

GUIDELINES AND PROCEDURES FOR REPATRIATION
NATIONAL MUSEUM OF NATURAL HISTORY
SMITHSONIAN INSTITUTION

Amended 2006

**GUIDELINES AND PROCEDURES FOR REPATRIATION
NATIONAL MUSEUM OF NATURAL HISTORY
SMITHSONIAN INSTITUTION**

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 affiliated¹ 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 that this process will continue 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 promise to strengthening 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 web at www.nmnh.si.edu/anthro/repatriation.

¹*Because the NMAI Act does not define cultural affiliation, it is NMNH policy to use the definition provided in the Native American Graves Protection and Repatriation Act (NAGPRA). The NAGPRA defines cultural affiliation as a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group.*

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. 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 objects. 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 American 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 followed the language of NAGPRA, 25 U.S.C. §3001 (PL 101-601), passed in 1990, and are discussed in more detail below (see: Section VI. Items Potentially Subject To Repatriation). The 1996 amendment also added two Native American traditional religious leaders to the 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 the number of human remains, 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 what 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 what 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.

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

Repatriation Office staff can provide Native American 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) 633-1899

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 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.² 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.

The request process results in the production of a report by the Repatriation Office staff which provides an assessment of the cultural affiliation of the collections requested for repatriation, summarizes all relevant details concerning the requested material, and recommends a course of action for the Secretary of the Smithsonian, or his designee, to follow in light of the legislative mandate. Documentation to determine the cultural affiliation of remains or objects considers any and all relevant information or evidence. Kinds of evidence may include, but are not limited to, biological, geographical, historical (both written and oral), genealogical, archeological, linguistic, folkloric, ethnological, and archival information, expert opinion, or any other relevant sources of information. The report is reviewed within the NMNH and submitted to the Secretary of the Smithsonian through the General Counsel and Undersecretary for Science for final approval. After the institutional review is completed, the report is sent to representatives of culturally affiliated groups. The report represents the NMNH's official response to a group's repatriation request.

²*Standing, for these purposes, means that the party requesting the materials falls within the categories of persons or groups eligible under the NMAI Act to file a repatriation request. In addition, if a claimant is acting on behalf of a tribe, there must also be proof that such person has the authority to represent the tribe. The NMNH may request additional written documentation to clarify the relationship of the requesting party to the materials in question.*

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, or regional or village corporations (as defined in the Alaskan Native Claims Settlement Act), 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 includes 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 offered for return to the federally recognized tribes.

VII. ITEMS POTENTIALLY SUBJECT TO REPATRIATION AT THE NMNH

The categories of materials that a requesting group may request are: (i) human remains of known 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 the m. See also Section VIII: 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 on-going 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 group 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.

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, nor does the museum know their location.

Sacred Objects. The NMNH shall repatriate, upon request, any specific ceremonial object that is needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents, unless the Museum asserts that it has the right-of-possession of these objects (see Right of Possession, Section VIII).

Objects of Cultural Patrimony. The NMNH shall repatriate, upon request, cultural objects that have an on-going historical, traditional, or cultural importance central to the culturally affiliated Native American group or culture itself, rather than property owned by an individual Native American. Such objects could not have been alienated, appropriated or conveyed by an individual, regardless of whether or not that individual was a member of a Native American tribe or Native Hawaiian organization. Such objects shall have been considered inalienable by the Native American group at the time the objects were separated from the group.

Objects Acquired Illegally. In accordance with long-standing Smithsonian policy³, the NMNH may repatriate, upon request, any materials acquired by or transferred to the NMNH illegally or 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.

³*"The Smithsonian Institution Policy on Museum Acquisitions" was adopted by the Smithsonian Institution Board of Regents in 1973.*

VIII. 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 VII: Items Potentially Subject to Repatriation at the NMNH. The requesting group must demonstrate cultural affiliation with the human remains and objects being requested. 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.

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 based upon biological, geographical, historical (both written and oral), genealogical, archeological, linguistic, folkloric, ethnological, and archival information, expert opinion, or any other relevant information. It must be shown by a preponderance of the evidence that the materials requested are culturally affiliated with the requesting party.

Right of Possession⁴

The original acquisition by the NMNH of a Native American 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.

IX. MULTIPLE OR COMPETING REQUESTS

The NMNH on occasion has received multiple or competing requests for the return of culturally affiliated remains or objects. Responsibility for the actual transfer and final disposition of remains and materials often presents a challenge to communities, requiring difficult and sometimes protracted negotiations within and between groups to arrive at a consensus regarding

⁴Because the NMAIA does not define "right of possession," it is NMNH policy to use the definition from NAGPRA. Under the NAGPRA, "right of possession" is defined as possession obtained with the voluntary consent of an individual or group that had the authority of alienation.

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.

X. 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 amendments. Committee members are selected from nominations from Native groups, museums, and the academic community. The seven committee members are present Native groups, museums, and the academic community; two committee members must be traditional Native American religious leaders. The committee was established to monitor and review the inventory, identification, and return of human remains, funerary objects, sacred objects, and objects of cultural patrimony. 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 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 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. Further information on the committee can be found on the web at www.nmnh.si.edu/anthro/rrc.

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

XI. 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 a return only after a consensus has been reached within the Native group about the manner of the return and the representatives to be involved.

XII. ARRANGEMENTS FOR RETURNS

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 a return. These arrangements shall include a mutually convenient date for the return.

Within the limits of available funds, the 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.

XIII. INTERNATIONAL REQUESTS

The scope of federal repatriation laws (the NMAI Act, as amended and NAGPRA) is restricted to Native groups residing in the United States and its territories. Efforts are made to coordinate requests for returns 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.

XIV. 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. Groups may wish to consider Museum retention with tribal input on care and preservation of the items.

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 return at a future date.