

Sherry Hutt, Manager, National
NAGPRA Program, National Park
Service, 1849 C Street NW.,
Washington, DC 20

Dear Ms. Hutt:

The American Association of Physical Anthropologists (AAPA) appreciates the opportunity to comment on regulation 43 CFR Part 10.7 regarding the disposition of unclaimed Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated or discovered on federal or tribal lands after November 16, 1990, pursuant to the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA). I am writing to reiterate the central points Dr. Patricia Lambert made during her oral presentation to you at the April 18, 2007, consultation in Washington, D.C.

The AAPA is the leading professional organization for physical anthropologists in the United States. We currently have more than 1700 members with research interests in all areas of human biology, including the study of human skeletal remains spanning the entire history of humankind in all areas of the world. The AAPA was part of the coalition of Native American and scientific groups that worked for the passage of NAGPRA. We continue to support the key goal of NAGPRA, which is to ensure that culturally affiliated Native American groups are allowed to make decisions regarding the disposition of their ancestral remains.

The AAPA strongly supports the key points that our representative, Dr. Patricia Lambert, and Dr. Susan Bruning, the representative of the Society for American Archaeology (SAA), made at the April 18th consultation. Specifically, we concur that:

1. “Unclaimed cultural items” is a narrowly defined category in NAGPRA that includes only those cultural items for which a claim of ownership is required, but for which a claim has not been made (Sec. 3(a)2B & C).
2. “Ownership,” as defined by NAGPRA (Section 3), is determined in a hierarchical manner in which lower categories (cultural affiliation or cultural relationship based on aboriginal land claims as supported by the Indian Claims Commission or U.S. Court of Claims judgments) may only be appealed to if no lineal descendents are identified and cultural items were not recovered from tribal land of a federally recognized tribe or Native Hawaiian organization. A “cultural relationship,” as previously defined, may only be invoked in cases where no culturally affiliated tribe is identified.

3. Under clearly defined situations, NAGPRA gives federally recognized tribes the ability to claim remains discovered on its aboriginal lands as defined by a final judgment of the Indian Claims Commission or the United States Court of Claims. Although there has been some discussion of altering this clearly stated statutory requirement through regulatory language, there is no statutory basis for such a change. NAGPRA is very clear regarding the definition of aboriginal lands and there is no legal basis for regulations that alter this statutory provision.

4. Once ownership, cultural affiliation, or cultural relationship of cultural items has been determined, only those parties identified as owners or possible claimants can claim these remains. In the language of NAGPRA, “unclaimed” does not mean “available.”

5. As per ARPA (1979) and 36 CFR 79, the Federal government owns cultural items described in Section 3(a)2B&C until such a time as a claim of ownership is made and, where required under NAGPRA, determined to be valid.

6. Federal repositories are funded by the American public for the purpose of research and curation. Therefore, cultural items housed in such facilities, with the exception of those for which ownership has been determined, should be made available for research according to the guidelines set out by repositories for access and study.

7. There is no statutory basis for repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony to a non-federally recognized Indian group that has stated a claim based on a relationship of shared group identity. NAGPRA defines cultural affiliation as a relationship that exists between a *federally recognized tribe* and an earlier group. As a result, non-federally recognized Indian groups are denied access to its provisions. We realize that this restriction results in inequities in situations where groups refused federal recognition or whose tribal status was revoked through various forms of governmental mischief. Never the less, regulatory language cannot legally be used to extend the provisions of NAGPRA to non-federally recognized groups without legislative actions that amend the statute.

It is worth reiterating that the reason that Native America, scientific, and museum groups were able to join together to support NAGPRA rests in the way in which NAGPRA balances the legitimate interests of scientific, public, and Native American interests in human remains and other cultural objects. The statute is carefully crafted compromise that recognizes the diversity of valid interests in human remains. Maintaining this balance should be the guiding principal used in the development of regulations regarding the disposition of unclaimed human remains and cultural objects.

Unclaimed Native American human remains have enormous scientific value because of the broad implications the information they can yield has for basic and applied research in the social and natural sciences, medicine, and forensic work. That is, these remains have value for learning about life in distant times, as well as importance for significant present-day medical and forensic concerns.

Human remains excavated or discovered on federal or tribal lands deserve thorough physical anthropological documentation that meets the highest standards of our profession. Such studies are an important source of information about the history of our country and contribute to our collective knowledge about the human past. Physical anthropological studies of human remains are also important owing to the contributions they can make to the process of accurately identifying parties entitled to ownership or control under NAGPRA.

We believe that human remains and other cultural items for which a qualified claimant has not been identified based on the provisions of Section 3(a) should be retained in Federal care. Current regulations (36 CFR 79) governing federal curation facilities adequately address issues related to the preservation and handling of human remains and other cultural items for which a qualified claimant has not been identified. Such remains should be retained by the federal government until they are claimed by a qualified party.

Sincerely,

Fred Smith, President
American Association of Physical Anthropologists