either removed from Federal or Tribal lands without a permit, or were obtained from a Federal agency or museum that failed to comply with the repatriation provisions of NAGPRA. Data from the Department of Justice and the United States Courts³⁸ indicates that, through 2022, 127 investigations of illegal trafficking of Native American human remains and cultural items have been opened resulting in 34 convictions.



³⁸ Data compiled by C. Timothy Mckeown from the Office of the United States Attorneys, National Caseload Data, FY2022 Data Files, and Pacer.gov

These data indicate that convictions for trafficking of Native American human remains under 18 U.S.C. 1170 (a) and funerary objects under 18 U.S.C. § 1170 (b) are relatively infrequent but have continued since NAGPRA was enacted. Convictions for trafficking of Native American sacred objects and objects of cultural patrimony under 18 U.S.C. § 1170 (b) are limited to 1993 to 2005, and further all were convicted in the United States District Courts for the Districts of New Mexico, Arizona, and Utah. The single not guilty verdict in 2004 stands out. Several factors seem to be responsible for this pattern. First, 18 U.S.C. § 1170 (b) convictions requiring proof that the cultural items were obtained in violation of NAGPRA are just more difficult. Second, the not guilty verdict in 2004 seems to reflect a chilling effect of the Ninth Circuit's interpretation of the definition of "Native American" in *Bonnichsen*. Third, the localization of convictions for illegal trafficking of Native American sacred objects and objects of cultural patrimony correlates with the activities of the Four Corners Interagency ARPA Task Force in the early 1990s and the continued activities of the law enforcement personnel involved in that project into the early 2000s. Last, during the 2010s, auctions of Native American sacred objects and objects of cultural patrimony appear to have moved outside of the United States, primarily to France. Addressing this pattern requires a multi-faceted approach. We note that Congress has already taken the first step in addressing this issue by passing the Safeguard Tribal Objects of Cultural Patrimony Act which increases penalties for both first time and repeat traffickers and implements export restrictions to stop the illegal export of Native American sacred objects and objects of cultural patrimony.

A. We recommend that Congress include the \$3 million in the FY2025 and subsequent budgets for implementation of the STOP Act, as estimated by the Congressional Budget Office.

B. Second, we ask the Congress to amend the definition of "Native American" as previously shown to provide a uniform and clear standard for the prosecution of trafficking cases.

C. Third, we request the Congress to amend 18 U.S.C. § 1170 requiring the government to show beyond a reasonable doubt that trafficked human remains and other cultural items were obtained without right of possession:

~~(a)~~ Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains or other cultural items of a Native American without the right of possession to those remains or items as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 1 year and 1 day, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 10 years, or both.

~~(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than 1 year and 1 day, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 10 years, or both.~~

D. Fourth, we request that the Congress establish and fund an interagency investigative effort like the Four Corners ARPA Task Force that will focus specifically on stopping illegal trafficking of Native American human remains and cultural items and establish and fund capabilities within the Department of Justice, Environmental Crimes Section (ECS) to coordinate

prosecution of violations of the NAGPRA, ARPA, and the STOP Act. Given the Department of the Interior's lack of response to the Government Accountability Office's recommendation to centralize information on violations of these laws, we recommend that the Congress enact legislation requiring all Federal agencies to provide the ECS each year with information on all criminal and civil violations of NAGPRA, ARPA, and the STOP Act which ECS will analyze to assess risks to Native American cultural resources.

Taken together, these four actions will clarify the statutory prohibition, provide the necessary expertise to investigate offenses, and chill the overseas market for Native ancestors and sacred objects.

8. Exemption from Disclosure of Culturally Sensitive Information

Many tribes have expressed concern that culturally sensitive information they provide to Federal agencies and museums during the consultation process must be disclosed upon request under provisions of the Freedom of Information Act. The Committee strongly recommends amending NAGPRA to protect culturally sensitive information identified by traditional religious leaders, lineal descendants, Indian tribes, or Native Hawaiian organizations as provided under exemption (b)(3) of the Freedom of Information Act.

