

# GUIDELINES AND PROCEDURES FOR REPATRIATION

## NATIONAL MUSEUM OF NATURAL HISTORY

### SMITHSONIAN INSTITUTION

Amended 2012

#### I. INTRODUCTION

The National Museum of Natural History (NMNH or Museum) recognizes the right of Native Americans to the return of human remains and objects specified in the National Museum of the American Indian Act (NMAI Act), as amended. The Repatriation Office was established to implement the statutory requirements of the NMAI Act. This law asserts the rights of Native American and Native Hawaiian peoples to determine the disposition of culturally affiliated human remains, funerary objects, sacred objects, and objects of cultural patrimony now in the collections of the Smithsonian Institution (Smithsonian). Repatriation at the NMNH is intended to be a collaborative process, in which both staff and Native peoples become involved in determining the future of human remains and cultural objects.

One of the primary tasks of the Repatriation Office at the NMNH is to inventory and assess the cultural origins of collections potentially affiliated with contemporary Native American and Hawaiian peoples in the United States. Another of its principal functions is to respond to requests for information and/or requests for the return of human remains, funerary objects, sacred objects, and objects of cultural patrimony affiliated with Native groups.

The repatriation program at the NMNH looks toward the future and intends for this process to generate a greater level of understanding and respect for the traditions and cultural heritage of Native Americans at the national level. This understanding can only come by incorporating contemporary Native perspectives into the interpretation and presentation of Native people's past and present cultural realities at the NMNH. Cooperative endeavors to address Native rights and concerns established during the repatriation process strengthen the Native voice at the NMNH, an institution historically committed to understanding and interpreting Native cultures of the Americas and the world. Further information on the repatriation process at NMNH can be found on the [Repatriation Office website](#).

## II. THE NATIONAL MUSEUM OF THE AMERICAN INDIAN ACT AND ITS AMENDMENT

The NMAI Act, 20 U.S.C. §80q (PL 101-185), passed in 1989, was the first federal repatriation legislation. The Act mandated that the Smithsonian inventory, document and, if requested, repatriate culturally affiliated human remains and funerary objects to federally recognized Native American tribes and Native Hawaiian organizations (both hereafter are Native groups). No deadline was given for Native groups to make a repatriation request.

The 1996 NMAI Act amendment (PL 104-278) addressed repatriation issues not previously addressed in the original NMAI Act. The 1989 NMAI Act did not address the disposition of sacred objects and objects of cultural patrimony, but was amended in 1996 to include those object categories. The amendment established deadlines for the distribution of summaries and inventories of Smithsonian collections to tribes. It required that summaries of objects that may meet the definition of unassociated funerary objects, sacred objects, and objects of cultural patrimony be completed and submitted to Native groups by December 31, 1996. Inventories for human remains and associated funerary objects were to be completed and submitted to Native groups by June 1, 1998. Definitions used by the NMNH for these remains and objects are identical to the language of NAGPRA, 25 U.S.C. §3001 (PL 101-601), passed in 1990, and are discussed in more detail below (see: Section VIII. Items Potentially Subject To Repatriation). The 1996 amendment also added two Native American traditional religious leaders to the Smithsonian's Native American Repatriation Review Committee (see: Section XII. Native American Repatriation Review Committee).

## III. IMPLEMENTATION OF THE SUMMARY AND INVENTORY PROCESSES

In accordance with the law, the NMNH produced summaries of potentially unassociated funerary objects, sacred objects, and objects of cultural patrimony and inventories of human remains and associated funerary objects and shared this information with culturally affiliated Native groups. Native American and Hawaiian groups received information regarding the number of human remains, and the type of objects and their place of origin, currently held by the NMNH.

### Summaries of Ethnological Collections

The NMNH completed the summaries of its ethnological collections and submitted them to Native groups as required by the 1996 amendment. Because of the difficulty in identifying which items may be funerary objects, sacred objects, or objects of cultural patrimony, the summaries included all Native American objects in the ethnological collections known to be held by the NMNH. Items that fit the definitions of sacred

objects or objects of cultural patrimony can only be identified in consultation with the culturally affiliated tribe. The summaries were intended to enable Native groups to begin to identify culturally-affiliated objects in the collections with final determinations to be made in consultation with the Museum. In addition to listings of all objects potentially affiliated with Native groups, the summaries of ethnological collections included descriptions of the acquisition history of the objects based on the available accession and catalog records. Additional summaries were developed of objects for which the cultural affiliation information was unclear and these lists were presented to all federally-recognized tribes.

