BEFORE AND AFTER NAGPRA: THE EFFECT OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT ON ARCHAEOLOGICAL PRACTICES IN THE UNITED STATES

by

Laura Ray

A Thesis Submitted to the Faculty of

The Wilkes Honors College

in Partial Fulfillment of the Requirements for the Degree of

Bachelor of Arts in Liberal Arts and Sciences

with a Double Concentration in Anthropology and Political Science

Wilkes Honors College of

Florida Atlantic University

Jupiter, Florida

April 2009
BEFORE AND AFTER NAGPRA: THE EFFECT OF THE NATIVE AMERICAN
GRAVES PROTECTION AND REPATRIATION ACT ON ARCHAEOLOGICAL
PRACTICES IN THE UNITED STATES

by

Laura Ray

This thesis was prepared under the direction of the candidate’s thesis advisors, Dr. Jacqueline Fewkes, Dr. Martin J. Sweet, and Dr. Rachel Corr and has been approved by the members of her supervisory committee. It was submitted to the faculty of The Honors College and was accepted in partial fulfillment of the requirements for the degree of Bachelor of Arts in Liberal Arts and Sciences.

SUPERVISORY COMMITTEE:

____________________________
Dr. Jacqueline Fewkes

____________________________
Dr. Martin J. Sweet

____________________________
Dr. Rachel Corr

____________________________
Dean, Wilkes Honors College

________
Date
First and Foremost I would like to thank my mentor Dr. Jacqueline Fewkes, it is her knowledge and passion that inspired my interest in Anthropology. Through the past five years Dr. Fewkes has dedicated endless hours to my education and success. I thank her for her help and guidance especially during the process of writing my thesis. I would also like to thank Dr. Martin J. Sweet for his time and direction during the thesis process. Finally, I would like to thank my parents, Matthew and Jacqueline Ray, for their continuous love and support which has helped me become the woman I am today.
ABSTRACT

Author: Laura Ray


Institution: Wilkes Honors College of Florida Atlantic University

Thesis Advisors: Dr. Jacqueline Fewkes

Dr. Martin J. Sweet

Dr. Rachel Corr

Degree: Bachelor of Arts in Liberal Arts and Sciences

Concentrations: Anthropology

Political Science

Year: 2009

The Native American Graves Protection and Repatriation Act (NAGPRA) was approved by Congress on November 16, 1990 after years of American Indian lobbying due to the unfair treatment of American Indian remains. Since the enactment of NAGPRA there have been multiple complaints from the archaeological community that the way in which they conduct their jobs has been severely limited by the implementation of NAGPRA. In this study I compare data from the Secretary’s Report to Congress questionnaire, conducted by the National Park Service’s Federal Archaeology Program, to determine whether NAGPRA has caused an increase or decrease in the amount of archaeological administrative, laboratory, and fieldwork completed between 1985 and 2005. The comparison shows that there was a significant increase in specific archaeological practices in the years following the implementation of NAGPRA. Looking at the changes in work patterns of archaeologists allows us to assess the success of NAGPRA and it provides empirical evidence to evaluate the claims made by parties affected by the act.
CONTENTS

Chapter 1: Introduction ................................................................. 1

Chapter 2: Historical Background .................................................. 4

  2.1: Historical Context ............................................................. 4

  2.2: Ethics and Identity ............................................................ 7

  2.3: Noted Successes in Repatriation Work ................................. 10

  2.4: Noted NAGPRA Concerns ................................................... 12

  2.5: Related Legal Studies ....................................................... 18

Chapter 3: Data Collection and Methods ......................................... 22

  3.1: Data Collection ............................................................... 22

  3.2: Methods ............................................................................ 24

Chapter 4: Analysis .................................................................... 26

  4.1: Introduction ....................................................................... 26

  4.2: Administrative Analysis ..................................................... 26

  4.3: Fieldwork Analysis .......................................................... 30

  4.4: Additional Analysis ......................................................... 34

Chapter 5: Conclusion ................................................................ 36

References .................................................................................. 41

Appendix A: Tables Charts and Categories Removed .......................... 44

Appendix B: Full Text of NAGPRA Law .......................................... 56

Appendix C: SAA Principles of Archaeological Ethics ...................... 77
Chapter 1: Introduction

Congress approved the Native American Graves Protection and Repatriation Act (NAGPRA) on November 16, 1990 after years of American Indian lobbying due to the unfair treatment of American Indian remains. This unequal treatment was, and still is, exemplified by the immense collection of American Indian remains at the Smithsonian Institute either displayed in exhibits or more commonly placed in boxes and put in storage, a process known as curation. In an internet article reminiscing about a meeting with Steve Russell, a University of Nevada- Reno graduate with a Masters in Judicial Studies and member of the Cherokee Nation of Oklahoma, retired Archaeologist K. Kris Hirst explains that the roots of NAGPRA come from a Lakota woman named Maria Pearson. Mrs. Pearson is a member of the Yankton Sioux people and was infuriated when her husband, a Department of Transportation engineer, came home in 1971 to tell her that the Department of Transportation had uncovered a cemetery containing white and Indian Burials. The remains of the 26 Euro-American individuals were reburied, while the Native American’s remains were brought to the State Archaeologist’s office (Buikstra, 2006). Mrs. Pearson could not stand this type of treatment, so she went to the office of Iowa Governor Robert Ray to protest the varying treatment of the remains found. A six year debate ensued over who owned the American Indian remains and finally the Iowa Reburial Law was enacted. This law and the persistence of Maria Pearson led to further battles over the treatment of American Indian remains and the future enactment of NAGPRA (Hirst, n. d.).

Since the enactment of NAGPRA in 1990 there have been multiple complaints from the archaeological community that the ways they conduct their jobs have been
severely limited by the implementation of NAGPRA. The processes involved in NAGPRA are very specific depending on how the remains are found and where they are located. In general the principle steps of NAGPRA as defined by the National Park Service are,

Federal agencies and museums must identify cultural items in their collections that are subject to NAGPRA, and prepare inventories and summaries of the items. Federal agencies and museums must consult with lineal descendants, Indian tribes, and Native Hawaiian organizations regarding the identification and cultural affiliation of the cultural items listed in their NAGPRA inventories and summaries. Federal agencies and museums must send notices to lineal descendants, Indian tribes, and Native Hawaiian organizations describing cultural items and lineal descendancy or cultural affiliation, and stating that the cultural items may be repatriated. The law requires the Secretary of the Interior to publish these notices in the Federal Register (NPS).¹

Many archaeologists argue that these processes not only slow their work but they are also very costly and can use up project funding quickly. There are federal grants available to help with expenses associated with NAGPRA compliance but often times these grants are not enough to cover all expenses. While archaeologists may not be able to do their jobs as they see fit, American Indians are frustrated that museums are taking too long to contact lineal descendents, Indian Tribes, or Native Hawaiian Organizations about cultural items that were curated before the enactment of NAGPRA.

