

Smithsonian  
*National Museum of the American Indian*

# REPATRIATION POLICY

**February 2014**

SAA Museum Archives Section Working Group Example

# NATIONAL MUSEUM OF THE AMERICAN INDIAN

## Resolution 01-13

### Approving the NMAI Repatriation Policy

**WHEREAS**, the history and cultures of the Indigenous Peoples of the Western Hemisphere are represented in collections of the National Museum of the American Indian (NMAI), and

**WHEREAS**, the cultures of Indigenous Peoples of the Western Hemisphere, both those practiced in the past and those of the present, and the collections that reflect those cultures, provide both a context for and a rich part of the activities of the NMAI, and

**WHEREAS**, within the collections of the NMAI are materials that are eligible for repatriation, namely human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony, and

**WHEREAS**, the deaccession and repatriation of human remains and the funerary objects associated with those remains to the Indigenous Peoples or communities of origin, regardless of geography or socio-political borders, is a high priority of the NMAI, and

**WHEREAS**, the NMAI's policy is that the utmost care and respect will be accorded to the materials within the collections, particularly the human remains, funerary objects, sacred objects, and objects of cultural patrimony; and all research, scientific study, exhibitions and other educational programs are to be conducted in a like manner; and that culturally specific information that may be known or may become known relating to the materials in the collections is to be accorded the same consideration, and

**WHEREAS**, the NMAI Board of Trustees desires to give appropriate guidance as to policies and procedures surrounding its repatriation program and therefore has developed the NMAI Repatriation Policy, and

**WHEREAS**, in developing the NMAI Repatriation Policy, the Board of Trustees affirms NMAI's commitment to:

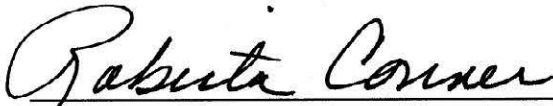
- support the continuation of ceremonial and ritual life of Indigenous Peoples,
- foster the study by Indigenous Peoples of their own traditions, and
- forge an understanding through open and consistent dialog between the NMAI and Indigenous Peoples so that the interests of each are understood and respected.

**WHEREAS**, the NMAI Repatriation Policy has been designed so that Indigenous Peoples have broad access to information pertaining to the collections in order to ensure that informed decisions are made regarding the care and disposition of materials to be repatriated.

**THEREFORE, BE IT RESOLVED**, that the Board of Trustees of the National Museum of the American Indian hereby adopts the NMAI Repatriation Policy as revised and dated December, 2013, and

**BE IT FURTHER RESOLVED**, that the NMAI Repatriation Policy be carried out to the extent practicable in accordance with the applicable treaties and international agreements with respect to Indigenous Peoples of the Western Hemisphere.

NATIONAL MUSEUM OF THE AMERICAN INDIAN



Roberta Conner  
Chair



Lynn Valbuena  
Secretary

The foregoing resolution was adopted at a duly convened meeting of the Board of Trustees of the National Museum of the American Indian, a quorum being present this 6<sup>th</sup> day of December 2013.

SAA Museum Archives Section Working Group Example

# NMAI REPATRIATION POLICY

## NATIONAL MUSEUM OF THE AMERICAN INDIAN POLICY GOVERNING THE REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS AND CULTURAL MATERIALS

### Introduction

This policy governs the repatriation of Native American human remains, funerary objects (associated and unassociated), sacred objects, and objects of cultural patrimony as set forth in the National Museum of the American Indian Act, 20 U.S.C. §80q (Public Law 101-185), as amended by the NMAI Act Amendment of 1996 (Public Law 104-278), Smithsonian and NMAI Collections Management policies, and other applicable laws, regulations, and policies.<sup>1</sup>

### I. Authority

The National Museum of the American Indian (NMAI) is governed by the Smithsonian Institution Board of Regents (“Board of Regents”), the Secretary of the Smithsonian, and the NMAI Board of Trustees (Board of Trustees). The Board of Regents has ultimate authority over and responsibility for the Smithsonian Institution collections. This responsibility is carried out through the Secretary and his/her designees. The Board of Trustees, established by the NMAI Act, has the sole authority, subject to the general policies of the Board of Regents, to: 1) lend, exchange, sell, or otherwise dispose of any part of the collections of the NMAI; 2) purchase, accept, borrow, or otherwise acquire artifacts and other objects for addition to the collections of the NMAI; and 3) specify criteria for use of the collections of the NMAI for appropriate purposes, including research, evaluation, education, and method of display. The Board of Trustees maintains the authority and responsibility to review and approve collections-related policies, including the NMAI Repatriation Policy.

