



## SOCIETY FOR AMERICAN ARCHAEOLOGY

### **Testimony of the Society for American Archaeology before the Senate Committee on Indian Affairs for the Oversight Hearing “The Long Journey Home: Advancing the Native American Graves Protection and Repatriation Act’s (NAGPRA) Promise After 30 Years of Practice”**

February 15, 2022

The Society for American Archaeology (SAA) appreciates this opportunity to provide the following comments on the current state of the implementation of NAGPRA. The SAA has long been involved in the issue of repatriation of Native American ancestors and cultural items to lineal descendants and culturally affiliated Indian Tribes and Native Hawaiian organizations. The SAA was one of the leading organizations at the forefront of the drafting and passage of the statute in 1990, and has remained deeply involved in its application and enforcement ever since.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With nearly 7,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

In general, while substantial progress has been made under NAGPRA, implementation of the law has taken longer than was anticipated at the time of NAGPRA’s passage and is proceeding too slowly for many. There is room for improvement in the statute, regulations, and programmatic activities. The repatriation process created by the existing regulations is too complex, takes too much time, and is severely underfunded. Too often, the Department of Interior (DOI) has not followed the statute and its own regulations in formulating and carrying out policy. At times, the voice of the Review Committee (RC) has gone unheard. The operations of the National NAGPRA program are often opaque and appear erratic. Museums and federal agencies face hurdles such as limited budgets and staffing shortages that create backlogs in addressing claims and holding consultations. Too few resources have been dedicated to the tribes and Native Hawaiian organizations and the appropriate reburial places are often unavailable due to current federal land management policy, making it difficult to proceed with the actual repatriation of human remains and cultural items.

An update to the NAGPRA regulations is long overdue. Given that the DOI intends to publish proposed changes to the NAGPRA regulations in the near future, the SAA believes that the most productive approach today is to provide the SCIA with answers to those questions asked by the senators during the hearing upon which the SAA can bring some of its experience to bear,

including our view of what needs to change in terms of the statute, regulations, and programmatic activities.

### **Hearing questions and SAA answers (in italics)**

Q: Sen. Cortez-Masto: The BLM and other agencies require lengthy NAGPRA consultations, is the DOI undertaking any effort to reduce the length of the process? *Consultation is a complicated process that often requires substantial time. Arbitrary timelines for consultation can prevent the relationship-building and establishment of trust that is necessary for the meaningful consideration of tribal information and perspectives, thereby limiting the potential for successful NAGPRA outcomes. To facilitate effective consultation, SAA recommends that additional funds be offered for NAGPRA consultation grants, that consultation grants be awarded more often than once a year, and that federal agencies devote more resources to their NAGPRA consultations. There are other areas that could help reduce the time to complete the NAGPRA process: hard deadlines for the NNP to process inventories and NICs; databases that provide tribal, museum, and agency NAGPRA contacts; a substantial increase in the funding for the repatriation efforts of tribes, museums, and federal agencies; and increased penalties for noncompliance.*

Q: Sen. Cortez-Masto: what funding commitment is needed to meet goal of law? *While such a number is difficult to estimate, it is clear that the current level of support—for the NNP, for compliance within other federal agencies, and for grants to tribes and museums to carry out repatriation projects—is wholly inadequate. From our calculations, an allocation of \$2.5 billion over the next 10 years is needed for substantial progress in repatriation of human remains and funerary objects. This amount is estimated based on information from the NNP (the current rate of completion for the publication of notices for of human remains and associated funerary objects of 21% and the \$50 million awarded to date for NAGPRA grants) multiplied by a factor of 10 (the vast majority of NAGPRA work is funded through museums, agencies, and tribes rather than through NAGPRA grants). Federal agencies should have a specific line item for NAGPRA in their budget to disclose how much they intend to spend to uphold their NAGPRA responsibilities.*

Q: Sen. Cantwell: what changes are needed in the law and regulations to ensure a sound process?

