

**U.S. House of Representatives, Committee on Resources  
Hearing on H.R. 2893, A Bill to Amend NAGPRA  
June 10, 1998**

*Oral testimony presented by Vin Steponaitis (President, SAA)*

Madam Chairman, the Society for American Archaeology (SAA) and the Society for Historical Archaeology (SHA) are grateful for the opportunity to comment on H.R. 2893. Our position on this bill is also supported by the Archaeology Division of the American Anthropological Association and the National Conference of State Historic Preservation Officers.

Let me state at the outset that we support the rights of Native Americans to reclaim human remains and funerary objects in cases where a cultural affiliation exists between a tribe and the items in question. We actively worked on NAGPRA when it was moving through Congress, and lobbied hard for its passage. We still support NAGPRA and believe it has done a great deal of good. But no bill is perfect. In 1990, when SAA delivered congressional testimony on NAGPRA, we expressed reservations about certain aspects of the bill, believing that they would lead to problems. In retrospect, we see that these reservations were well founded. That's why we now support H.R. 2893, which addresses some of these problems while at the same time preserving the spirit of compromise embodied in the original law.

As we see it, H.R. 2893 makes two major changes to the present situation.

First, it makes explicit and enhances the opportunities for scientific study prior to repatriation. The reason we support this objective is simple: The archaeological record is a priceless part of our national heritage, and it is important that information about the past be brought to light for the benefit of all Americans. NAGPRA is *very* vague on the subject of scientific recording and study, which leads to tremendous variation in the way the law is interpreted and invites the kinds of problems we saw in Kennewick. The resulting confusion often prevents important studies from being carried out, and fosters determinations of cultural affiliation that are not adequately based on all the evidence required by NAGPRA.

H.R. 2893 addresses this problem in that it makes explicit the need to record basic information when ancient remains are found, and establishes criteria for conducting limited additional studies where appropriate. All in all, we believe that these new provisions strike a reasonable balance between the general public interest in archaeology, and the spiritual concerns of affiliated Native American groups.

The second major change made by H.R. 2893 is to eliminate the one provision in NAGPRA that gives control of remains to tribes that have no demonstrable cultural affiliation; currently, this occurs if such remains happen to be found on Federal property that falls within a tribe's "aboriginal land" as adjudicated by the Indian Claims Commission. We support eliminating this provision because we believe that cultural affiliation is what gives repatriation claims their legitimacy. The problem is that "aboriginal lands" are based on recent territories that were

occupied around the time of European contact, and take no account of change through time. Native people have lived on this continent for *thousands* of years and frequently moved. Thus, there is no necessary cultural connection between a modern tribe and ancient remains that happen to be found within its recent territory. And without that connection, repatriation claims, no matter how sincere, have no strong foundation.

I think it's also important to remember that the Department of Interior, in their 1990 testimony before this committee, *opposed* the aboriginal lands provision in NAGPRA and argued that it should be removed, which is exactly what H.R. 2893 would do.

Finally, I also wish to mention a few things that H.R. 2893 quite appropriately does *not* do:

- \* The amendment does not affect the legal definitions of "Native American" and "cultural affiliation";

- \* it does not challenge tribal sovereignty;

- \* it does not prevent *any* repatriation that would take place under current law to a culturally affiliated tribe; and

- \* it will not affect *any* remains that have already been returned to tribes, as the study provisions apply only to remains controlled by Federal agencies and museums.

In sum, enactment of this bill would result in a substantial improvement over the current situation, while at the same time preserving a reasonable compromise between scientific and Native American concerns. For all these reasons, we strongly support H.R. 2893.

Again, thank you for this opportunity to present our views.