During the course of my undergraduate thesis research I have compared data from the Secretary’s Report to Congress questionnaire, conducted by the National Park Service’s Federal Archaeology Program, to determine whether NAGPRA has caused an increase or decrease in the amount of archaeological administrative, laboratory, and fieldwork completed between 1985 and 2005. In this resulting paper I assess this question by examining the Federal Archaeology Program’s Secretary’s Report to Congress. My

¹ For more in-depth information on the NAGPRA process please see Appendix B.
finding indicate that there has not been a decrease in archaeological administrative and fieldwork since the implementation of NAGPRA. In this paper I present the historical background that led to the implementation of NAGPRA as well as the current state of NAGPRA. I also explain the related legal studies, my data collection, methods, analysis, and conclusions.
Chapter 2: Background

2.1: Historical Context

When speaking of NAGPRA’s negative effects on archaeology and other sciences, Kurt Dongoske, the acting Director at the Zuni Heritage and Historical Preservation Office, states, “I cannot help but take the position that the archaeological community has created this situation through its 100-plus years of insensitivity to the living descendents of the people whose villages and physical remains are the objects of our study” (Dongoske, 1996, p. 293). This history that led to the enactment of NAGPRA began during the time of American colonization and expansionism (Gulliford, 1992; Ferguson, 1996; Hinsley, 2000). As individuals began to colonize further west, the desecration and robbing of American Indian graves increased. Many individuals believed that American Indians had, “declined from an ancient civilization to a rude state over a long period of time but also that it was impossible for them to advance toward civilization…Indians were a separate, inferior species” (Bieder, 2000, p. 23). Therefore, scientists such as Samuel Morton, the founder of physical anthropology in America, began collecting Native American skulls and artifacts to keep, trade, and sell. Morton theorized there was a relationship between cranial capacity, race, and intelligence (Gulliford, 1996; Ferguson, 1996; Bieder, 2000; Arkeketa, 2004). While Morton’s theory was later disproven, during the time of American colonization it was a popular theory and it perpetuated grave robbing and looting. Morton recruited: “Indian agents, along with civilian and military physicians, in various parts of the country” to collect American Indian skulls (Bieder, 2000, p. 24). Collecting crania and other American Indian artifacts was not only practiced by scientists and their “employees,” but was a hobby for many individuals. Curtis Hinsley, a Professor of History at Northern Arizona University,
explains that grave robbing and pot hunting strengthened male relationships, “father to son, brother to brother, mentor to student, digging up aboriginal America contributed to (if it did not specifically create) a shared male identity that, one might suggest, went through the earth (and its inhabitants)” (Hinsley, 2000, p. 45). The shared male identity that Hinsley refers to is related to a collective male domination over the American Indians, who were seen as uncivilized and inferior. While American Indian grave robbing and looting still occurs today, it was most prominent from the 1830s to the 1930s. Indian grave robbing not only became a fashionable sport among gentlemen, but the acquisition of American Indian skulls for study became institutionalized. For example, the Surgeon General, William A. Hammond, established the Army Medical Museum in 1862 and ordered all medical officers to collect specified specimen of value and send it to his office. To entice the medical officers, Hammond even told his officers that their name would be displayed with each specimen they submitted (Gulliford, 1996). There are many stories of massacres during this time period in which innocent women and children were mutilated or decapitated, such as the Black Hawk War, Sand Creek Massacre and Washita Massacre. After these mass murders, the attackers would pick through the site for items that they would either keep or sell to private collectors or museums. (Gulliford, 1996; Weaver 1997). In all three cases mentioned earlier, heads were taken and put on display (Osborn, 2000; Weaver, 1997). This practice continued and also included the looting of ancient and prehistoric burials. The looting of American Indian remains and artifacts was not only practiced by the military and the Field Museum of Natural History, but also the National Museum of Natural History, the Smithsonian Institute, the Chicago Field Museum, European museums, and most notably private individuals. The looting of
American Indian remains became extremely competitive. While private collectors would boast about their rich collections to make other entrepreneurs jealous, they were stingy and would rarely loan out their collections for museum display (Hinsley, 2000). This type of behavior, practiced by male individuals, reiterates that people during this time period did not think of American Indians as humans, but rather “savages” whose remains and artifacts they could put on display. Only in the late 1980s did the rights of the dead and their descendents become a critical issue for scientists. During this decade multiple tribes began the legal process of trying to have their ancestors and artifacts returned to their rightful owners. The process was slow and painful for the American Indians because of the fierce opposition by archaeologists and museum staff but in some cases repatriation finally occurred. Public opinion during this time shifted in support of Native Americans and their fight to procure their past. Magazine and newspaper editorials were run presenting the American Indian point of view regarding repatriation, and nightly news shows presented segments supporting Native American reburial rights (Zimmerman, 1996; Cooper, 2008). Private individuals no longer thought of American Indians as uncivilized, unchanging, and inferior but instead as human beings with rights.

After the National Museum of the American Indian Act was passed in 1989, representatives from the National American Indian Council, the National Congress of American Indians, the Association for American Indian Affairs, and the Native American Rights Fund united to lobby for a Federal Law to repatriate American Indian remains so that they could have a proper burial and to protect remains from future exploitation (Fine-Dare, 2002). After years of turmoil, in November 1990, Congress passed the Native American Grave Protection and Repatriation Act (NAGPRA). The passing of NAGPRA
has in some cases opened a dialogue between American Indians and museums. The remains in many museums today are not on display because American Indians protested to have them removed from public viewing; therefore they have been warehoused for future analysis or repatriation. For example, in 1983, the Fort Worth Museum of Science and History was targeted by the American Indians Against Desecration (AIAD) for two skulls and a tibia on display. The (AIAD) went to the newspapers and forced the museum to remove the display (Cooper, 2008). Slowly, museum after museum removed human remains from display. Roger Echo-Hawk, a tribal historian, and Walter Echo-Hawk, an attorney for the Native American Rights Fund, estimate that there may be as many as 2.5 million American Indian Remains in museums, federal agencies, other institutions and private collections. They also claim that the Smithsonian Institution alone has over 18,500 American Indian remains (Echo-Hawk and Echo-Hawk, 1995). While the implementation of NAGPRA was necessary, it has led to many new problems for American Indians and archaeologists as well as several success stories.

2.2 Ethics and Identity

The subject of ethics is always brought up when speaking of repatriation and how archaeologists have dealt with the issue, as well as how archaeologists have dealt with the remains of past American Indians and the emotions of American Indians today. Cultural relativism is the idea that investigators put aside their own personal beliefs, cultural beliefs and values so that they can view other’s beliefs and values in their cultural context or from the native’s perspective (Rice and Salzman, 2008, 53). Rice and Salzman (2008) explain that “being culturally relative does not mean we are morally relative” (53). Therefore, archaeologists still have the right to follow their own moral standard, while
respecting the moral standard of American Indians. Also, understanding a person’s beliefs and values through a cultural lens does not mean you have to agree with those beliefs and values, especially if they conflict with your own. Meighan (2000) argues that “recognizing that other people may have other values does not mean that one must accept those values or compromise his or her own ethical standards” (191). Thus, while an archaeologist may understand and respect the ethical standards of American Indians, they must follow their own ethical standards and proceed with their work how they see fit.

Archaeologists who are members of professional organizations are required to follow ethical guidelines that are published by the organization. These guidelines provide archaeologists with a minimum standard of ethics that should be followed while conducting archaeological work. Typically, if a member does not follow the ethical guidelines provided by their professional organization they will be removed from the organization. The Society for American Archaeologists (SAA) has published a set of eight ethical principles that they require their members to follow. The eight principles are: Stewardship, Accountability, Commercialization, Public Education and Outreach, Intellectual Property, Public Reporting and Publication, Records and Preservation, and Training and Resources (SAA).² The SAA ethical principles state directly that, “archaeologists should work actively for the preservation of, and long term access to, archaeological collections, records, and reports” (SAA). This stance presented by the SAA is in direct conflict with NAGPRA because NAGPRA advocates the repatriation of human remains and sacred and funerary objects. If respected professional, archaeological organizations are presenting ethical guidelines in direct opposition to NAGPRA, archaeologists must rely on their own ethical system to determine how to react to

² For a detailed description of the SAA ethical principles please see Appendix C.
NAGPRA legislation. Since NAGPRA regulates repatriation and protection of the deceased, the act can cause highly sensitive and complicated situations, especially if organizations such as the SAA do not support the law. Although archaeologists are concerned with the cultural beliefs of the American Indians and other peoples they study, they also want to pursue the truth and find out as much about the past as possible. Native Americans who advocate reburial feel it is a human-rights issue and they believe that their ancestors should be treated how they deem fit and that human remains should not be treated as property (Goldstein and Kintigh 2000, 181). While many people try to solve the reburial issue as a matter of ethics it is difficult because of the competing ethical stances of archaeologists and American Indians. As Goldstein and Kintigh state,

> to claim that archaeologists have no right to excavate or examine an entire class of information is to deny our background and training...eliminating sites or portions of sites from excavation or analysis because of the kind of items they may contain is not an ethical stance for an archaeologist (2000, 183).