### **Inventories of Physical Anthropology and Archaeology Collections**

The NMNH was required to produce inventories of human remains and objects in its collections and submit them to tribes by June 1, 1998. Inventory reports were based on geographic location and were distributed to tribes who resided in or once had traditional territories in those geographic locations. Because of the difficulty in identifying which objects may have met the definition of funerary objects, sacred objects, or objects of cultural patrimony, the inventories included all Native American human remains and objects in the collections known to be held by the NMNH. No attempt was made to verify cultural affiliation. The reports serve as a starting point for consultations on collections. It is during the consultation process that a comprehensive review of all accession information is undertaken. Verification of the cultural affiliation of the human remains and objects and determinations about funerary objects, sacred objects, and objects of cultural patrimony are developed in consultation with tribes and the result is compiled in a report prepared by the staff of the Repatriation Office (see Section VIII). Tribal representatives may request additional copies of the inventories and summaries.

## **IV. INITIATING A CONSULTATION**

Communication and collaboration with Native groups is the foundation of the repatriation process at the NMNH. Upon receiving summaries of ethnological collections or inventories of physical anthropology and archaeology collections, Native groups are asked to review the lists and use them either to identify human remains and objects of concern or to initiate consultations with the Repatriation Office for the purpose of identifying culturally affiliated remains and objects.

The requesting party may have access to collection documentation at any time during the repatriation process. In addition, Native groups may conduct independent research. Collaborative arrangements with the Repatriation Office for the purpose of gathering information are encouraged. Such collaborative efforts may include work with Native community scholars and traditional experts, internships, and other types of formal and informal research arrangements. Resources and support for such arrangements are not part of the regular operating budget of the Repatriation Office, but the Native American

Repatriation Review Committee (see Section XII) will, to the extent possible, assist in supporting tribal visits.

Repatriation Office staff can provide Native group representatives with access to the collections, associated photographs, and museum records and offer instruction on the use of museum resources. The policy of the Repatriation Office is to make information on the origin and identity of requested objects available to the requesting group as early in the repatriation process as possible.

Native groups are invited to make appointments to view the collections in the care of the NMNH. As has long been the practice at the NMNH, suggestions from Native groups regarding the display and care of collections are welcome. Decisions about implementing such suggestions will be made on a case-by-case basis. Telephone inquiries and appointments for visits to the museum can be made by calling the Repatriation Office. In order to ensure that a Repatriation Office staff member will be available, appointments for visits should be made at least two weeks in advance. Requests can be sent to:

Repatriation Office  
MRC 138, Box 37012  
Department of Anthropology  
National Museum of Natural History  
10th and Constitution Ave., NW  
Washington, DC 20013-7012  
(202) 633-1865

Additional information, including the NMAI Act, staff contacts, and information on the repatriation process can be found on the [Repatriation Office website](#).

## V. INITIATING A REPATRIATION REQUEST

Upon receiving information about the NMNH's collections, a Native group may wish to make a request for repatriation. This process officially begins with a letter to the Repatriation Office at the address above requesting the return of specific remains or objects subject to repatriation under the law. Parties making requests for repatriation are asked to identify themselves and the basis of their request (see Section VI: Who May Make A Repatriation Request), to indicate the geographical extent of their request, and to specify the types of material they are interested in receiving more information about, i.e. human remains, funerary objects, sacred objects, or objects of cultural patrimony. Upon receipt of a written request from a lineal descendant or a federally recognized group's leaders, the individual's and/or group's standing as a qualified requesting party is reviewed. If the party is qualified, a Repatriation Office staff member is assigned to respond to the repatriation request and this person serves as the contact person for the Native group that initiated the request.

## VI. WHO MAY MAKE A REPATRIATION REQUEST

Requests for the repatriation of Native American human remains and cultural objects may be made by: (i) lineal descendants of named individuals; (ii) federally recognized Native American tribes; (iii) federally recognized Native Alaskan villages; and (iv) Native Hawaiian organizations.

### **Lineal Descendants of Named Individuals**

The closest living lineal descendants of named individuals whose remains are currently held by the NMNH may make a request for the return of those remains. Descendants of known individuals who owned unassociated funerary objects or sacred objects currently held by the NMNH may make a request for the return of those objects. An accurate family genealogy must be provided.

