

May 17, 2010

Honorable Ken Salazar, Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Re: Native American Graves Protection and Repatriation Act Regulations—Disposition of Culturally Unidentifiable Human Remains; Final Rule

Dear Secretary Salazar:

We write to express our deep concern over the negative impact the final rule regarding “Disposition of Culturally Unidentifiable Human Remains” will have on the current and future state of science. These changes are set to take effect on May 14, 2010 (Federal Register 75(49): 12378-12405).

Our position follows the longstanding (1986) policy of the Society for American Archaeology (SAA) that recognizes the legitimacy of both traditional and scientific interests in human remains, and advocates a balance between those interests..

The Native American Graves Protection and Repatriation Act (NAGPRA), enacted in 1990, was bipartisan legislation intended to strike a balance between the interests of Native Americans in repatriating the remains of their ancestors and the interests of science and the broader public that seek to learn from human remains of the history of our species’ migration across the globe and into the peopling of the New World, the health and diet of past Native Americans, our shared human heritage, and contemporary issues of health and disease. The law’s history of cooperation and compromise among the major stakeholders has been a principal reason for NAGPRA’s success until now.

Consistent with SAA’s policy, under NAGPRA the ability to repatriate human remains from collections in the nation’s museums and federal agencies depends on showing “cultural affiliation” between the human remains and a modern, federally recognized tribe. Repatriation thus appropriately depends upon the establishment of a reasonably close biological or cultural relationship with a modern tribe. The balance embodied by NAGPRA hinges on cultural affiliation as a modest threshold for the closeness of relationship. When such affiliation can be established, the traditional interests in the repatriation of ancestors appropriately takes precedence over the broader interests of science and the public. However, where this threshold is not met -- which is to say that no biologically or culturally descendant tribe has been identified (i.e., the remains are “culturally unidentifiable”) -- the remains were to be carefully curated in museums and federal repositories and made available for appropriate and responsible use in scientific research and education.

Contrary to both the letter and the spirit of the law, the newly published final rule on the Disposition of Culturally Unidentifiable Human Remains destroys the fundamental balance of NAGPRA by mandating the “disposition” (removal from museum and agency collections) of a large fraction of the

culturally unidentifiable remains that have already contributed key data, but that still have untapped potential because we have new techniques today that never existed before. The loss of these collections to native groups with no demonstrable affiliation (including, potentially enemies of their actual ancestors) is especially tragic considering that the technologies that allow us to tap this research potential (including DNA and isotope geochemistry research) are rapidly expanding. The collections at issue are large and irreplaceable. Indeed, as such DNA and other new research advances, it is likely that some of the remains now considered “culturally unidentifiable” will become “culturally affiliated,” allowing them to be returned to tribes with which they may be shown to have a demonstrable relationship.

Finally, not all remains in the “culturally unidentifiable” category are necessarily Native American (or Native Alaskan or Native Hawaiian) in affiliation. There are a number of situations in which remains may be mixed, with Euro-Americans and Native Americans present at the same locations, as at early historic trading posts and forts. A determination of “culturally unidentified” may have been made for remains from these locations because a finer distinction was not possible at the time of analysis.

The scientific community, including the Society for American Archaeology and the American Association of Physical Anthropologists, as well as the nation’s major museums, have commented repeatedly on drafts of this new rule and antecedent documents, but their comments have largely gone unheeded.

Unfortunately, the implementation of the Department of the Interior’s new rule will result in an incalculable loss to science. We therefore request that you immediately withdraw this rule and seek a resolution that is consistent with the balance of interests that NAGPRA was written to represent. If these regulations are imposed, it will result in North America’s indigenous societies becoming one of the world’s least known and least understood populations---in terms of ancient diet, disease and health – as other skeletal populations in other world areas continue to be studied and continue to yield important new insights into the way of life of our shared distant ancestors.

Sincerely,

Bruce D. Smith, Smithsonian Institution*

Robert McC. Adams, University of California San Diego

Jeanne Altmann, Princeton University

Berhane Asfaw, Rift Valley Research Service

Ofer Bar-Yosef, Harvard University

Cynthia Beall, Case Western Reserve University

Jane Buikstra, Arizona State University

Robert Carneiro, American Museum of Natural History
Michael D. Coe, Yale University
Robert D. Drennan, University of Pittsburgh
Kent V. Flannery, University of Michigan
Ralph M. Garruto, Binghamton University
Melvin C. Goldstein, Case Western Reserve University
E. A. Hammel, University of California, Berkeley
Henry Harpending, University of Utah
Kristen Hawkes, University of Utah
Frank Hole, Yale University
Sarah B. Hrdy, University of California, Davis
Paul Kay, University of California, Berkeley
Patrick V. Kirch, University of California, Berkeley
Richard G. Klein, Stanford University
Conrad P. Kottak, University of Michigan
Joyce Marcus, University of Michigan
Douglas L. Medin, Northwestern University
David J. Meltzer, Southern Methodist University
Michael Moseley, University of Florida
James F. O'Connell, University of Utah
Barbara H. Partee, University of Massachusetts Amherst
Dolores R. Piperno, Smithsonian Institution
Steve Plog, University of Virginia
A. Kimball Romney, University of California Irvine
Jeremy A. Sabloff, Santa Fe Institute
Marshall Sahlins, University of Chicago
Romuald Schild, Polish Academy of Sciences
Charles S. Spencer, American Museum of Natural History
Melford E. Spiro, University of California, San Diego
David Hurst Thomas, American Museum of Natural History
Patty Jo Watson, Washington University
Fred Wendorf, Southern Methodist University

Tim White, University of California, Berkeley

Douglas Yen, Australian National University

* To whom correspondence should be addressed. E-mail: smithb@si.edu.

Notes:

(1) The signatories are all members of the U.S. National Academy of Sciences but are not speaking on its behalf, or on behalf of their individual institutions and organizations.

Cc: John Holdren, Director, White House Office of Science and Technology Policy
Executive Office of the President
725 17th Street Room 5228
Washington, DC 20502

Thomas L. Strickland, Assistant Secretary for Fish and Wildlife and Parks
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Jonathan B. Jarvis, Director, National Park Service
Sherry Hutt, Manager, NAGPRA Program
National Park Service
1201 Eye Street, NW., 8th Floor,
Washington, DC 20005