If archaeologists avoid possible archaeological sites, the valuable information contained in those sites will possibly never be available to the public. Archaeologists, according to the SAA, are supposed to be “advocates for the archaeological record for the benefit of all people” (Appendix C). This is not possible if they must avoid certain locations. While professional organizations may present ethical guidelines that their members should follow, individual members also have a personal set of ethical beliefs and values.

Individual struggles with the ethical issues associated with NAGPRA further complicate this discussion for, while it may seem that American Indians and archaeologist are two distinct groups this is not the case. There are American Indian archaeologists that conduct excavations and also work with other American Indians regarding repatriation issues. While the number of American Indian archaeologists is
small, in 2003 there was about 15 individuals with doctorates and 50 with a master’s degree, there is an increase in American Indians working as professional archaeologists (Watkins, 2003). Joe Watkins, a federal archaeologist and Choctaw Indian, explains that there are programs available that “provide training to indigenous people in archaeological techniques and subsequently employ them as cultural resource technicians on Forest Service projects” (Watkins, 2003, p. 279). These training programs available to American Indians are a way for American Indians to become more involved with what happens to archaeological finds and detailing their past through the archaeological record. Within the American Indian and archaeological communities there is a multitude of views about repatriation and what should be done with human remains and sacred and funerary objects. Each group is a combination of different individuals with varying views on the repatriation issue.

2.3 Noted Successes in Repatriation Work

The enactment of NAGPRA has moved repatriation in a new direction and has opened the door for archaeologists and American Indians to work together to unravel the past of North America. In the recent past archeologists disregarded the feelings of American Indians about their ancestors. The implementation of NAGPRA has opened dialogue between archaeologists and American Indians and created the possibility for lifelong partnerships between the groups to learn more about America’s past. NAGPRA is not free from serious issues but has also experienced great success which must be noted and praised if continued agreements and trust are to be made.

As mentioned previously, many early scientists would unearth countless remains at one time and would put them in boxes and archive them without conducting any
archaeological examinations. Archaeologist can now benefit from the required analysis of these forgotten remains to determine the kinship ties for repatriation under NAGPRA (Zimmerman 1996, 299).

While some archaeologists do not want to communicate with tribes because of the fear that their research projects will be taken away from them, (Mihesuah 1996, 98) if a relationship of trust can be built between American Indians and archaeologists on an individual basis then access is gained to desired material and sites (Zimmerman 1996, 304). For example, archaeologists have had real success in working with the Hopi. When an agency has an intention to excavate or if human remains are inadvertently discovered, NAGPRA procedures are initiated and tribes are notified of the discovery. After the tribe(s) is/are contacted they help make recommendations on how the remains will be handled and whether osteological analysis will occur and to what extent (Dongoske 1996, 289). The Hopi have been successfully and actively consulted in multiple cases regarding NAGPRA legislation. In many cases the Hopi allow osteological analysis on remains that are discovered, as long as the remains are not harmed by the process (Donogoske 1996, 292). The Hopi do allow archaeological studies to be conducted on many remains and objects found, however they believe that all human remains must be reburied after analysis has been completed within a specified and reasonable timeframe. In this case both the Hopi and the archaeological communities are benefiting from the relationship they have acquired through NAGPRA legislation. While archaeologists may not be able to preserve the human remains for future analysis, they are able to conduct some tests to learn as much as possible before reburial. In making a compromise,

---

3 Osteological Analysis is any analysis conducted of bones. This can range from observations of anatomical characteristics, measurement of remains, microscopic analysis, and chemical analysis (Landau & Steele, 2000).
however big or small it may be, everyone involved (archaeologists, the Hopi, and the public) benefits in some way.

Archaeologists have also had successful experiences with other tribes. Successful relationships between archaeologists and American Indian tribes typically involve a compromise where archaeologists are able to conduct some type of research on the items found, but can also include other compromises as well as movements to provide the general public with information about the past. The National Museum of the American Indian’s removal of objects from display: “represents a significant shift in curatorial practice and an increasing respect for tribal and native cultures” (Gulliford, 1992, 32). The museum has removed the Sacred Pipe of the Sioux, an Iowa tribal tomahawk, four Zuni masks, and a Bear Cult Knife (Gulliford, 1992). As museums make an effort to work with American Indian tribes, a dialogue begins that could be useful in future interactions. Beyond successful compromises, there are 36 First Nations and tribal programs that are pursuing archaeological research. These programs are: “initiating cultural resource inventories, monitoring compliance proceedings, and reviewing the professional work of archaeologists, and the Kwanlin Dan First Nation of Yukon has taken an active role in the excavation and interpretation of their heritage” (Watkins, 2003, 279). If American Indians and archaeologists can continue working together they will be able to provide a more holistic history of America’s past.

2.4 Noted NAGPRA Concerns

While NAGPRA has led to many successful partnerships between American Indians and archaeologists, it is not free from issues and conflicts. The issues are steamed by the different views of the American Indian and archaeological communities on the
ownership of the past, as well as on issues relating to the religious and racial background of American Indians. While these are two instances of contention between the archaeological and the American Indian communities there is also controversy within these communities as well, especially within the American Indian communities.

Many archaeologists vehemently disagree with reburial because of the archaeological information that is contained in the remains that will be lost forever when reburied. These archaeologists want to maintain permanent collections for future study with the development of new technologies (Dongoske 287, 1996). In West Virginia a 2,000 year old ancient mound will be studied because it is in the path of a highway. The state agreed with a committee of Indians that everything will be reburied after the project’s completion including bones, sacred artifacts, soil samples, chipping waste, ecological samples, food refuse and anything else that is contained in the mound (Meighan, 1992, 42). Weiss (2001) argues that, “by reburying skeletons, valuable scientific evidence is lost as is the possibility to study them further as newer and better techniques come along (e.g., those based on DNA extraction, CT scans, and MRI imaging)” (15). There is no denying the loss of information that occurs with reburial.

One serious problem faced by American Indians is that if remains in museums cannot be identified as belonging to ancestors of a specific tribe, then those remains become the possession of the state or museum. Another problem faced related to NAGPRA, is that if remains are found on tribal land they become the property of the tribe that owns the land. This is a problem because many tribes are not located on the lands in which their ancestors lived because the government was responsible for the establishment of reservations and many American Indian tribes have been relocated
multiple times with little effort by the state to place tribes in their traditional areas. Therefore, if remains are discovered on tribal land the tribe that owns the land determines the final treatment and dispositions of the remains and objects found, even if it has been established that the remains belong to another tribe (Dongoske 1996, 290).