### **Federally Recognized Native American Tribes**

A federally recognized Native American tribe is defined as any tribe, band, nation, organized group or community of Native Americans, including Native Alaskan villages, listed by the Bureau of Indian Affairs), which is recognized as eligible for the special programs and services provided by the United States to them because of their status as Native Americans.

### **Native Hawaiian Organizations**

A Native Hawaiian organization is any organization which serves and represents the interests of Native Hawaiians, has a primary and stated purpose to provide services to Native Hawaiians, and has expertise in Native Hawaiian affairs.

Non-federally recognized tribes which include state recognized tribes lack standing to make a repatriation request under the NMAI Act. At times, federally recognized tribes have included non-federally recognized tribes in making disposition decisions on materials that have been made available for repatriation to the federally recognized tribes.

## VII. REPATRIATION ASSESSMENT REPORTS

Reports are prepared by the Repatriation Office staff in response to repatriation requests and summarize all of the available information on the origins of the collections in question. The reports assess cultural affiliation of the requested human remains and objects, evaluate whether the items fall into repatriation categories, and review the status of the museum's right of possession. Under the NMAI Act the NMNH is required to use the best available scientific and historical information in these assessments and to make assessments based on the preponderance of the evidence. This effort to determine the cultural affiliation and if objects are in repatriation categories may take into consideration any available information, including geographical, kinship, biological, archaeological, anthropological, linguistic, oral traditional, historical, or any other relevant information or expert opinion. Consultation and information on cultural affiliation from Native

American communities is an important part of the evaluation process. Recommendations for repatriation are made on the basis of this assembled information. The reports are reviewed by museum curators and final approval of the reports has been delegated to the NMNH Museum Director by the Secretary of the Smithsonian Institution. After review by the NMNH Museum Director, the report is sent to representatives of culturally affiliated tribes and other affected tribes or groups. The report represents the NMNH's official response to a repatriation request.

Upon receipt of the completed report, a Native group may disagree with the findings and recommendations for repatriation. If the tribe feels that the report has not adequately considered the evidence, the Repatriation Office welcomes any additional evidence that can be provided and will reconsider the evaluation. If the tribe is still disagrees with the findings of the report, the tribe may request a review of the findings by the independently appointed Native American Repatriation Review Committee (See Section XII). Abstracts of the Repatriation Office assessment reports are available at <http://anthropology.si.edu/repatriation/reports/summaries/htm>. Native group representatives may request additional copies of the assessment reports by contacting the Repatriation Office.

## VIII. ITEMS POTENTIALLY SUBJECT TO REPATRIATION AT THE NMNH

The categories of materials that a group may request are: (i) human remains of named individuals; (ii) culturally affiliated human remains; (iii) associated and unassociated funerary objects; (iv) sacred objects; (v) objects of cultural patrimony; and (vi) objects illegally transferred to or acquired by the NMNH or under circumstances that render invalid the Museum's claim to them (See also Section IX: Criteria For Repatriation).

### **Named Individuals**

The NMNH shall repatriate, upon request, any human remains of known identity to the closest living lineal descendant of the named individual. The repatriation of named individuals to living descendants is an ongoing policy at the NMNH established prior to the enactment of the NMAI Act and requests for the return of named individuals are given the highest priority. If lineal descendants cannot be located, the NMNH shall repatriate, upon request, to the culturally affiliated Native American tribe or Native Hawaiian organization.

### **Culturally Affiliated Human Remains**

The NMNH shall repatriate, upon request, human remains that have been identified as being culturally affiliated with a particular federally recognized Native American group or Native Hawaiian organization.

### **Associated and Unassociated Funerary Objects**

The NMNH shall repatriate, upon request, any funerary object that, as part of a death rite or ceremony of a culture, is reasonably believed to have been intentionally placed with an individual of known affiliation at the time of death or later, to the living descendants of a

named individual, or to the culturally affiliated Native American group or Native Hawaiian organization. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site.

Associated funerary object shall mean a funerary object removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe where the NMNH has in its collection the human remains with which the funerary object was originally placed or knows the location of the associated human remains based on NMNH accession records.

Unassociated funerary object shall mean a funerary object removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe where the NMNH does not have in its collection the human remains with which the funerary object was originally placed.