### II. Repatriation Policy

The NMAI shall receive, review, and decide repatriation claims in a respectful manner. As a matter of policy, the NMAI does not use destructive testing on human remains in its collection.

#### A. Eligible Materials

The claimant must establish that the specific materials requested for return are eligible for repatriation. In evaluating each claim, the NMAI will use its best efforts to gather all relevant information from the claimant, the NMAI’s collections and records, and any

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<sup>1</sup> The Smithsonian Institution is excluded from the coverage of the Native American Graves Protection and Repatriation Act (NAGPRA), see 25 USC 3001 (definition of “federal agency”) and, therefore, is not subject to the NAGPRA regulations promulgated by the National Park Service (NPS). However, the NMAI Act Amendment of 1996 added provisions for the inventory and repatriation of unassociated funerary objects, sacred objects, and objects of cultural patrimony. These terms are defined in Section 2(3) of NAGPRA. In addition, the NMAI may voluntarily consult the NAGPRA regulations where appropriate for guidance.

other person or entity with information pertinent to the claim, and will consult, as appropriate, with interested parties. Relevant information will include, but not necessarily be limited to, oral tradition, geography and place, descent and kinship, archaeology, anthropology, linguistics, folklore, history, expert opinion, or other information. The results will be documented in a repatriation report that will be provided to the Board of Trustees to render a decision.

The categories of eligible materials are as follows:

## 1. Human remains

- a. *Human remains* mean the physical remains of a human body of a person of Native American ancestry. For purposes of this policy, it is assumed that all human remains in the collection are of Native American ancestry unless otherwise known. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For purposes of this policy, human remains do not include culturally modified human remains as defined in Section II.e.
- b. *Culturally Affiliated Human Remains and Human Remains Requested by Lineal Descendants*. Upon request of an eligible claimant (as defined in Section II (B)) that has established lineal descent or cultural affiliation with the human remains, the NMAI will repatriate human remains to the lineal descendant, Indian Tribe or Native Hawaiian Organization.
- c. *Culturally Unaffiliated Human Remains*. If the NMAI cannot determine cultural affiliation by a reasonable basis, but where some information is available to establish a relationship to an Indian Tribe or Native Hawaiian Organization, the NMAI will use its best efforts to identify the appropriate Indian Tribe or Native Hawaiian Organization with which to consult regarding cultural affiliation or responsibility for the final disposition of the human remains. The NMAI will first seek to establish cultural affiliation as set forth in Section II (B) below, but if there is not a reasonable basis to establish such affiliation, the NMAI will consider repatriation to Indian Tribes or Native Hawaiian Organizations that can demonstrate a relationship to the ancestral, historic, or aboriginal territories from where the human remains were collected.
- d. *Culturally Unknown Human Remains*. If no information is available through which cultural affiliation can be established, the Board of Trustees will decide upon a plan for carrying out a respectful disposition of culturally unknown human remains.
- e. *Culturally Modified Human Remains*. A determination of an appropriate course of action for human remains that have been culturally modified (e.g., finger bone necklaces) will be decided by the Board of Trustees on a case-by-case basis after

consultation with Indian Tribes or Native Hawaiian Organizations to determine the appropriate course of action.

## 2. Funerary objects

- a. *Associated funerary objects* are objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of the NMAI.
- b. *Unassociated funerary objects* are objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the NMAI.
- c. *Culturally Affiliated Associated and Unassociated Funerary Objects*. Upon the request of a lineal descendant, Indian Tribe, or Native Hawaiian Organization as set forth in Section II (B) below, the NMAI will repatriate any associated or unassociated funerary object to the lineal descendant, Indian Tribe, or Native Hawaiian Organization.
- d. *Culturally Unaffiliated and Culturally Unknown Associated Funerary Objects*. If the NMAI cannot determine cultural affiliation but some information is available to establish a relationship with an Indian Tribe or Native Hawaiian Organization, the NMAI will use the best means possible to identify the appropriate Indian Tribes or Native Hawaiian Organizations with whom to consult regarding cultural affiliation or responsibility for the final disposition of the associated funerary objects. If no information is available through which cultural affiliation can be established, the Board of Trustees will decide upon a plan for carrying out the respectful disposition of the associated funerary objects.