As mentioned previously, disagreements occur within and among tribes. While some tribes seek to rebury all of their ancestors on tribal lands, others are only interested in claiming unidentified remains found on public land to argue that the boundaries of their territory should be expanded, for tribal recognition, and to settle any land claim suits (Gulliford 1996, 120). When remains are found on public land in some states, multiple notifications must be sent to the numerous tribes that could be the rightful owners of the remains and objects. Some tribes, such as the Hopi, object to the way in which federal organizations and museums determine cultural affinity. If remains are found on tribal lands the tribe that owns the land also has ownership of the remains even if they are not culturally affiliated with the tribe (Dongoske, 1996, 289). Since the federal organizations and museums were only given a short amount of time and money to inventory and repatriate Native American remains and artifacts, they presented entire collections to groups of tribes instead of presenting individual items to individual tribes. The Hopi also feel that this is a problem because by just loosely matching up collections of items with groups of tribes, the items are not going to their rightful owners. The Hopi have contested the accuracy of the

Notices of Inventory Completion for Native American Human Remains and Associated Funerary Objects published in the Federal Register for Chaco Culture National Park, Aztec Ruins National Monument, and Mesa Verde National Park…In short, the Hopis objected to the fact that the three parks conducted consultations with tribes not on an individual but on a group basis; that the parks

---

4 For more information on ownership please see Appendix B, Section 3.
did not provide item-by-item affiliations, instead speaking to whole collections; and that the parks gave undue consideration to contemporary cultural associations with geographical places in establishing identity with earlier identifiable groups (Fine-Dare 2002, 153).

While the intent of the legislator that wrote NAGPRA may be that each item should be individually evaluated and presented to the most affiliated tribe, the above example proves that this is not how the law is being applied. Also, some tribes try to claim specific remains and artifacts where no archaeological or historical evidence indicates a relationship between the tribes and the remains (Goldstein and Kintigh 2000, 184). The Kennewick Man case is a perfect example. In 1996 two individuals found a set of human remains near the Columbia River in Washington State. Initially, police believed the remains were a product of a homicide but after a brief investigation of the remains a projectile point was found. This led to radiocarbon dating tests, which returned an age of approximately 9,000 years. The Confederated Tribes of the Umatilla Indian Reservation filed a formal claim to the remains even though there was no evidence linking them to the Kennewick Man. The Corps of Engineers decided to repatriate the remains to the Umatilla but eight archaeologists filed suit claiming that the remains may not be Native American and therefore not subject to NAGPRA. A judge decided in favor of the eight anthropologists but the legal battle continued. In 2004 the U.S. Court of Appeals ruled that there was no proof of cultural affiliation and allowed for scientific study to continue (Watkins, 2003; Weiss, 2001).

An unexpected consequence of NAGPRA that has occurred is the “infighting and squabbling” among certain tribes over what to do with remains when the tribes are contacted (Gulliford 1996, 132). While some tribal members want all human remains to come home so that their ancestors may finally rest in peace, others fear that the dead may
actually harass the living or that the remains became mixed up and the wrong remains
will be returned due to inaccurate record keeping of the bones. It is important to tribal
members that historic enemies are not accidently buried on their tribal land (Gulliford
1996, 133). Other disagreements have occurred within tribes over who has the authority
to speak about repatriation issues.

While the enactment of NAGPRA has made possible the return of remains from
museums and federal organizations, as well as better treatment of remains by
archaeologists and other scientists, the terms of the law do not address the larger issue of
grave robbing which affects American Indians and archaeologists alike. Grave robbing
which was considered somewhat of a “gentlemen’s hobby” in the past, still occurs today.
Most of the items that are stolen from American Indian burials are sold at auction houses
to the highest bidder (Miheasuah, 2000). Since there is high consumer demand for these
types of products, looters take the risk to make a hefty profit (Kersel & Luke, 2005). For
archaeologists, looting is a problem because looters destroy archaeological resources that
could be used for scientific research. Looters typically search for lost American Indian
cemeteries and once they are found the land is leased, or in the case that the cemetery is
on private property, looters will ask permission to dig around. In the case that a private
owner does not give permission, the looters typically trespass during the evening, digging
by lantern light under a tarp to avoid detection (Mallouf 1996, 63). Looters try to gain
legitimacy by grouping together in organizations and carrying false business cards
linking them to universities, the state, or professional archaeological organization. The
looters hand out these business cards to private land owners in hopes that they will be
able to dig. The passing of NAGPRA has only made looting a more serious problem
because while archaeologists are going through the required procedures and debating American Indians about the importance of their work, looters take advantage of the situation and take everything that is not being guarded (Mallouf 1996, 67). Looting is a problem for American Indians because once the artifacts are taken by a private collector or a businessman, those artifacts are difficult to recover. Many looters take large amounts of artifacts and sell them at flea markets, fairs, gun shows, and artifact shows (Mallouf 1996, 71). Some academics and American Indians put archaeologists and looters in the same category, which gives archaeology a bad name. For example, Mihesuah (2000) states, “Indians often place scientists in the same category as grave robbers. To them the only difference between an illegal ransacking of a burial ground and a scientific one is the time element, sun screen, little whisk brooms, and the neatness of the area when finished” (99). Despite this opinion American Indians and archaeologists can agree that burial sites should be protected from looters and that they should be fully prosecuted if caught. Looting of prehistoric sites has become such a problem in many areas that cartographers are considering leaving the locations of these sacred places off of future maps and guidebooks (Mihesuah 1996, 101). Looting is a problem that has been exacerbated by NAGPRA but it is a problem that has a solution. If American Indians come together with archaeologists, prehistoric and historic sites can be protected which will benefit both communities.

An issue that has just as much weight as the disagreements, is that there are many administrative and procedural problems that have occurred with the implementation of NAGPRA. NAGPRA is a very expensive and time consuming endeavor which has put a lot of pressure on federally funded organizations, museums, and archaeologists. Due to
the extensive nature of the project there have been many delays and backlogs. Fine-Dare (2002) claims that the federal government is receiving inventory notices from organizations required to comply with NAGPRA much faster than it can process and publish them. This delays the ability of tribal officials to respond to these organizations. The deadline for completing the inventory process was 1995, but even though the National Park Service supplied millions of dollars in grant money to assist in the implementation of the law, extensions were required. 58 extensions were granted in 1995 and in 1998 6 institutions continued to request extensions (NAGPRA Review Committee Minutes). Issues such as the one above must be addressed if NAGPRA is going to be an effective means of repatriation.

2.5 Related Legal Studies

In this section I will be addressing cases that show we can assess the impact of a law on certain behaviors. Many studies have been conducted by scholars and scientists to determine the effect of a specific law on behavior; one such study was conducted by Beth Rosenson, a Political Scientist, in 2006. Rosenson was interested in the impact of ethics laws on the decision to run for the state legislature (Rosenson, 2006). Rosenson looked at two different variables to measure the effect of ethics legislation, the number of people running for office as well as whether a particular open seat primary race was contested. She wanted to test whether the charges that ethics laws decrease or deter recruitment and retention of legislators is correct. Rosenson found that increased ethics legislation does decrease the number of candidates running for office and a “lower probability that an open seat primary race is contested” (Rosenson 2006, p. 622). These findings confirmed anecdotal cases and claims by the public and legislators that ethics laws deter individuals
from legislative service. Rosensons study is similar to my study because I am conducting empirical research to confirm or disprove claims by individuals.

In 2003 Rebecca Bartel, a Zoologist, and Mark Brunson, an Environmental Scientist, conducted a study to determine whether Utah’s bounty program had an effect on the number of coyotes removed by Utah hunters. The goal of the study was to determine if the bounty program increased the number of hunters and trappers and the number of coyotes taken. Bartel and Brunson created a survey which was distributed to the entire population of bounty program participants, this allowed for the use of descriptive statistics. The researchers determined that the bounty program did not lead to a significant increase in bounty participants nor did it lead to an increase in the amount of coyotes taken. In my current study I am also using the results of a survey distributed to an entire population allowing for descriptive statistics.

