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The Native American Graves Protection and Repatriation Act (NAGPRA)

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The Native American Graves Protection and Repatriation Act (Public Law 101-601; 25 U.S.C. 3001-3013) describes the rights of Native American lineal descendants, Indian tribes, and Native Hawaiian organizations with respect to the treatment, repatriation, and disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony, referred to collectively in the statute as cultural items, with which they can show a relationship of lineal descent or cultural affiliation. One major purpose of this statute (Sections 5-7) is to require that Federal agencies and museums receiving Federal funds inventory holdings of Native American human remains and funerary objects and provide written summaries of other cultural items. The agencies and museums must consult with Indian Tribes and Native Hawaiian organizations to attempt to reach agreements on the repatriation or other disposition of these remains and objects. Once lineal descent or cultural affiliation has been established, and in some cases the right of possession also has been demonstrated, lineal descendants, affiliated Indian Tribes, or affiliated Native Hawaiian organizations normally make the final determination about the disposition of cultural items. Disposition may take many forms from reburial to long term curation, according to the wishes of the lineal descendent(s) or culturally affiliated Tribe(s).

The second major purpose of the statute is to provide greater protection for Native American burial sites and more careful control over the removal of Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands. NAGPRA requires that Indian tribes or Native Hawaiian organizations be consulted whenever archeological investigations encounter, or are expected to encounter, Native American cultural items or when such items are unexpectedly discovered on Federal or tribal lands (Section 3). Excavation or removal of any such items also must be done under procedures required by the Archaeological Resources Protection Act (Sec. 3 (c)(1)). This NAGPRA requirement is likely to encourage the in situ preservation of archaeological sites, or at least the portions of them that contain burials or other kinds of cultural items. In many situations, it will be advantageous for Federal agencies and Tribes undertaking land-modifying activities on their lands to undertake careful consultations with traditional users of the land and intensive archeological surveys to locate and then protect unmarked Native American graves, cemeteries, or other places where cultural items might be located.

Other provisions of NAGPRA: (1) stipulates that illegal trafficking in human remains and cultural items may result in criminal penalties (Section 4); (2) authorizes the Secretary of the Interior to administer a grants program to assist museums and Indian Tribes in complying with certain requirements of the statute (Section 10); (3) requires the Secretary of the Interior to establish a Review Committee to provide advice and assistance in carrying out key provisions of the statute (Section 8); authorizes the Secretary of the Interior to penalize museums that fail to comply with the statute (Section 9); and, (5) directs the Secretary to develop regulations in consultation with this Review Committee (Section 13).

"Cultural affiliation" is a key concept for implementing this statute; it is a cornerstone for repatriation requests and for asserting claims related to new discoveries on Federal or Tribal land. The statute defines cultural affiliation as

a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian Tribe or Native Hawaiian organization and an identifiable earlier group (Sec. 2(2)).

This implies that contemporary groups of Native Americans of diverse backgrounds who voluntarily associate together for some purpose or purposes are not viewed as proper claimants

Introduction

Antiquities Act 1906

National Historic Preservation Act (NHPA)

Archeological and Historic Preservation Act (AHPA)

Archaeological Resources Protection Act (ARPA)

Abandoned Shipwreck Act (ASA)

Native American Graves Protection and Repatriation Act (NAGPRA)

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under the provisions of the statute.

Whether new discoveries from Federal or Tribal land or existing collections are being considered, it is not necessary for the agency, museum, lineal descendent, Indian Tribe, or Native Hawaiian organization to establish beyond all doubt which descendent or Native American group is a proper claimant for purposes of repatriation. This is true in situations involving cultural items in collections as well as when dealing with newly discovered materials.

The types of evidence which may be offered to show cultural affiliation may include, but are not limited to, geographical, kinship, biological, archaeological, anthropological, linguistic, oral tradition, or historical evidence or other relevant information or expert opinion. The requirement of continuity between present day Indian Tribes and materials from historic or prehistoric Indian Tribes is intended to ensure that the claimant has a reasonable connection with the materials. Where human remains and funerary objects are concerned, the Committee is aware that it may be extremely difficult, unfair, or even impossible in many instances for claimants to show an absolute continuity from present day Indian Tribes to older, prehistoric remains without some reasonable gaps in the historic or prehistoric record. In such instances, a finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of gaps in the record (Senate 1990:9).

