

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES**

Oversight Hearing on the Native American Graves Protection and Repatriation Act
Wednesday, October 7, 2009, 10:00 a.m., 2435 Longworth House Office Building

Written Testimony of the Society for American Archaeology

Presented by
Susan B. Bruning
Chair, Committee on Repatriation
Society for American Archaeology

Mr. Chairman, the Society for American Archaeology thanks you, ranking member Hastings, and the Committee on Natural Resources for the opportunity to testify on the Native American Graves Protection and Repatriation Act (NAGPRA).

The Society for American Archaeology is the leading organization of professional archaeologists in the United States. Since its founding in 1935, the Society has been dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas. With more than 7,000 members, the Society represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. The Society has members in all 50 states, as well as many other nations around the world.

The Society's involvement with NAGPRA precedes the law's enactment. It consulted extensively with and testified before Senate and House Committees to build a coalition of scientific and museum organizations and Native American groups that strongly supported NAGPRA's enactment. Over the years, the Society has closely monitored the law's implementation and provided input to the Department of the Interior, the NAGPRA Review Committee, and Congressional oversight panels. The Society is committed to supporting effective and timely implementation of NAGPRA.

NAGPRA has accomplished a great deal over the past nineteen years. Extensive repatriation of human remains and other cultural items under NAGPRA, from both museum collections and recent excavations, has occurred and continues to occur through mutual agreements among tribes, museums, and Federal agencies. NAGPRA has resulted in many successful repatriations, has led to innovative solutions for other disposition needs, and has facilitated the forging of important and lasting relationships among tribal, museum, and scientific stakeholders.

The Society believes that these successes are due to the fact that NAGPRA and the processes it created are founded upon a carefully crafted balance among Native Americans, museums, and scientists. The compromises reflected in NAGPRA's provisions were reached through extensive discussion among parties on all sides of the

issue. Senator McCain's remarks on the day of the Senate's passage of NAGPRA make this clear:

The passage of this legislation marks the end of a long process for many Indian tribes and museums. The subject of repatriation is charged with high emotions in both the Native American community and the museum community. I believe this bill represents a true compromise.... In the end, each party had to give a little in order to strike a true balance and to resolve these very difficult and emotional issues. (Congressional Record, October 26, 1990, 17173).

Administration of the processes established by the statute is carried out by the National Park Service's (NPS) National NAGPRA Program, with guidance and recommendations from the NAGPRA Review Committee. Over the years, the Society has worked with NPS on NAGPRA issues by submitting comments on proposed rules, frequently appearing before the Review Committee, nominating persons to serve as scientific members of the Review Committee, and consulting with National NAGPRA staff.

The Society has worked diligently to support a balanced and fair implementation of the Act, consistent with the explicit language and the legislative history of the Act. In recent years, however, the Society has had, and has expressed, growing concerns about imbalance in certain areas of the law's implementation. The Society believes that it is critical that the actions and policies of the National NAGPRA office and the NAGPRA Review Committee reflect an increased effort to acknowledge and accommodate the diversity of interests at stake, particularly in light of the forthcoming actions by the Department of the Interior in addressing the issues of unclaimed cultural items and culturally unidentifiable human remains.

In 2007, during consultations with National NAGPRA and other parties regarding proposed regulations on unclaimed cultural items, the Society highlighted four key points:

1. **Balance:** NAGPRA presents a carefully constructed balance among the legitimate interests of diverse parties, including lineal descendants, Indian tribes and Native Hawaiian organizations, scientific and museum communities, and the public at large.
2. **Human remains:** Human remains should be treated with dignity and respect at all times.
3. **Documentation:** Cultural items should be documented in accordance with professional standards in order to contribute to the process of accurately identifying parties entitled to exercise rights under NAGPRA and as a responsibility to all Americans' interest in our nation's past.
4. **Consistency with Law and Policy:** NAGPRA regulations must be consistent with the statute and with other applicable law.

In the statute, the NAGPRA Review Committee was charged with “recommending specific actions for developing a process for disposition” of culturally unidentifiable human remains (25 U.S.C. 3006 (c)(5)). In its 1999 Draft Principles of Agreement Regarding the Disposition of Culturally Unidentifiable Human Remains, the NAGPRA Review Committee acknowledged that “a fundamental tension exists within the statute between the legitimate and long denied need to return control over ancestral remains and funerary objects to Native people, and the legitimate public interest in the educational, historical and scientific information conveyed by those remains and objects.” (64 Fed. Reg. 145 (July 29, 1999)).