9. Administrative Placement of NAGPRA Implementation Responsibilities

In 2020, then-Representative Haaland introduced H.R. 8298 to amend NAGPRA. One of her key proposals was to redelegate enforcement and other activities previously assigned to the National Park Service to the Office of the Assistant Secretary for Indian Affairs. NAGPRA is clearly Indian law, not only is it enshrined under Title 25 of the United States Code, but Indian Tribes are the obvious and primary beneficiaries. Implementation of NAGPRA should be administered accordingly and not under the rubric of "cultural resources." When the question was formally asked by the Department in 2021, the majority of 85 written responses supported changing placement of the program (38) or would consider changing it pending additional consultation (10), while only six supported retaining the program within the National Park Service.³⁹ We recognize that Secretary Haaland has the authority to implement this re delegation by means of Secretarial Order with follow-up revision of the Departmental Manual. If, for some reason, this change is not implemented in a timely fashion, we request that Congress amend 25 U.S.C. § 3013 as follows:

25 U.S.C. § 3013. Implementation and Enforcement (a) The Office of the Assistant Secretary for Indian Affairs shall be the office for implementation and enforcement and other activities delegated by the Secretary. (b) The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this chapter and shall have the authority to issue such orders as may be necessary to enforce the provisions of this chapter.

10. NMAI Act

We also request that Congress consider amending the process by which the Smithsonian Institution returns Indian and Native Hawaiian human remains, funerary objects, sacred objects, and objects of cultural patrimony under the National Museum of the American Indian Act.

³⁹ Freedom of Information Act request DOI-NPS-2022-000473.

As we pointed out in last year's report, at least one group of Indian Tribes has unsuccessfully tried to recover such items from the National Museum of Natural History and has exhausted their administrative appeals, despite a unanimous recommendation to repatriate from the Smithsonian's own repatriation advisory committee. In such a situation under NAGPRA, an Indian Tribe is able to challenge the failure to repatriate such cultural items to the United States District Courts (25 U.S.C. § 2013). However, the NMAI Act does not include a similar grant of jurisdiction. The Committee recommends amending the NMAI Act to add the following provision:

20 U.S.C. § 80 q-16. Jurisdiction and Enforcement. The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

The recent series of articles by the Washington Post highlights the Smithsonian's view that determinations of cultural and geographic affiliation of Indian and Native Hawaiian human remains and associated funerary objects are only triggered by claims, and not by a set deadline as required under NAGPRA, as well as the lack of transparency in the Smithsonian repatriation process. To address these shortcomings, and to bring the Smithsonian process more in line with that required by all other Federal agencies and institutions receiving Federal funding, the Committee further recommends amending the NMAI Act as follows:

20 U.S.C. § 80 q-9 (a) Inventory and identification

(1) The Secretary of the Smithsonian Institution, in consultation and cooperation with traditional Indian religious leaders and government officials of Indian tribes, shall-
(A) inventory the Indian human remains and Indian funerary objects in the possession or control of the Smithsonian Institution; and

(B) using ~~the best available scientific and historical documentation~~ information possessed by the Smithsonian Institution, identify the ~~origins~~ geographical and cultural affiliation of such remains and objects.

(2) The inventory made by the Secretary of the Smithsonian Institution under paragraph (1) shall be completed not later than ~~June 1, 1998~~ [date 36 months following enactment].

(3) For purposes of this subsection, the term "inventory" means a simple, itemized list that, ~~to the extent practicable, identifies, based upon available information held by the Smithsonian Institution, the geographic and cultural affiliation of the remains and objects referred to in paragraph (1).~~ summarizes the information called for by this section.

20 U.S.C. § 80 q-9 (b) Notice in case of identification of ~~tribal origin~~ geographical or cultural affiliation.

If the ~~tribal origin~~ geographical or cultural affiliation of any Indian human remains or Indian funerary object is identified by a preponderance of the evidence, the Secretary shall ~~so notify any affected Indian tribe at the earliest opportunity.~~

~~shall,~~ not later than 6 months after the completion of the inventory, notify the affected Indian tribes.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Indian human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to cultural or geographic affiliation; and
(C) which lists the Indian human remains and associated funerary objects that are not clearly identifiable as being culturally or geographically affiliated with that Indian tribe, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe.
(3) A copy of each notice provided under paragraph (1) shall be published by the Secretary in the Federal Register.