Elizabeth Weiss, an anthropology professor at San Jose State University, conducted a study to determine whether the statement by Rose, Green, and Green that “the inventory process is eliminating gaps in knowledge of specific time periods and geographic areas…osteological analyses are more comprehensive…[and] osteological analyses and the development of new methodologies will increase” is correct (Rose et al, 1996, p 99-100). In other words, Weiss is trying to determine whether NAGPRA is improving scientific knowledge. To conduct her research Weiss closely examined issues of the American Journal of Physical Anthropology dating from 1975 to 2005. The American Journal of Physical Anthropology was specifically chosen because it is the official journal of the American Association of Physical Anthropology (AAPA) (the largest physical anthropology association in the world), which published a statement of
their position on NAGPRA which was sympathetic to repatriation when cultural affiliation can be determined. Also, the journal has been in publication for 90 years and, therefore, includes the pre and post-NAGPRA eras, and the journal is highly regarded and consistently ranks within the top three of all anthropology journals by the Social Science Citation index. To determine whether the statement by Rose and colleagues was correct, Weiss collected and tabulated specific information for each year. From the variables listed in Appendix A, Weiss calculated several percentage values. Pre-NAGPRA to post-NAGPRA changes were determined using all of the variables. For each variable, Weiss calculated averages and standard deviations for pre and post-NAGPRA. T-tests were used to analyze the data to identify significant differences between the years. She then converted the variables into z-scores to meet the assumptions needed to run parametric tests. Through her study, Weiss determined that compared to the pre-NAGPRA years, there had been a statistically significant decrease of osteological studies containing Native American remains, fewer sites used, and fewer geographic locations examined.

Addressing Rosenon’s call for empirical research on the effects of the law on specific behaviors, in my research I will empirically test the effect of NAGPRA on archaeological administrative work and fieldwork by analyzing the information obtained from the Secretary’s Report to Congress. While Elizabeth Weiss carried out empirical research on the effect of NAGPRA, her research is too limited in scope. By focusing exclusively on osteological research on American Indians and only analyzing the publications of the American Journal of Physical Anthropology, she has restricted her findings and overall research question. While she sought to address the effect of

---

5 A table with the variables Weiss uses in her study is available in Appendix A.
NAGPRA on osteological research of American Indians exclusively, in my research I seek to expand on her findings by widening the scope. In this research I assessed the effect of NAGPRA on several different measures of archaeological practice, including the number of permit applications applied for and issued as well as the number of field studies conducted. These measures go beyond the scope of osteological research to form a more comprehensive picture of the state of archeological practice before and after the passing of NAGPRA.
Chapter 3: Data Collection and Methods

3.1 Data Collection

I obtained the data for this project from the National Park Service website. The data presented is the raw data from the Secretary’s Report to Congress (SRC) questionnaire which is a product of the Archaeological and Historical Preservation Act. The raw data is available in Excel spreadsheet format for fiscal years 1985 through 2005 for the public to view at no charge. The full reports, which are necessary to understand the raw data, are also available at no charge on the same webpage from fiscal years 1975 through 2005.6

The Archaeological and Historical Preservation Act was passed in 1974 which led to the Secretary’s Report to Congress (SRC).7 This report includes information on federal programs and their impact on the United States archaeological heritage. The original data, which comes from the questionnaires sent out to Federal agencies, is the only data about archaeological activities and resources in Federal agencies that are collected separately from information about cultural resources. The questionnaire that is the basis of the SRC has gone through many changes prior to its official use in 1985.

The Departmental Consulting Archaeologist (DCA) requested that all Federal agencies provide the National Park Service information concerning archaeological projects related to their programs from fiscal year 1975 through 1978. Unfortunately, the information was largely incomplete and did not allow for an analysis of the effectiveness of Federal archaeological activities, the goal of the SRC. In fiscal Year 1979, the National Park Service solicited information about Federal agencies archaeological

---

6 The website where this information is available is http://www.nps.gov/archeology/src/index.htm
7 The Secretary’s Report to Congress is produced by the office of the Secretary of Interior.
activities. Initially, the National Park Service’s Federal Archaeology Program was requesting information about individual projects but because many agencies could not provide the detail requested, the SRC questionnaire was created to collect summary information about archaeological activities. Federal archaeologists and historic preservation officers met in 1985 to discuss the Federal Archaeology Program. The meeting led to a recognition by those present that all Federal archaeology activities should be available in the SRC. A new more encompassing questionnaire was developed and was employed for the first time for fiscal year 1985, the first year consistent data was collected from Federal agencies. This questionnaire was substantially modified for fiscal year 1986. Both the 1985 and 1986 questionnaires as well as those that follow were sent to all agencies with archaeological responsibilities (see Appendix A). The questionnaire was modified several more times with the last changes being made in fiscal year 1998. These changes were made due to changing priorities and to refine the survey to be as effective as possible. Among the new questions added to the questionnaire the most significant additions were questions regarding collections management, volunteering, and money allocation. While earlier versions of the questionnaire ask respondents to note both acres that were completely surveyed for archaeological sites and those that were partially surveyed for archaeological sites separately, in later questionnaires the two categories were combined. Earlier versions also asked for information about persecuted cases, while later questionnaires asked about persecuted individuals. The 1985 questionnaire only requested information about ARPA cases, later questionnaires also requested information about non-ARPA cultural resource law violations. Another significant change to the questionnaire is that the questionnaires sent out from 1994-1997
asked about the number of convictions in all non-ARPA cases of documented vandalism or looting, while the 1998 questionnaire requested separate information about non-ARPA misdemeanor convictions and non-ARPA felony convictions. Also, some agencies reorganized throughout the years leading to some name changes. The Department of Agriculture Soil Conservation (SCS) became the Natural Resources Conservation Service (NRC), the Department of Agriculture Rural Electrification Administration (REA) became the Rural Utilities Service (RUS) and in 2000 the United States Marine Corps (USMC) began submitting their answers in conjunction with the United States Navy (USN). It is therefore evident that the data is not completely consistent throughout fiscal years 1985 to 2005 due to the significant modifications of the questionnaire since fiscal year 1985 and the uneven applicability of questions to the varied department agencies. All of the questionnaires up to fiscal year 2005 are available to the general public on the National Park Service website.\footnote{The web address for the SRC questionnaires is http://www.nps.gov/archeology/src/questionnaire.htm.}

### 3.2 Methods

Due to the weak reliability in the data collected by the National Park Service’s Departmental Consulting Archaeologist I only looked at categories that contained answers for all years between 1985 and 2005, with one exception. I did not exclude categories that had no response in 1985 because it was the first year that the full questionnaire was established and agencies were not used to filling out the questionnaire. For the categories I included in my analysis, there were responses in 1986 for all of the categories with no answer in 1985; therefore the inclusion of 1985 should not cause any problems with my analysis. Many of the categories I excluded were categories added when the questionnaire was revised in later years, as there was no earlier data on which to
base a comparison. Also, the DCA does not require that agencies respond to all questions, because in many cases questions do not pertain to every agency. This leads to blank spaces and zeros in the data set. After removing the categories that were not included from 1985 through 2005, I added the responses for each category by year and entered the total on a new Excel sheet. For example, under tribal notices I added the number of tribal notices from each agency for 1985, put that data in a new Excel sheet, and then repeated the process for each year and category, hence creating one Excel sheet with the totals of each category by year. I then created a line graph for each category to see if there was a positive or negative trend over time from 1985 through 2005 and applied an exponential trend line to determine if the trends were negative or positive. A negative trend line would indicate that NAGPRA had a negative impact on a certain activity, a positive trend line would indicate that NAGPRA had a positive impact on a certain activity and a line straight across would indicate NAGPRA had no impact on a certain activity.  