Executing the provisions of the Graves Protection and Repatriation Act involves three primary participants: Federal agencies, all museums receiving Federal funds (including State, local, and private institutions), and Indian Tribes and Native Hawaiian organizations. Oversight of and directions for the activities required of these three types of organizations are to be provided by the Secretary of the Interior and the NAGPRA Review Committee established by the statute.

The kinds of remains and the artifacts covered by provisions of the statute are: (1) human remains and associated funerary objects; (2) unassociated funerary objects; (3) sacred objects; and (4) objects of cultural patrimony.

"Human remains" are not defined in the statute, and consequently all kinds of Native American human remains are covered. This means isolated human bones, teeth, or other kinds of bodily remains that may have been disturbed from a burial site are still subject to the provisions of this statute.

"Associated funerary objects" are objects reasonably believed to have been placed with human remains as part of a death rite or ceremony. The use of the adjective "associated" refers to the fact that these items retain their association with the human remains with which they were found and that these human remains can be located. It applies to all objects that are stored together as well as objects for which adequate records exist permitting a reasonable reassociation between the funerary objects and the human remains that they were buried with.

It frequently occurs in archeological sites that artifacts seemingly from burials were not placed with the human remains as part of a death rite, rather they have been introduced into the burial later by natural processes or cultural activities unrelated to death rites or ceremonies. These latter objects would not be considered funerary objects.

"Unassociated funerary objects" are items that "...as a part of a 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...", but for which the human remains are not in the possession or control of the museum or Federal agency. These objects also must meet one of two further conditions. They must be identified by a preponderance of the evidence as either "... related to specific individuals or families or to known human remains..." or "...as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe (Sec. 2(3)(B)).

"Sacred objects" are defined in the statute as "...specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents...(Sec. 2(3)(C))" Further discussion of this term is supplied by the Senate Committee report:

There has been some concern expressed that any object could be imbued with sacredness in the eyes of a Native American, from an ancient pottery shard to an arrowhead. The Committee does not intend this result. The primary purpose of the object is that the object must be used in a Native American religious ceremony in order to fall within the protection afforded by the bill (Senate 1990:7).

"Objects of cultural patrimony" are defined in the statute as having "...ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual...(Sec. 2(3)(D))". The key provision in this definition is whether the property was of such central importance to the Tribe or group that it was owned communally. The potential vagueness of this term again produced comment by the Senate Committee:

The Committee intends this term to refer to only those items that have such great importance to an Indian Tribe or to the Native Hawaiian culture that they cannot be conveyed, appropriated or transferred by an individual member. Objects of Native American cultural patrimony would include items such as Zuni War Gods, the Wampum belts of the Iroquois, and other objects of a similar character and significance to the Indian Tribe as a whole (Senate 1990:7-8).

Many objects in archeological or ethnographic collections are not subject to the statute, because they never had a burial, funerary, religious, or cultural patrimonial context in the culture that they were part of. Such objects would be retained in existing repositories with appropriate treatments and care. When archeological investigations or unanticipated discoveries on Federal or Tribal land result in the recovery of such items, they are to be treated and disposed of according the requirements of the appropriate archeological or historic preservation laws.

Further Readings and Links

[Native American Graves Protection and Repatriation Act \(25 U.S. Code 3001 et seq.\)](#), statute text.

[Native American Graves Protection and Repatriation Act Regulations; Final Rule \(43 CFR 10\)](#), regulation text.

[National NAGPRA Program](#), regulation text and legislative history.

[Managing Archeological Collections: NAGPRA](#)

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1990 Senate Report Number 473, 101st Congress, 2nd Session.

Sources of Information

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National NAGPRA Program, Office of the Associate Director, Cultural Resources, National Park Service, Washington, DC. (202) 354-2201.

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