11. Report to Congress.

NAGPRA requires this committee to submit an annual report to the Congress on progress made and barriers encountered in implementing this section during the previous year.⁴⁰ The scope of the Committee's activities generally focuses on inventory and identification of the Act, but also includes duties specifically related to NAGPRA as a whole.⁴¹ In the past, the committee has interpreted this charge broadly to include many issues not only arising under NAGPRA but similar repatriation issues under other statutes. Most notably, the committee's annual report for FY1994 highlighted the need to amend the National Museum of the American Indian Act to establish a deadline for completing inventories and expending the statute to also cover unassociated funerary objects, sacred objects, and objects of cultural patrimony, changes that were eventually enacted by Congress. The Committee's report to Congress for FY2021 recommended passage of the Safeguard Tribal Objects of Patrimony Act which was eventually passed by Congress and recently signed into law by President Biden. We hope these recommendations have been helpful to the Congress. Recently, some have suggested that several of the recommendations in this report are outside of our jurisdiction. The language of the Committee's charge may be open to interpretation, and it would be useful to eliminate confusion. In order to clarify this matter, we request that Congress amends 25 U.S.C. 3006 (h) as follows:

The committee established under subsection (a) shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing ~~this section~~ the Act and related matters during the previous year.

12. Reburials within National Parks and other federally owned lands

During the June 2023 NAGPRA Review Committee meeting, the Committee received comments indicating that one of the major struggles impeding repatriation is identifying safe lands for the reburial of ancestors and their cultural belongings. Current National Park Service (NPS) management guidance currently only allows reburial within park lands if the remains were originally removed from that specific park.⁴² Management Policy 6.3.8 specifically prohibits the creation of new cemeteries within a park unless authorized by federal statute. The Committee recommends that the Congress specifically authorize the NPS to:

1. Allow reburial of Native American human remains and funerary objects on NPS lands regardless of original location of removal;
2. Allow the creation of new cemeteries for the specific purpose of reburial of

⁴⁰ 25 U.S.C. § 3006 (a).

⁴¹ 25 U.S.C. § 3006 (c)(7).

⁴² NPS Management Policies 2001, 5.3.4 and 6.3.8.

Native American human remains and funerary objects;

3. Incorporate reburial areas and newly created cemeteries into long-term park management plans, with appropriate documentation, protection, and confidentiality measures; and

4. Develop specific policy guidance to facilitate the reburial process for Park managers and Tribes.

National NAGPRA Program Statistics

NAGPRA At-A-Glance Fiscal Year 2023

446	notices published in the Federal Register
3	Review Committee meetings
13	letters alleging failure to comply received
\$3.407	million awarded for grants
\$271,277	21 repatriation grants
\$3,135,723	34 project grants

NAGPRA notices more than doubled – the number of notices published in the Federal Register was more than double the previous year and the largest number ever published in one year.

NAGPRA activity increased – the number of human remains that have completed the regulatory process grew by 6%.

NAGPRA funding increased –available grant funds increased to \$3.407 million, the largest amount ever available.

More NAGPRA work needed – Over 96,000 Native American individuals are still in collections and 90,803 of those have not been culturally affiliated with any present-day Indian tribe or NHO. Cultural affiliation and consultation could resolve the rights to these individuals, especially in states like Illinois (15,136), Ohio (10,894), California (7,385), and Florida (6,083).

NAGPRA Accomplishments FY 1990 – FY 2023

For the first time since 1990, more than 50% (116,978) of the Native American human remains reported **have completed the NAGPRA process.**

Over 2 million associated funerary objects have completed the NAGPRA process with human remains.

38% of museums subject to NAGPRA have resolved all Native American human remains under their control.

More than 358,000 unassociated funerary objects have been published in notices.

About 31,264 other cultural items have been published in notices.

