

## **Native American Graves Protection and Repatriation Act**

**Agencies:** National Park Service (Department of Interior)

**Citation:** [25 U.S.C. §§ 3001 et seq.](#)

**Enacted as:** “National American Grave Protection and Repatriation Act”, on November 16, 1990

### **Where Law Applies:**

*Federal lands:* Any land other than tribal lands that are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971. United States “control” refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply the regulations (43 C.F.R. 10) without abrogating the otherwise existing legal rights of a person. ([43 C.F.R. 10.2 \(f\)\(1\)](#)). Note: as there is no express exclusion of the OCS from the definition of federal lands as there is in ARPA for the definition of public lands, NAGPRA may apply on the OCS as it is land controlled by the United States.

*Tribal lands:* All lands which are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (P.L. 86-3). Actions authorized or required under the regulations ([43 C.F.R. 10](#)) will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution. ([43 C.F.R. 10.2 \(f\)\(2\)](#)).

### **Summary:**

The [Native American Graves Protection and Repatriation Act \(NAGPRA\)](#) ([25 U.S.C. §§ 3001 et seq.](#)) is a federal law passed in 1990. NAGPRA provides a process for museums and federal agencies to return certain Native American cultural items—human remains, funerary objects, sacred objects, or objects of cultural patrimony—to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA includes provisions for unclaimed and culturally unidentifiable Native American cultural items, intentional and inadvertent discovery of Native American cultural items on Federal and tribal lands, and penalties for noncompliance and illegal trafficking. In addition, NAGPRA authorizes Federal grants to Indian tribes, Native Hawaiian organizations, and museums to assist with the documentation and repatriation of Native American cultural items, and establishes the Native American Graves Protection and Repatriation Review Committee to monitor the NAGPRA process and facilitate the resolution of disputes that may arise concerning repatriation under NAGPRA.

All federal agencies are subject to NAGPRA. All public and private museums that have received federal funds, other than the Smithsonian Institution, are subject to NAGPRA—repatriation by the Smithsonian Institution is governed by the [National Museum of the American Indian Act of 1989](#), 20 U.S.C. § 80q (2011). The excavation and inadvertent discovery provisions of NAGPRA apply only to Federal and tribal lands. Under NAGPRA, tribal lands are lands (including private lands) within the exterior boundaries of an Indian reservation. If the burial ground is not on Federal or tribal land, then the excavation and inadvertent discovery provisions of NAGPRA do not apply. However, other State and Federal cultural preservation laws may apply, and State or local cemetery laws may also apply.

The principle steps of the NAGPRA repatriation process include --

- Federal agencies and museums must identify cultural items in their collections that are subject to NAGPRA, and prepare inventories and summaries of the items.
- Federal agencies and museums must consult with lineal descendants, Indian tribes, and Native Hawaiian organizations regarding the identification and cultural affiliation of the cultural items listed in their NAGPRA inventories and summaries.
- Federal agencies and museums must send notices to lineal descendants, Indian tribes, and Native Hawaiian organizations describing cultural items and lineal descendancy or cultural affiliation, and stating that the cultural items may be repatriated. The law requires the Secretary of the Interior to publish these notices in the Federal Register.

NAGPRA recognizes claims by lineal descendants, Indian tribes, and Native Hawaiian organizations. An Indian tribe is any tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Department of the Interior has interpreted the definition of "Indian tribe" as applying to approximately 770 Indian tribes and Alaska Native villages that are recognized by the Bureau of Indian Affairs. A Native Hawaiian organization includes any organization that: (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 includes the Office of Hawaiian Affairs and Hui Malama I Na Kupuna `O Hawai`i Nei. The Department of the Interior has interpreted this definition to also include the Hawaiian island burial councils and various 'Ohanas (extended families).

**Source:** U.S. Department of the Interior National Park Service, [NAGPRA Frequently Asked Questions](#) (last visited December 13, 2013)

#### **Other Relevant Sources:**

- National Park Service, National NAGPRA
  - [Resources for the Public](#)
  - [National NAGPRA Documents and Publications](#)
- NAGPRA [Regulations](#)