### **Sacred Objects**

The NMNH shall repatriate, upon request, any sacred objects, unless the Museum asserts that it has the right of possession to these objects (see Right of Possession, Section IX). The 1996 NMAI Act amendment added sacred objects as a repatriation category and uses the definition that is found in NAGPRA. Sacred Objects are “specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents” (25 U.S.C. 3001(3)C).

### **Objects of Cultural Patrimony**

The NMNH shall repatriate, upon request, objects of cultural patrimony, unless the Museum asserts that it has the right-of-possession of these objects (see Right of Possession, Section IX). The 1996 NMAI Act amendment added objects of cultural patrimony as a repatriation category and uses the definition that is found in NAGPRA. An object of cultural patrimony has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group [25 U.S.C. 3001(3)D].

### **Objects Acquired Illegally**

In accordance with long-standing Smithsonian policy, the NMNH may return, upon request, any materials illegally transferred or acquired by the NMNH under circumstances that render invalid the Museum's claim to them. Each request for materials so acquired will take into account all relevant evidence submitted by a requesting party. It will also take into account information about acquisition that the NMNH has available in its accession records.

## **IX. CRITERIA FOR REPATRIATION**

In order for human remains and cultural objects to be repatriated, the requested items must fall into one of the categories of Section VIII: Items Potentially Subject to Repatriation at the NMNH. Items made available for repatriation must have a demonstrated cultural affiliation. With regard to unassociated funerary objects, sacred objects, and objects of cultural patrimony the requesting party may also be required to present evidence that the NMNH does not have the right of possession to the material. If the Museum and the claimants should disagree over whether their respective burdens have been proven, the Native American Repatriation Review Committee may be called upon to facilitate the resolution of the dispute (see Section XII). When items are culturally affiliated with two or more Native groups, all Native groups must be in agreement for the repatriation to proceed.

### **Cultural Affiliation**

For repatriation to occur, a relationship must exist between a claimant and the requested material. This relationship can be lineal descent or cultural affiliation. In many cases, the evidence of affiliation may be indicated by collections records which can contain information on cultural affiliation. Affiliation can be established through the documentation process. The requesting party may also provide evidence of cultural affiliation. Cultural affiliation means that there is a relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence – based on geographical, kinship, biological, archaeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion – reasonably leads to such a conclusion [43 C.F.R. Part 10, Section 10.2(e)].

### **Right of Possession**

The original acquisition by the NMNH of a unassociated funerary object, sacred object or object of cultural patrimony from a Native group with the voluntary consent of an individual or group that had the authority to alienate the object at the time it was acquired gives the right of possession of that object to the NMNH. If a culturally affiliated group seeking repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony presents evidence which, standing alone before the introduction of evidence to the contrary, would support a finding that the NMNH did not have right of possession of the object, then the NMNH shall return such object unless it can prove that it has right of possession.

## **X. CULTURALLY UNAFFILIATED HUMAN REMAINS AND FUNERARY OBJECTS**

Native American human remains and objects fall into three broad categories at the NMNH: culturally affiliated, culturally unaffiliated, and unassessed. Human remains and

objects that have not yet been evaluated in repatriation reports fall into the category of unassessed. Human remains and funerary objects that have been assessed in Repatriation Office reports are found to be either culturally affiliated or culturally unaffiliated, with respect to federally recognized tribes. Due to the likelihood that culturally unaffiliated human remains and funerary objects may eventually be culturally affiliated as research and technical tools improve and new information is identified through consultations and other sources, culturally unaffiliated human remains and funerary objects will be retained by the museum until additional evidence is obtained that leads to their cultural affiliation.

## **XI. MULTIPLE OR COMPETING REQUESTS**

The NMNH may receive multiple or competing requests for the return of culturally affiliated remains or objects. When more than one group is culturally affiliated the responsibility for the actual transfer and final disposition of remains and materials may present a challenge to communities and may require difficult and sometimes protracted negotiations within and between groups to arrive at a consensus regarding final disposition. It is NMNH policy to encourage all affiliated or potentially affiliated groups to reach a mutually acceptable solution and to propose a unified position to the Museum. The NMNH will consult with all claimants but will not interfere with the internal political or religious affairs of Native groups nor compel a solution. If requesting parties fail to reach a resolution, the Native American Repatriation Review Committee can be asked to review the competing requests (see Section XII).