## 3. Sacred Objects

- a. *Sacred objects* are objects needed by traditional Native American religious leaders for the practice of Native American religions, including objects needed for the renewal of a religious practice.
- b. The NMAI will use its best efforts to determine whether an object is sacred by seeking the counsel of tribal claimants, tribal elders and experts, and other individuals who can provide relevant information, and by searching scholarly literature bearing on the issue.
- c. Upon the request of a lineal descendant, Indian Tribe, or Native Hawaiian Organization as set forth in Section II (B) below, the NMAI will repatriate any

sacred object to the lineal descendant, Indian Tribe, or Native Hawaiian Organization.

#### 4. Objects of Cultural Patrimony

- a. *Objects of cultural patrimony* are objects having ongoing historical, traditional, or cultural importance central to the Indian Tribe or Native Hawaiian Organization or culture, 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. The given object shall have been considered inalienable by the Indian Tribe or Native Hawaiian Organization at the time the object was separated from said group.
- b. Upon the request of an Indian Tribe or Native Hawaiian Organization as set forth in Section II (B) below, the NMAI will repatriate objects of cultural patrimony to the culturally affiliated Indian Tribe or Native Hawaiian Organization.

#### 5. Objects Acquired Illegally

In accordance with longstanding Smithsonian policy, the NMAI may repatriate, upon request, any materials acquired by or transferred to the NMAI 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 the requesting party, as well as NMAI's accession records.

#### B. Cultural Affiliation

Cultural affiliation is defined as a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present-day Indian Tribe or Native Hawaiian Organization and identifiable earlier group.

#### C. Eligible Claimants

The claimant must possess the requisite relationship to the eligible materials, either through establishment of lineal descent or through establishment of cultural affiliation.

1. **Lineal Descendant.** A lineal descendant is defined as an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian Tribe or Native Hawaiian Organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed.
2. **Indian Tribe.** Indian Tribe is defined as any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional corporation (as defined in, or established pursuant to, the Alaska Native Claims

Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

3. **Native Hawaiian.** Native Hawaiian is defined as a descendant of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii.
4. **Native Hawaiian Organization.** Native Hawaiian Organization means any organization that serves and represents the interests of Native Hawaiians, has a primary and stated purpose of the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs.

#### **D. Burden of Proof**

1. **Reasonable Basis Standard.** The claimant bears the burden of proof with respect to a repatriation request. To meet this burden, the available evidence must be sufficient to establish a reasonable basis for believing the materials in question are eligible for repatriation and that the claimant is a lineal descendant or culturally affiliated with the materials under claim. In some cases, the burden of proof may be satisfied by reference to NMAI's inventory and accession records.
2. **Types of Evidence.** Where the written record bearing on an issue is inconclusive or unreliable, the claimant may satisfy its burden of proof through evidence derived from oral tradition, folklore, linguistics, geography, descent, kinship, archaeology, anthropology, historical patterns of ownership and/or control, expert opinion, or other relevant information.

### **III. Claims Process**

#### **A. Step One: Informal Inquiry for Repatriation Information**

1. Potential claimants may contact the NMAI and request inventories of ethnographic and archaeological materials to which they may be culturally affiliated.
2. The NMAI will respond in writing to the request.

#### **B. Step Two: Request for Consultation Visit and Collections Review**

1. Claimants may request a consultation visit. Prior to such a visit, claimants must provide authorization from the appropriate tribal government.
2. Lineal descendants must provide documentation establishing a relationship to the known individual whose remains, funerary objects, or sacred objects they intend to claim.



### **C. Step Three: Formal Repatriation Request**

1. Claimant must submit a written request for repatriation. In the case of an Indian Tribe or Hawaiian Native Organization, the request must be submitted on official letterhead.
2. The request must include catalog number(s), description(s), the category or categories under which repatriation is being requested, and pertinent information demonstrating cultural affiliation to the claimed material(s).

### **D. Step Four: Review by the NMAI**

1. The claimant must meet the burden of proof in establishing that:
  - a. The materials requested for repatriation fall within a category eligible for repatriation under Section II(A); and
  - b. The claimant is eligible to make a claim under the NMAI Act either as a lineal descendant or based on cultural affiliation with the requested materials as set forth in Section II (B).
2. NMAI will review and evaluate the claim, consult with the claimant as appropriate, seek expert advice as needed, conduct research into the basis for the claim, and prepare a report on the claim.
3. The Board of Trustees will review the report and will render a decision about the claim.
4. The NMAI will notify the claimant of the decision of the Board of Trustees. If the claim is not approved, the claimant may appeal the decision under Section IV below.