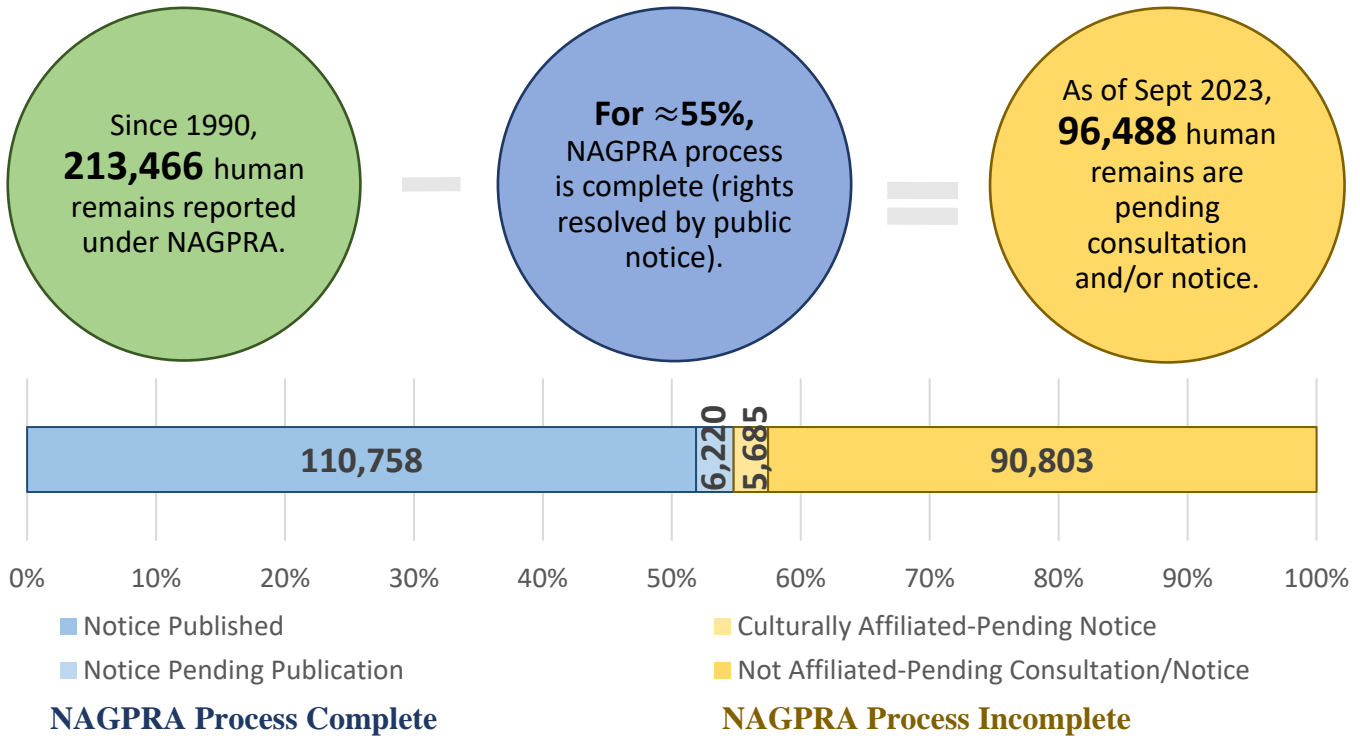
85 Review Committee meetings have been held between FY 1990-FY 2023.