## **XII. NATIVE AMERICAN REPATRIATION REVIEW COMMITTEE**

The Native American Repatriation Review Committee was established under the NMAI Act in 1989 with five members, and increased to seven members with the 1996 amendment. Committee members are selected from nominations from Native groups, museums, and the academic community. Two committee members are nominated by Native groups, two committee members are nominated by Native groups as traditional Native American religious leaders, and three members are nominated by museums and the academic community. Smithsonian staff may not serve on the committee. The committee was established to independently monitor and review the inventory, identification, and return of human remains, funerary objects, sacred objects, and objects of cultural patrimony. The role of the Committee is advisory. The committee's purpose is to ensure that the Smithsonian undertakes a fair and objective consideration and assessment of all relevant evidence with respect to the inventory and identification of Native materials.

The committee may, upon the request of any affected party, review any findings relating to the origin or the return of human remains and cultural objects. They may also assist the Secretary of the Smithsonian or their designee in facilitating the resolution of any dispute between groups or between a group and the Institution with regard to the

disposition of collections that may arise. The committee's recommendations upon the review of any findings are directed to the Under Secretary for Science of the Smithsonian. An appeal of the Under Secretary's decision may be directed to the Secretary of the Smithsonian for review and final decision. There will be no additional appeals from the decision of the Secretary.

Further information on the committee can be found on the [Native American Repatriation Review Committee website](#).

The Chair of the Native American Repatriation Review Committee can be reached at the following address:

Native American Repatriation Review Committee  
MRC 138, Box 37012  
Department of Anthropology  
National Museum of Natural History  
10th and Constitution Ave., NW  
Washington, DC 20013-7012

### XIII. NOTIFICATION

The Repatriation Office makes every attempt to ensure that all parties with a potential interest in the collections under consideration are aware of the NMNH's decision to repatriate. Once the recommendations for a return have been agreed upon, a notification must be placed in local newspapers, tribal newsletters, and other news media having effective distribution and a one month waiting period must take place to allow any interested parties to contact the Museum. The notification process is designed to ensure that all other parties with a potential interest in the return are informed of the pending action and have an opportunity to obtain further information or consult with the NMNH prior to the repatriation of the collection. The goal of the Repatriation Office is to ensure a broad dissemination of information and to initiate arrangements for repatriation only after a consensus has been reached within the Native group about the manner of the repatriation and the representatives to be involved.

### XIV. ARRANGEMENTS FOR REPATRIATIONS

Once an agreement has been reached by the requesting party and the NMNH regarding the disposition of the human remains or objects, arrangements may be made for the repatriation. These arrangements shall include a mutually convenient date for the repatriation.

Within the limits of available funds, the Native American Repatriation Review Committee will support the travel costs of bringing two representatives of the group to

the NMNH to prepare the remains and objects in question for repatriation. This coverage would generally include transportation, hotel accommodations, and meals for two days of round-trip travel and a two day visit to the Museum. All arrangements for NMNH-sponsored travel must be made by the NMNH or the expenses cannot be covered.

## **XV. INTERNATIONAL REQUESTS**

The scope of federal repatriation laws (the NMAI Act, as amended and NAGPRA) is restricted to lineal descendants, federally recognized Native American tribes, and Native Hawaiian organizations residing in the United States. Efforts are made to coordinate requests for repatriation from groups in Canada and Mexico whose members reside on both sides of the international border, with their United States counterparts. Repatriation decisions for indigenous groups other than Native Americans are contingent upon international agreements, unless the materials in question are found to have been acquired illegally or under circumstances which render the NMNH's claim of title invalid.

## **XVI. ALTERNATIVES TO REPATRIATION**

In addition to the repatriation of culturally affiliated human remains and objects, Native groups may wish to examine alternatives to repatriation or reburial. Native groups may wish to allow human remains and objects to be retained by the NMNH under the existing policies of access and curation. Human remains found to be culturally affiliated are available for research access only with the permission of the culturally affiliated Native group. Groups may wish to consider Museum retention with tribal input on care and preservation of the items. Memoranda of Understanding for collaborative curation of remains and objects are also options to be considered.

Native groups may determine that it is in their best interest to delay a request for the repatriation of remains or objects. Any decision by a Native group not to make a repatriation request at the present time in no way precludes the possibility of making a request for repatriation at a future date.