❖ *SAA recommended statutory changes to NAGPRA:*

- *Definition of Native American – change to “of, or relating to, a tribe, people, or culture that is or was indigenous to the United States”*
- *Enforcement functions (both criminal and civil) delegated to DOJ*
- *Require federal agencies to provide appropriate (as determined through tribal consultation) lands for reburial on federal lands*
- *Protection of sensitive information recorded during NAGPRA consultation process (exclusion from FOIA)*
- *Revise the penalties to include audits of all federal funds received by the museum/organization found to be out of compliance*
- *Add repatriation to the list of duties that can be assumed by THPO programs, with a concomitant increase in funding to assist with staffing for that work*

❖ *SAA recommended Regulatory changes to NAGPRA:*

- *Codify the duties of the National NAGPRA Program*
- ❖ *SAA recommended departmental changes to facilitate implementation of NAGPRA:*
  - *Programmatic activities:*
    - *Refocus the efforts of the National NAGPRA Program (NNP) on its core functions: notices, grants, databases, training, technical assistance, and enforcement*
    - *Require the National NAGPRA Program to maintain databases that will facilitate NAGPRA compliance, such as lists of tribal, museum, and agency NAGPRA officials*
    - *Create deadlines for the NNP to submit notices to the Federal Register once they are received by the NNP*
    - *Resume NAGPRA training by NNP staff rather than outsourcing it*
    - *Ensure that grants are awarded in an equitable manner without preferential treatment based on unwritten criteria. Have at least two opportunities per fiscal year for consultation grant applications to be submitted and reviewed*
  - *Staffing:*
    - *Create a unit within the office of the Secretary of the Interior to oversee all cultural and historic preservation programs, laws, and compliance effort for tribes, including NAGPRA; if this does not occur, then undertake to adequately staff the NNP, and create a Senior Advisor position within the NNP that is linked to the NPS' Tribal Relations Office*
    - *The SAA supports the NNP being housed in the administrative unit within the Department of Interior that is the most efficacious for the Tribal nations and accomplishing the goals of NAGPRA. It encourages the DOI to give weight to the recommendations supplied by the tribes on this specific subject in the fall of 2021 when considering the proper placement of the program*

*Q: Sen. Schatz--how does NAGPRA apply to boarding schools? The SAA commends the DOI for undertaking the Federal Indian Boarding School Initiative and trusts that the DOI will consider this question as part of its review. DOI's consultation with Tribal nations on this subject will be critical to answering this question, as will additional research into land and facility ownership and funding.*

*Q: Sen. Schatz--DOI has hired NAGPRA civil investigator; is there a backlog in allegations of non-compliance? The SAA believes that there is a backlog of allegations of non-compliance, but the NNP has not provided current information on civil enforcement investigation since its 2017 annual report. At the end of FY17, a total of 115 entities were named in letters alleging a failure to comply. A total of 449 allegations had been investigated for 53 entities, with a total of 32 allegations against 20 entities substantiated. The status of the investigations into the other 62 entities, and the number of allegations involved, has not been reported by the NNP. Between FY18 and FY20, at least two letters alleging non-compliance were received by the NNP; but the number of entities and allegations in those letters has not been made publicly available. The addition of the new civil investigator should help with any backlog.*

*Q: Sen. Murkowski--only 21% of institutions have fully resolved all claims on human remains / items under NAGPRA; is it accurate to say that 79% are in non-compliance? According to the NNP, approximately 21% of the institutions with human remains have published notices for the repatriation or disposition of all of the human remains under their stewardship. The SAA applauds their efforts. The other 79% are museums and agencies that have not published notices for all human remains under their stewardship, but they may meet the basic technical requirements for being in compliance. The SAA understands that very few situations in NAGPRA are clear-cut; without further information on the civil enforcement efforts, we do not know how many museums or agencies are non-compliant. It is also unknown how many entities have never submitted an inventory or summary. NAGPRA is a process and it takes time, resources, and institutional will, support, and prioritization to complete notices for all human remains.*