In its 2008 comments on the proposed regulations regarding the disposition of culturally unidentifiable human remains (79 Fed. Reg. 58582 (October 16, 2007)), the Society highlighted four key points:

1. NAGPRA strikes a carefully crafted balance between the legitimate interests of tribes to care for their ancestors and the legitimate interests of scientific and scholarly efforts to contribute to knowledge about the human past.
2. Cultural affiliation is the foundation upon which this balance of interests rests. It provides a mechanism that enables descendant communities to obtain control over the disposition of their ancestral remains and important cultural items where a reasonably traceable relationship to an earlier group may be established, it respects the interests of the larger public to learn about humanity’s shared past, and where such relationship has not yet been demonstrated it preserves certain cultural items and information for the benefit of future generations.
3. The Society led the scientific community in developing the compromise that NAGPRA embodies and it has consistently supported the law’s implementation in a manner consistent therewith.
4. NAGPRA has led to productive new relationships among tribes, museums, and archaeologists through much effort and relationship-building over the last 19 years.

The leading stewards of the NAGPRA process on the national level are the NAGPRA Review Committee and the National NAGPRA office. The Society supports their roles in carrying out the responsibilities enumerated in the Act (25 U.S.C. 3006 (c)). The law requires the Secretary of the Interior to appoint members to the Review Committee in a manner that supports the balance of interests at stake. The statute established its Review Committee in recognition that these were difficult issues requiring diverse perspectives. The National NAGPRA office, as the entity implementing the day-to-day activities of NAGPRA, has a responsibility of neutrality toward the diverse perspectives on NAGPRA, including those in the museum, educational, and scientific communities, as it carries out its duties.

Despite the safeguards built into the law, the Society believes there has been a serious erosion of the critical balance of interests represented in the law. For instance, in the proposed rule drafted by the National NAGPRA Office, the pivotal role of “cultural affiliation” as a cornerstone of the law is effectively discarded. The law requires “cultural affiliation” to be demonstrated by evidence before arriving at determinations about appropriate allocation of decision-making authority. All such evidence, whether provided by tribes, archaeologists, or other researchers, must be considered as parties work toward determinations of cultural affiliation. **This process takes effort, it takes resources, and it takes time.** These proposed regulations suggest that the quick and complete removal of human remains from curatorial institutions – a mandate that is neither explicit nor implicit in the Act – is more important than allowing time for parties to work together to seek knowledge and understandings about relationships of “shared group identity” – the cornerstone of “cultural affiliation” – and to develop options for caring for remains and cultural objects.

The Society encourages those overseeing the National NAGPRA office to use diligence in ensuring that all activities, including those relating to funding, enforcement, dispute resolution, and “cultural affiliation,” are conducted with utmost transparency and in a manner consistent with the statute and respectful of the balance embodied in the law and the diversity of stakeholder interests. Those vested with responsibility for implementing NAGPRA should seek to do so in a manner that is respectful of the diversity and importance of tribal concerns not only for appropriate treatment of their ancestral human remains and cultural items but also for the appropriate treatment of culturally unidentifiable human remains. This is of paramount importance. It is also critical that those same stewards of the NAGPRA process seek to carry out their responsibilities in a manner that is respectful of scholarly research and appropriate scientific inquiry as tools that assist in determining “cultural affiliation” and in understanding aspects of the broader human past. A great many tribes, museums, agencies, and archaeologists have developed successful working relationships grounded in mutual respect and collaborative research, in their efforts to determine “cultural affiliation” and to craft solutions to NAGPRA issues and to larger issues relating to the management of cultural heritage.

As the leading professional society of archaeologists in the United States, the Society for American Archaeology will continue to support these goals. The many productive relationships that have been established over nearly twenty years of joint effort among those with a diversity of interests would be best served by ensuring that any forthcoming changes to the law support the balance of interests built into the law and the ability of all parties to work together toward sound and respectful solutions.

On behalf of the Society for American Archaeology, thank you for the opportunity to provide the Committee with its perspectives.