### **E. Step Five: The Process of Return**

1. If the repatriation request is approved, the NMAI will arrange for the return of the human remains or objects.

## **IV. Appeals of Repatriation Decisions**

- A.** In the event a decision rendered by the Board of Trustees is disputed by the claimant, an appeal will be heard by an Appeals Committee comprised of the Under Secretary for History, Art and Culture of the Smithsonian Institution, the Vice Chair of the Board of Trustees, and the Chair of the Policy and Budget Committee of the Board of Trustees.
- B.** The members of the Appeals Committee will recuse themselves from all discussions and votes on all repatriation matters presented to the Board of Trustees, thereby preserving their independence from the Board of Trustees repatriation decisions in the event an appeal is submitted.

C. The Appeals Committee may seek the advice of the Circle of Elders of the NMAI, the Repatriation Review Committee of the National Museum of Natural History, or outside expertise as deemed appropriate by the Appeals Committee.

D. There is no further level of appeal beyond the Appeals Committee.

**V. Access to Sensitive Information Received as Part of Repatriation Consultations, Sensitive or Restricted Collections, and Repatriation Reports**

A. The NMAI is a public institution and its collections and related records are maintained for the benefit of the public as a general rule. The NMAI, in the course of addressing repatriation cases, has received and will receive sensitive cultural information with the expectation that this information will be kept confidential. Therefore, access to the collections and related records may be restricted in accordance with Smithsonian and NMAI Repatriation policies.

B. Access to records containing collections information shall generally be granted, but subject to the following:

1. Resource limitations;
2. Security considerations;
3. Intellectual property rights, including restrictions on archival or documentary materials placed on them by the donor, NMAI archivists, or tribal authorities;
4. Concern for disclosing confidential or culturally or religiously sensitive information about a lineal descendant, Indian Tribe, or Native Hawaiian Organization; and
5. Concern for the protection of exact location information involving reburial locations, incompletely excavated archaeological sites, or endangered species.

C. Access to records containing sensitive information, such as donor and collector information, custody and physical location, collecting localities, protected cultural knowledge and intellectual property may be limited by the NMAI in accordance with applicable laws, privacy rights, third party rights, contractual restrictions, security considerations, and other reasons consistent with Smithsonian and NMAI Repatriation policies.

D. Access to images and records concerning collection items that have been repatriated or fall under a valid, pending repatriation claim shall be allowed only with the explicit written permission of the appropriate lineal descendant or culturally affiliated Indian Tribe or Native Hawaiian Organization.

- E. With respect to requests for records, the Smithsonian has adopted a records disclosure policy, Smithsonian Directive 807 (Requests for Smithsonian Institution Records), which is based on the intent and spirit of the Freedom of Information Act. Requests for records, including but not limited to requests for copies of completed repatriation reports prepared by the NMAI, may be requested under Smithsonian Directive 807. In accordance with that policy, sensitive information may be redacted from the report and other records because of its cultural or religious nature. Appeals of decisions withholding disclosure of records may be made to the Smithsonian Office of General Counsel.
- F. Access to the physical collections by researchers and visitors shall be granted in accordance with the NMAI's Collections Management Policy, subject to compliance with sensitive collections protocols. No access to collections or information regarded as culturally sensitive or confidential will be granted without the express written permission of a lineal descendant, Indian Tribe, or Native Hawaiian Organization.
- G. Authorized tribal representatives may take photo/video images of human remains and associated funerary objects only with the express written permission of the lineal descendant, Indian Tribe or Native Hawaiian Organization to which the objects are culturally affiliated. The authorized tribal representative will be required to sign a Repatriation Filming Permission form. Permitting photo/video images of human remains or associated funerary objects is intended to aid tribal governments to pursue repatriation of the human remains and objects. These photo/video images may not be published or distributed for any non-repatriation related purpose without the express written permission of the NMAI and the appropriate lineal descendant, Indian Tribe, or Native Hawaiian Organization.

## **VI. Indian Tribes That Are Not Federally Recognized, Indigenous Communities Outside of the United States**

The NMAI Act and its 1996 amendment address repatriation only for federally recognized Indian Tribes and Native Hawaiian Organizations within the United States. However, in accordance with its mission and in recognition of the United Nations Declaration on the Rights of Indigenous Peoples, the NMAI will consider repatriation requests for human remains, associated funerary objects, sacred objects, and objects of cultural patrimony by Indian Tribes that are not federally recognized and Indigenous Communities outside of the United States on a case-by-case basis. Such considerations will be guided by the policies, processes, and requirements contained in the NMAI Repatriation Policy.