I analyzed eight categories to determine whether NAGPRA had an impact on archaeological practices in the United States. As I will show in the next chapter, I found that while there was some variability between the years the end result as of 2005 was a general increase in archaeological activity; thus in every examined archaeological activity there was a significant increase in productivity between 1985 and 2005.

---

9 For an explanation of categories removed after analysis please see Appendix A.
Chapter 4: Analysis

4.1 Introduction

At the beginning of this project I was interested in looking at whether NAGPRA caused an increase or decrease in the amount of administrative, laboratory, and fieldwork completed between 1985 and 2005. I chose these three categories specifically because they are necessary for practicing archaeological research. When looking closer at the information provided in the SRC I realized that the information solicited from the Federal Archaeology Program does not include laboratory work, therefore I can only analyze whether NAGPRA has caused an increase or decrease in administrative work and fieldwork between 1985 and 2005. If we understand administrative work to be completing the necessary paperwork to conduct archaeological practices and be in compliance of state and federal laws, three questionnaire subcategories fall under administrative work: “Permit Applications”, “Permits Issued”, and” Tribal Notices”. Fieldwork typically involves surveying land, planning excavations, excavating, and recording evidence. Five subcategories fall under what I consider to be fieldwork conducted by archaeologists: “Field Studies”, “Sites Total”, “New Sites Identified”, “Field Checks”, and “Acres Inventoried”.

4.2 Administrative Analysis

“Permit Applications” summarize the amount of archaeological activity undertaken using various legal authorities because archaeologists must obtain a permit before they can conduct fieldwork legally. “Permits Issued” include both permits issued during each respective fiscal year and permits in effect during that year. As I have shown
in the graphs in Figures #1 and #2, there is a relationship between the permits applied for and the permits issued. Both of the subcategories, “Permit Applications” and “Permits Issued”, show a gradual positive increase over time, which indicates that the amount of archaeological administrative work has increased since the enactment of NAGPRA. Also, because “Permit applications” and “Permits Issued” are necessary to conduct fieldwork, these graphs indicate that the amount of fieldwork conducted increased as well. In both subcategories there is a decrease after 2005, but without the data for the years after 2005 I cannot determine whether this is a new trend.

Figure 1 Permit Applications
The third subcategory of the category of Administrative work is “Tribal Notices” which is the number of notifications to Indian Tribes of proposed work that might harm or destroy sites having religious or cultural importance to a Tribe, as required by ARPA Uniform Regulation. In the graph in Figure #3, it is clear that there is a general increase between 1985 and 2005.
While there are extreme variances throughout the years, there is a significant difference between the amount of tribal notifications sent out in 1985 and those sent out in 2005. This increase indicates that since 1985 archaeologists conducted more administrative work on “Tribal Notices”, and that the increase continued after the implementation of NAGPRA. The increase in “Tribal Notices” also indicates that the implementation of NAGPRA did not stop archaeologists from attempting to conduct fieldwork at sites that may contain American Indian remains or culturally affiliated items, despite the fact that these finds would initiate NAGPRA. However, the decrease in “Tribal Notices” after 2002 could be a late reaction by archaeologists to NAGPRA. In general, there has been a significant increase in archaeological administrative work from 1985 to 2005. The implementation of NAGPRA has led to an increase in administrative work because museums and federal agencies were required to complete inventories for all American Indian items in their possession. This increase in administrative work may be the cause of
comments by archaeologists that they are not able to conduct their jobs, such as
archaeological fieldwork.

4.3 Fieldwork Analysis
Similar upward trends are seen when we examine the data associated with
fieldwork practices. We can see in the graph in Figure #4 for the first subcategory, “Field
Studies” that after the implementation of NAGPRA more “Field Studies” were conducted
to identify and evaluate archaeological properties.

![Field Studies Graph](image)

This means that archaeologists were out in the field surveying land for possible
archaeological sites. Although the major increase in field studies does not occur until
2000, there is an increase in field studies in 1991, following the implementation of
NAGPRA, and then some minor undulations before the sharp increase occurring in 2000.
The information provided in the graph in Figure #4 therefore gives further support to the
claim that there was an increase in archaeological practices after the implementation of NAGPRA.

The graph in Figure #5 displays the data on the second subcategory, “Sites Total”, and shows the same positive trend over time. The “Sites Total” subcategory represents the total number of archaeological sites/properties, places where archaeological excavations are undertaken, on land controlled by an agency.

![Sites Total Graph]

After the implementation of NAGPRA the number of archaeological sites/properties controlled by agencies climbed until 1994 when it varied slightly until 2002 when it began to rise steadily again. The increase in the number of sites found on land controlled by federal agencies suggests that archaeological fieldwork/surveying must have also increased, as these two activities are associated with an increase in sites identified.
In the third fieldwork subcategory, “New Sites Identified” in Figure #6, we are examining the number of new archaeological sites that were identified by federal agencies. When looking at the number of new sites identified during each fiscal year it is clear that there is a major spike in the data in 2000.

![New Sites Identified](image)

This spike is due to 100,389 new sites identified by the Air Force during fiscal year 2000. I was able to determine this by looking at the data per year by agency. While my graph shows only a slight general increase in new sites identified from 1985 to 2005, there is still an increase and the increase occurs when the Air Force is removed from the 2000 data, however so slight the increase may be.

Similar to the last fieldwork subcategory, the fourth subcategory of the questionnaire data, on the number of permittees field checked also includes significant spikes in the data.
In 1999 the Federal Aviation Administration conducted 130,000 field checks which caused a significant increase in the data. In 2005 another spike occurred but was the result of work done by the National Resource Conservation Service (NRCS). Even if both of these agencies were removed from the data set there would still be a general increase in field checks from 1985 to 2005. An increase in “Field Checks” is typically due to an increase in “Permits Issued” because “Field Checks” are conducted after a permit has been issued and work commences, therefore an increase in “Field Checks” indicates an increase in archaeological practices.

The final subcategory of archaeological fieldwork examined, “Acres Inventoried”, includes acres inspected by identification and evaluation investigations. When I began this project, I thought that since the number of field studies increased, the number of acres inventoried would also increase; however, as shown in Figure #8 this was not the
The number of acres inventoried actually decreased slightly over time which means that while fewer acres were being inventoried more sites were identified and more surveys were being conducted on smaller amounts of land. Since the decrease in acres inventories was so small I have concluded that the enactment of NAGPRA had no significant effect on the number of acres inventoried, although it may have had a positive impact on all of the categories previously discussed.

