



British Association for Biological Anthropology and Osteoarchaeology

Dr Sherry Hutt
Manager
National NAGPRA Program
National Park Service
Docket No. 1024-AC84
1849 C Street NW (2253)
Washington D.C. 20240
USA

BABAO
c/o Archaeological Sciences
University of Bradford
Bradford BD7 1DP
United Kingdom

Bradford. 11 January 2008

Dear Dr Hutt,

43 CFR Part 10

RIN 1024 – AD68

Native American Graves Protection and Repatriation Act Regulations – Disposition of Culturally Unidentifiable Human Remains

Please find below a submission on behalf of the British Association for Biological Anthropology and Osteoarchaeology (BABAO) in response to your call for comments on a Proposed Rule published in the Federal Register Vol. 72, No. 199, October 16, 2007, in relation to the above item.

Yours sincerely,

Dr Holger Schutkowski
(Chair of BABAO)

British Association for Biological Anthropology and Osteoarchaeology

Comments on the US Department of the Interior's Proposed Rule for the Disposition of Culturally Unidentifiable Human Remains

The British Association for Biological Anthropology and Osteoarchaeology (BABAO) promotes the study of human remains to advance the understanding of humanity in the past and present. We share this mission with the American Association of Physical Anthropologists (AAPA) on the premise that there is no other source material that would allow a more immediate access to elucidating the human past. Although we as an organisation are based in Britain, we have a direct interest in the proposed rule for the disposition of culturally unidentified remains. Our membership is international (including the USA) and the issues raised in the Proposed Rule are generic and of concern to the entire scientific community.

- 1) The appropriateness of using the priority structure in determining the disposition of culturally unidentifiable human remains

This proposal implicitly works from the assumption that unidentifiable human remains must not exist and therefore be connected with people or institutions that have affiliations to regional provenance to arrange for future disposition. The Proposed Rule fails to make a clear link of such remains and biological or cultural continuity with Native American peoples, thus taking it out of the context of NAGPRA. Instead, it proposes a mechanism that seeks to enforce geographical closeness as the criterion for establishing ownership. This is highly problematic, as scientific study of archaeological evidence has shown that that place of burial is often a poor guide to the geographical location an individual inhabited during life.

The priority ruling also seems to overlook the importance of culturally unidentifiable human remains for scientific study. Since in its present form, the proposed rule would suggest that the term applies to all human remains, irrespective of Native American contexts, it potentially destroys or makes unavailable research and teaching collections of irreplaceable value that are the basis of scientific anthropological enquiry.

- 2) The meaning of the term 'cultural relationship'

The proposal of a priority structure implies that cultural relationship between unidentifiable human remains and claimants can and should be established. This is potentially problematic for ethical reasons, but also because it would place the onus on museums to verify and establish such affiliations.

We believe that the NAGPRA legislation as currently drafted provides a good balance between the needs of science on the one hand and the rights of indigenous groups on the other. Because of this, its provisions have been influential regarding policy in other parts of the world. For example, here in the UK, the panel appointed by Government to draft our own guidelines (published 2005) for UK museums on dealing with claims for repatriation of human remains to Native groups overseas has been mindful of the framework provided by NAGPRA in the USA during its deliberations. The proposed rule for the disposition of culturally unaffiliated remains would destroy the carefully crafted balance which characterises NAGPRA and which has made this Act a template for other countries dealing with contested ancient human remains.

In conclusion, BABAO would urge the Department of the Interior to re-evaluate their proposals. A mechanistic rigid legal regulation does not take into account the complexity of the issues involved and it creates ethically questionable and scientifically unacceptable solutions. The perceived need to deal with culturally unidentifiable human remains goes against the spirit of NAGPRA and is potentially more harmful than beneficial for all parties concerned.