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

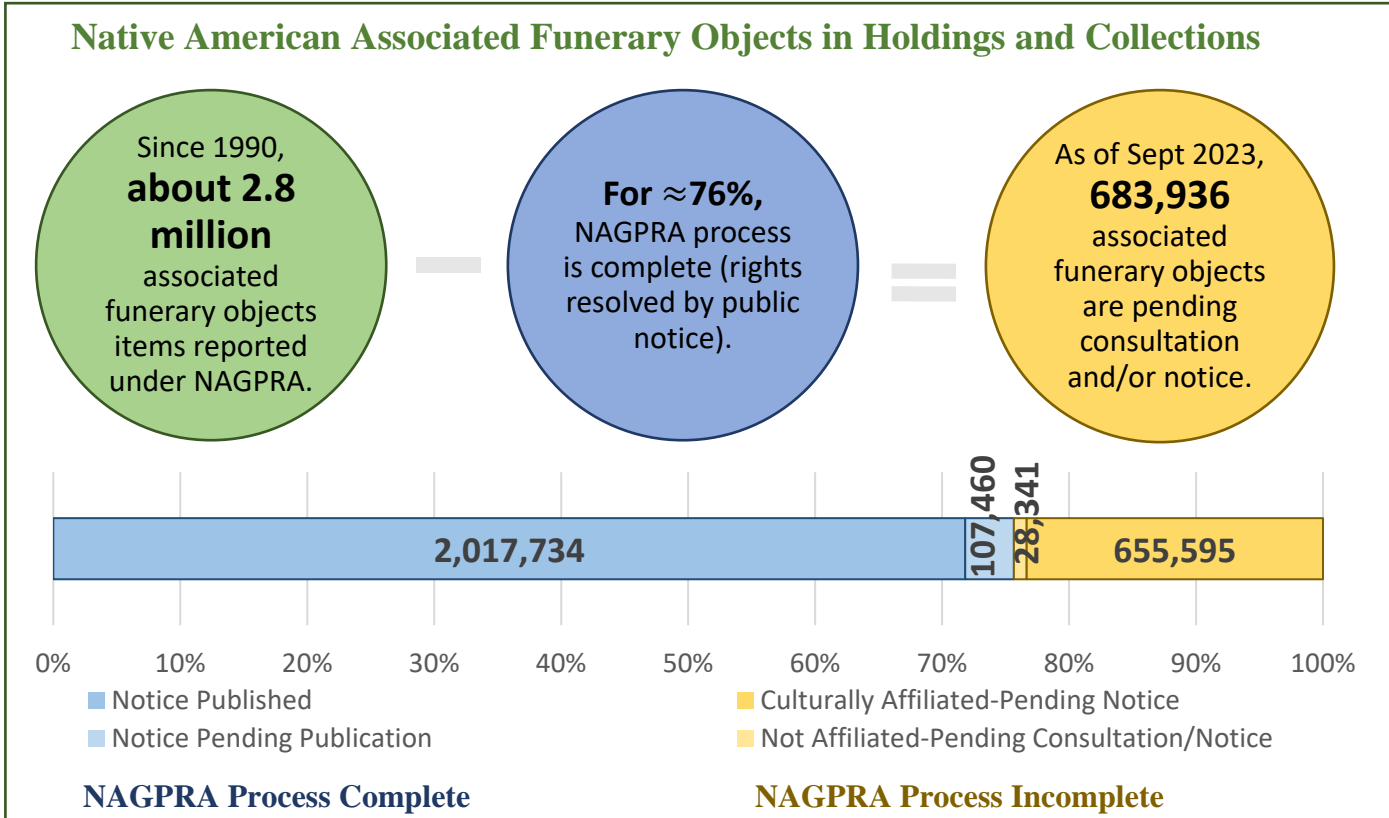
\$59 million has been awarded in NAGPRA grants.