4.4 Additional Analysis

There are a few data points that have more recently been added to the questionnaire that do not provide enough data for in-depth quantitative analysis, but there inclusion in the questionnaire may be a direct consequence of NAGPRA. After the implementation of NAGPRA, in 1991 a Collections Management section was added to
the SRC. This section requested questionnaire informants to provide information about how many cubic feet of stored material remains an agency had, what percent of those cubic feet had been catalogued, and how many lineal feet of records were associated with stored archaeological material remains. The addition of these questions could have been in direct response to NAGPRA because they address issues related to NAGPRA legislations. In 1998 the section was expanded to request information about the number of federal museums/ repositories curating agency collections and the number of non-federal museums/repositories curating agency collections. The addition of these questions to the SRC questionnaire adds more responsibility to archaeologists to maintain their records and also puts more pressure on federal agencies to be accountable to the public. If more data were available for these sections it could provide more information on archaeological practices because if there were a significant increase in the amount of stored material it could indicate an increase in archaeological finds implying an increase in archaeological fieldwork. If there were a significant decrease in the data it could indicate a different type of work being done by archaeologists, specifically repatriation. While there is not enough data for analysis, I believe the inclusion of this section in the SRC questionnaire is significant because it shows a movement toward better record keeping and a possible change in archaeological practices.
Chapter 5: Conclusion

The enactment of NAGPRA was long awaited by many American Indians. The passing of NAGPRA infuriated archaeologists because of the anticipated effect it would have on their profession. An ethical battle ensued between American Indians and archaeologists. American Indians believe it is not ethical to study human remains or store their ancestors in musty boxes. Archaeologists believe it is their right and obligation to study archaeological evidence so they can learn as much about the past and the human record as possible. Archaeologists think that NAGPRA has caused a decrease in archaeological practices because when American Indian artifacts or remains are found excavations must stop and if archaeological items are repatriated no more analysis can occur. I wanted to determine whether the claim by archaeologists that NAGPRA has decreased archaeological practices is correct. I analyzed other studies which determined the effect of a law on a specific behavior to determine a suitable method of analysis. I combined methods from multiple other studies to make sure my method would be effective. I used the raw data from the Secretary’s Report to Congress to determine whether NAGPRA caused a decrease in archaeological practices. According to my research, after the implementation of NAGPRA there was an increase in the overall productivity of archaeologists. This included increases in all types of archaeological activity, including “Field Studies”, “Sites Identified”, and the number of “Permits Issued” along with many other archaeological activities. Although some archaeologists may feel that their jobs have been limited by NAGPRA, these claims are not justified by the data provided by archaeologists themselves. Despite the feelings of archaeologists, my research clearly shows that NAGPRA did not cause a decrease in archaeological administrative work and fieldwork in the United States. I was not able to analyze the
effect of NAGPRA on laboratory work but because some analysis is required to determine cultural affiliation under NAGPRA, an increase could possibly also be seen in that category. While it may seem from my data that the enactment of NAGPRA caused an increase in archaeological practices other factors must be considered, including the number of practicing archaeologists and the critical commentary in publications.

The increase in archaeological productivity or activity could be due factors not associated with NAGPRA, such as the increase in the number of practicing archaeologists. Since 1985 there has been a general increase in the number of doctoral dissertations written in archaeology, from 130 in 1985 to 203 in 2005, (please see Appendix A), this implies an increase in the number of practicing archaeologists (ProQuest). The increase in doctoral dissertations follows the same general increase seen throughout my data on archaeological practices. This increase in archaeologists could indicate that archaeologists are continuing to work on projects despite their noted fear that their work will be taken away or that the type of work they are doing will change. Although an increase in archaeologists may be related to the increase in archaeological practices, it does not negate my findings that NAGPRA did not cause a decrease in archaeological practices.

Another factor is the possibility that the articles written by archaeologists stressing limitations on archaeological practices is generating a sense of urgency to complete or begin work that might not be possible in the future. For example, Weiss (2001) states,

The sample I worked on is now also in jeopardy. I had x-rayed the bones of over 100 individuals from the Tsimshin tribe of British Columbia dating between 3,500 to 1,500 years old. Although the Haida have no affiliation with these remains, museum officials were fearful that the remains I was working on would be seen...
and reclaimed too. I was warned to keep a low profile. Subsequently, and probably based on the lists of remains that the museum was required to publish for Native activists, the sample I worked on attracted attention and may also be repatriated (Weiss, 2001, p. 13).

Weiss’ commentary sounds like a warning to archaeologists that they must protect their collections and complete any analysis before it is taken away by American Indian tribes. The quote provided by Weiss above provides some insight into why archaeologists are claiming there is a decrease in archaeological practices. Weiss says that she was warned to keep a low profile for fear that the remains would be claimed and possibly returned. If the remains were taken away Weiss would no longer be able to conduct her research on those remains and neither would anybody else. If enough remains are taken away, the archaeological practice of laboratory analysis on human remains will be in danger and lead to a decrease in that specific archaeological practice.

If someone were interested in taking this research project further, I would recommend conducting private and group interviews of archaeologists. This would provide in-depth information that is not solicited in the SRC questionnaire such as, why archaeologists believe specifically there has been a decrease in archaeological practices, how their jobs have changed, and how NAGPRA has affected them directly. This information will provide the researcher with invaluable information regarding specific archaeologists’ feelings and reactions towards NAGPRA. If this information is combined with information gathered from a survey the data could be compared to understand the difference between how the majority of archaeologists respond versus how each individual responds. Therefore, future researchers should also conduct a survey so that they can gather information about archaeologists to compare with their interviews. This survey should include questions regarding what each archaeologist thinks about
NAGPRA, specifically whether they think NAGPRA is working, and whether they believe it has had an impact on their work. There should also be follow-up questions to clarify responses given by the respondents. For example, if an archaeologist believes NAGPRA has had an impact on his/her work there should be follow up questions regarding how his/her work has changed and whether there has been an increase or decrease in the amount of hours they spend doing specific activities. Those surveyed should also be asked what new sites they have worked on, whether NAGPRA proceedings were initiated at the site, what type of analysis was conducted on the items found at the site, and whether the analysis was a result of NAGPRA. Answers to these questions will provide specific numbers of how many archaeologists have been affected by NAGPRA legislation and in what ways there were affected. A question should also be included regarding the locations archaeologist have conducted their field research to determine whether archaeologists are conducting research in certain areas that would typically initiate NAGPRA. These types of questions will provide the researcher with valuable information about whether NAGPRA has changed archaeological practices in the United States. For example, if fewer archaeologists conduct field work in areas associated with American Indians then there is a possibility NAGPRA was the culprit. Also, by determining whether there has been a change in the number of hours spent doing certain activities the researcher will gain more insight into how NAGPRA has changed archeological practices.

NAGPRA has been a controversial law since its enactment in 1990. The debate between archaeologists, scholars, and American Indians on the effectiveness of the law and who owns America’s past will continue because of the ethical issues the law raises
for all parties involved. While NAGPRA may not provide all of the answers for solving this conflict it has created a base for further development. Only with further research will a more conclusive answer be found as to whether NAGPRA has had an effect on archeological administrative work and fieldwork in the United States. While I believe more research will provide the public with a greater understanding of NAGPA and its effects on archaeologists, my research clearly indicates that NAGPRA has not caused a decrease in archaeological practices in the United States.
References


