NAGPRA:

Disposition of Culturally Unidentifiable Native American Remains and Associated Funerary Objects
NAGPRA Claimant Hierarchy

- Updated to include new regulations -
Repatriation Order Following Publication of Federal Register NIC

1. Lineal descendant
2. Culturally affiliated Indian tribe or Native Hawaiian org

Prior to 2011, these disposition required approval by Secretary (through the Review Committee), but can now proceed following publication of the Federal Register NIC:

3. Indian tribe or NHO based on tribal land
4. Indian tribe based on aboriginal land (Final judgment of the Indian Claims Commission or US Court of Claims or Treaty or Act of Congress or Executive Order)

5. Indian tribe or NHO based on some other criteria (unspecified)

These dispositions still require concurrence of tribal land/aboriginal land tribes, if applicable, and approved by Secretary:

6. Non-federally recognized Indian group
7. Reburial pursuant to state or other law
Historic CUHR Issues

• “Reserved” section was not promulgated in 1995 with other sections of the act
• SAA consistently states that only cultural affiliated cultural items were to be repatriated and that Congress expected the Review Committee to provide disposition recommendations to Congress, which would then re-open the debate
• National Park Service consistently states they have authority to promulgate all NAGPRA regulations, including CUHR
NAGPRA Regulations

- Nov. 16, 1990  NAGPRA signed into law

- Dec. 4, 1995  Final Rule published in Federal Register (43 CFR Part 10). Includes most sections of the Act

- April 3, 2003 Final Rule for Civil Penalties

- March 21, 2007 Final Rule for Future Applicability (newly discovered cultural items; Fed agencies and museums have 6 months to complete summary or 2 years to complete inventory)


- March 15, 2010 Final rule for Disposition of CUHR published that went into effect May 14, 2010

- Today, Feb. 2011:  Still to be promulgated (reserved section) of the act, “Unclaimed”

- (See one-page handout, Table 8, found on page 40 of GAO report)
Implementation

• In 1990, the Congressional Budget Office estimated between 100,000-200,000 Native Americans and 10-15 million objects were stored in repositories.

• Nov. 16, 1995 - Inventories and summaries due after consultation with Indian tribes and NHOs; written notification to be sent by May 16, 1996 that had to include:
  – Culturally affiliated items (10.10)
  – CUHR and Associated Funerary Objects (10.11).
Affiliated & Unidentifiable Native American Human Remains

Native American Remains

45,022

126,384

1

2
Associated Funerary Objects

938,061

1,070,784
1. Lineal descendant
2. Culturally affiliated Indian tribe or Native Hawaiian org

Prior to 2011, these disposition required approval by Secretary (through the Review Committee), but can now proceed following publication of the Federal Register NIC:

3. Indian tribe or NHO based on tribal land (within exterior boundaries)
4. Indian tribe based on aboriginal land (Final judgment of the Indian Claims Commission or US Court of Claims or Treaty or Act of Congress or Executive Order)

5. Indian tribe or NHO based on some other criteria (unspecified criteria)

These dispositions still require concurrence of tribal land/aboriginal land tribes, if applicable, and approved by Secretary:

6. Non-federally recognized Indian group
7. Reburial pursuant to state or other law
Issues of Affiliation

• Prehistoric remains (no date for how old is too old)
• Regional repatriation requests more common
• GAO Report – no enforcement, inaccurate information in CUHR database
• A museum or Federal agency that is unable to prove right of possession to CUHR must offer to transfer control upon receipt of a valid claim
Issues of Affiliation, continued

• Civil penalties apply if museum refuses to:
  – provide all CUHR information
  – doesn’t meet 90 day period to initiate consultation with tribe or NHO upon receipt of valid claim
  – Refuses to transfer control after tribe/NHO submits valid request

• When to go to Review Committee?
  – Dispute between tribe/NHO and Fed/museum
  – Request disposition of CUHR to non-federally recognized Indian group
  – Reburial pursuant to state or other law
Notice of Inventory Completion

• Notices of Inventory Completion (NIC) continue to be required for cultural affiliation announcement

• NIC for CUHR? Museums and Federal agencies need to publish Federal Register notices upon:
  – Completion of CUHR consultation process