



SOCIETY FOR AMERICAN ARCHAEOLOGY

## **Analysis of HR 2893, Amendment to NAGPRA**

*November 18, 1997*

The Native American Graves Protection and Repatriation Act of 1990 (25 USC 3000 et seq.), recognized the legitimate interests of Indian tribes and Native Hawaiian organizations in ancestral human remains, funerary items, sacred items, and items of cultural patrimony that are held in museum collections and that continue to be excavated from federal lands. NAGPRA attempts to balance those *traditional* interests with legitimate *public* interests that derive from enhanced knowledge of America's past achieved through scientific study and from education of the public through museum exhibits. Emphasizing consultation between native people and the institutions holding the cultural items, NAGPRA provides for the return of these remains or objects to a modern group if cultural affiliation can be demonstrated.

While considerable progress has been made over the last seven years, problems with the original act have become evident. They derive from the inherent difficulty of defining "cultural affiliation," from the rather uneven manner in which key parts of the act have been implemented, and from what we believe is an inadequate recognition in NAGPRA of public interests in America's prehistory. The controversy over the disposition of the 9300 year old Kennewick skeleton brought a key problem to the attention of the public: under NAGPRA, human remains of great scientific importance were to be repatriated without scientific study to an Indian tribe whose relationship to the skeleton appeared to most observers to be remote.

Enactment of HR 2893 would, in our view, result in a substantial improvement in the balance of public interests in America's past and the appropriately privileged interests of related Indian tribes and Native Hawaiian organizations. HR 2893 would achieve three major objectives:

1) *To enhance scientific recording and study of cultural items.* It would require recording, to generally accepted scientific standards, of cultural items that are newly excavated on federal lands and would require agencies to retain control over those items for 90 days after the publication of a notice of their discovery in the Federal Register. It permits study of culturally unaffiliated items to determine cultural affiliation or to obtain information of scientific, historical or cultural value. Culturally affiliated items may be studied only if the study is "reasonably expected to provide significant new information concerning the prehistory or history of the United States," and only so long as such study does not delay repatriation of items claimed by a culturally affiliated tribe or Native Hawaiian organization for more than 180 days. [These changes are effected by the addition HR 2893's sections 1(c), 2, and 3, resulting, in NAGPRA, in the addition of 3(f), a minor wording change to 5(b), and a substitution of 7(b).]

In this context it is important to recognize that HR 2893 does *not* diminish the ability of culturally affiliated tribes or Native Hawaiian organizations to achieve repatriation nor does it alter NAGPRA's definition of cultural affiliation. Study would *not* be allowed if the remains or items have lineal descendants, if the study would violate the museum's policies or prior agreements, or if the scientific benefits of the study are shown to be clearly outweighed by curatorial, cultural or other reasonable concerns. Newly excavated or discovered items from tribal lands would also be exempt from study, unless permitted by the tribe.

2) *To eliminate the provision of NAGPRA that provides for repatriation of recently excavated cultural items based on recent land use and in the absence of cultural affiliation.* However, it should be recognized that under the proposed change these cultural items would be still be subject to repatriation under regulations to be promulgated by the Secretary of the Interior, just like other unaffiliated items. [This change is effected by HR 2893 section 1(a), the removal of NAGPRA's Section 3(a)(2)(C).]

3) *To clarify the disposition of inadvertently discovered cultural items.* In practice, the disposition of "inadvertent discoveries" of cultural items by federal agencies is not consistently governed by NAGPRA's provisions for intentional excavations. We believe that this clarification is in the interests of both the scientific and Native American communities, and in complete conformance with NAGPRA's original intent. [This change is effected by HR 2893's section 1(b) resulting in two minor wording changes in NAGPRA's section 3(d).]