NAGPRA in Fiscal Year 2023

Native American Human Remains in Holdings and Collections

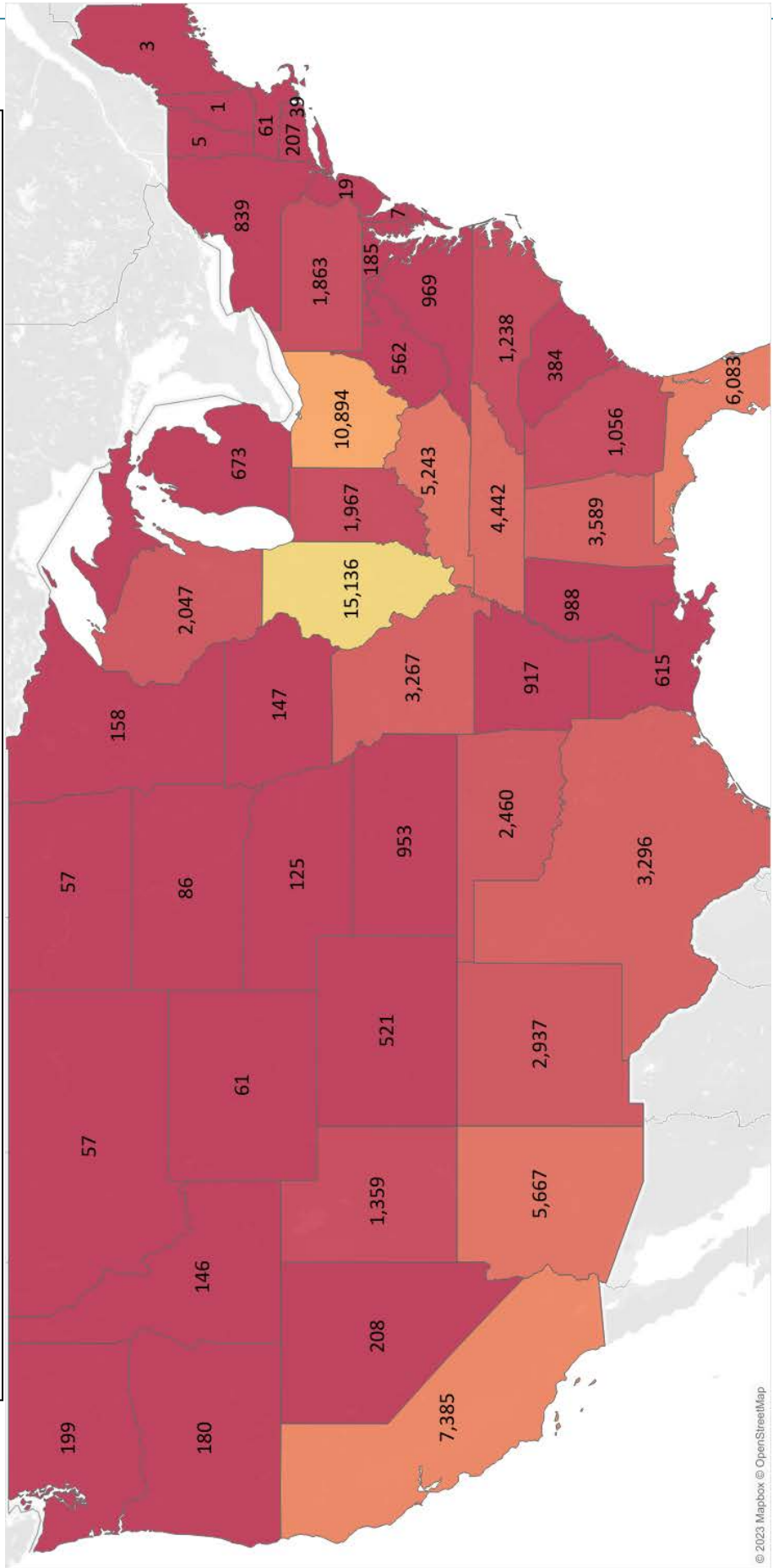


Native American Associated Funerary Objects in Holdings and Collections



NAGPRA in Fiscal Year 2023

Sets of Native American human remains by state of removal/excavation. Showing the **96,488** human remains in holdings and collections as of Sept 2023.



© 2023 Mapbox © OpenStreetMap

NAGPRA in Fiscal Year 2023

Sets of Native American individuals by institution/Federal agency. 20 largest holdings or collections as of Sept 2023.

Ohio History Connection (formerly the Ohio Historical Society)	7,167
Illinois State Museum	7,110
Harvard University	5,570
Univ. of California, Berkeley	4,903
Indiana University	4,838
Univ. of Tennessee, Knoxville	3,930
Univ. of Kentucky, William S. Webb Museum of Anthropology	3,807
Univ. of Alabama Museums	2,927
Univ. of Arizona, Arizona State Museum	2,625
Univ. of Florida, Florida Museum of Natural History	2,591
Univ. of Missouri, Columbia, Museum of Anthropology	2,451
Univ. of Oklahoma, Sam Noble Oklahoma Museum of Natural History	2,258
Center for American Archeology, Kampsville Archeological Center	1,947
Univ. of Texas at Austin, Texas Archeological Research Laboratory	1,905
American Museum of Natural History	1,882
Milwaukee Public Museum	1,600
U.S. Dept. of Defense, Army Corps of Engineers	1,456
Florida Dept. of State	1,422
Field Museum	1,294
U.S. Dept. of Interior, Bureau of Indian Affairs	1,111

More lists available at:

https://public.tableau.com/shared/WB6Y469JH?:display_count=n&:origin=viz_share_link