### Appendices

### Appendix A: Tables, Charts, and Categories Removed

#### Table 1 Federal Agencies with Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>AF</td>
<td>Air Force</td>
</tr>
<tr>
<td>ANG</td>
<td>Air National Guard</td>
</tr>
<tr>
<td>ARNG</td>
<td>Army National Guard</td>
</tr>
<tr>
<td>BIA</td>
<td>Bureau of Indian Affairs</td>
</tr>
<tr>
<td>BLM</td>
<td>Bureau of Land Management</td>
</tr>
<tr>
<td>BOP</td>
<td>Bureau of Prisons</td>
</tr>
<tr>
<td>BOR</td>
<td>Bureau of Reclamation</td>
</tr>
<tr>
<td>CG</td>
<td>Coast Guard</td>
</tr>
<tr>
<td>CPD</td>
<td>Community Planning and Development Department</td>
</tr>
<tr>
<td>COE</td>
<td>Corps of Engineers</td>
</tr>
<tr>
<td>CEQ</td>
<td>Council On Environmental Quality</td>
</tr>
<tr>
<td>COMM</td>
<td>Department of Commerce</td>
</tr>
<tr>
<td>DOD</td>
<td>Department of Defense</td>
</tr>
<tr>
<td>ED</td>
<td>Department of Education</td>
</tr>
<tr>
<td>DOE</td>
<td>Department of Energy</td>
</tr>
<tr>
<td>DOJ</td>
<td>Department of Justice</td>
</tr>
<tr>
<td>DOL</td>
<td>Department of Labor</td>
</tr>
<tr>
<td>DOS</td>
<td>Department of State</td>
</tr>
<tr>
<td>DOA</td>
<td>Department of Army</td>
</tr>
<tr>
<td>DOT</td>
<td>Department of Transportation</td>
</tr>
<tr>
<td>EDA</td>
<td>Economic Development Administration</td>
</tr>
<tr>
<td>EPA</td>
<td>Environmental Protection Agency</td>
</tr>
<tr>
<td>FSA</td>
<td>Farm Service Agency</td>
</tr>
<tr>
<td>FMHA</td>
<td>Farmers Home Administration</td>
</tr>
<tr>
<td>FHA</td>
<td>Farmers Home Administration</td>
</tr>
<tr>
<td>FFA</td>
<td>Federal Aviation Administration</td>
</tr>
<tr>
<td>FCC</td>
<td>Federal Communications Commission</td>
</tr>
<tr>
<td>FED</td>
<td>Federal Compliance- State and Local</td>
</tr>
<tr>
<td>FEMA</td>
<td>Federal Emergency Management Agency</td>
</tr>
<tr>
<td>FERC</td>
<td>Federal Energy Regulatory Commission</td>
</tr>
<tr>
<td>FHwA</td>
<td>Federal Highway Administration</td>
</tr>
<tr>
<td>FRA</td>
<td>Federal Railroad Administration</td>
</tr>
<tr>
<td>FTA</td>
<td>Federal Transit Administration</td>
</tr>
<tr>
<td>FWS</td>
<td>Fish and Wildlife Service</td>
</tr>
<tr>
<td>FS</td>
<td>Forest Service</td>
</tr>
<tr>
<td>GSA</td>
<td>General Services Administration</td>
</tr>
<tr>
<td>HHS</td>
<td>Health and Human Services Department</td>
</tr>
<tr>
<td>HUD</td>
<td>Housing and Urban Development Department</td>
</tr>
<tr>
<td>INS</td>
<td>Immigration and Naturalization Service</td>
</tr>
</tbody>
</table>
*International Boundary and Water Commission (IBWC)
*Interstate Commerce Commission (ICC)
Minerals Management Service (MMS)
National Aeronautics and Space Administration (NASA)
National Capitol Planning Commission (NCPC)
National Oceanic and Atmospheric Administration (NOAA)
National Park Service (NPS)
*National Science Foundation (NSF)
Natural Resource Conservation Service (NRCS)
Nuclear Regulatory Commission (NRC)
*Office of International Affairs (OIA)
Office of Surface Mining (OSM)
Office of Territorial and International Affairs (OTIA)
Resolution Trust Corporation (RTC)
Rural Development Service (RDS)
Rural Electrification Administration (REA)
Rural Housing Service (RHS)
Rural Utilities Service (RUS)
Small Business Administration (SBA)
Smithsonian Institution (SI)
Soil Conservation Service (SCS)
St. Lawrence Seaway Development Corporation (SLSDC)
Tennessee Valley Authority (TVA)
*U.S. Department of Agriculture (USDA)
*U.S. Department of Interior (USDI)
*U.S. Department of the Treasury (USDT)
U.S. Geological Survey (USGS)
U.S. Postal Service (USPS)
*United Nations (UN)
Urban Mass Transportation Administration (UMTA)
U.S. Bureau of Mines (USBM)
U.S. Marine Corps (USMC)
U.S. Navy (USN)
Veterans Administration (VA)

* Indicates the agency has had no responses to any SRC Questionnaires.

Table 2 Variables used in Weiss study

| The number of studies in the journal for each year |
| The number of studies per year that Use Native American remains from the United States |
| The number of different Native American United States sites per year |
The number of different states examined per year
The number of Native American osteological studies counted previously that used metric or observational methodologies
The number of Native American osteological studies that used X-ray methodologies
The number of Native American osteological studies counted that use CT-scan methodologies
The number of Native American osteological studies that use generic methodologies
The number of Native American osteological studies that use histography
The number of Native American osteological studies that use Buikstra and Ubelaker
The number of Native American osteological studies that are descriptive or are describing the site and remains
The number of Native American osteological studies that are testing a hypothesis
The states where the data originated from in the counted studies

Figure 9  Dissertations in Archaeology

Categories Removed from SRC Analysis
After I manipulated the data provided by the National Park Service and created the graphs to determine if NAGPRA had an effect on archaeological practices in the United States, I realized that some of the categories that I included in my analysis would not have been affected by NAGPRA even if there was an increase in that category over
time. I therefore removed an additional thirteen categories. The first two categories I removed were “Unanticipated Discoveries” and “Unanticipated Data Recovery”. The number of “Unanticipated Discoveries” and the amount of data recovered from those sites would not be affected by NAGPRA because the discoveries were accidental finds or were, as their title indicates, unanticipated; therefore these categories do not provide information about NAGPRA’s effect on archaeological practices. The next three categories that I removed were sites “NRHP Total”, “Sites Eligible”, and “Sites Ineligible”. I removed these categories because NAGPRA should not impact whether a site is put on the National Register of Historic Places (NRHP) list. To be considered eligible for the NRHP, the property must be old enough to be considered historic, typically 50 years or older, and must have historical significance. The NRHP website lists questions that should be considered before applying for the NRHP,

- Is the property associated with events, activities, or developments that were important in the past? With the lives of people who were important in the past?
- With significant architectural history, landscape history, or engineering achievements? Does it have the potential to yield information through archaeological investigation of our past (NRHP)?

The number of sites on the NRHP list and their eligibility for the status does not provide information about archaeological practices, the focus of this study. The next category that I removed was “Acres Total”. “Acres Total” assesses the total acres controlled by each agency. As with the other categories the change in acres controlled by an agency would not be effected by NAGPRA and does not give any information about archaeological practices. The last seven categories I removed from analysis were “Violations”, “Arrests”, “Cited”, “ARPA Misdemeanor Convictions”, “ARPA Felony Convictions”, “Restore”, and “Law Cost”. All seven of these categories are related because they have to
do with law violations and the repercussions to those violations. The violations category includes the number of documented violations of the Archaeological Resources Protection Act (ARPA), the Antiquities Act, and other statutes protecting archaeological properties during the fiscal year on land administered or owned by each agency. “Arrests” include the number of arrests made in cases of documented vandalism or looting. “Cited” is the number of citations issued in cases of documented vandalism or looting. “Restore” is the estimated cost for restoring or repairing archaeological properties in cases which civil penalties have been assessed for violations of ARPA or other authorities, and “Law Cost” is the estimated cost to the agency of law enforcement for archaeological resource protection. While it can be argued that NAGPRA could have an effect on the increase in “Law Costs” because more law enforcement is needed to protect Native American grave sites and the increase in “Violations” could be due to tighter security and stricter laws, these seven categories do not provide any information on archaeological practices (please see Appendix A for the graphs pertaining to the aforementioned categories).
Unanticipated Discoveries

Unanticipated Data Recovery

---

Unant Discovery  Expon. (Unant Discovery)

Unant DataRec  Linear (Unant DataRec)
Appendix B: Native American Graves Protection and Repatriation Act

Native American Graves Protection and Repatriation Act
Public Law 101-601
101st Congress
An Act

To provide for the protection of the Native American graves, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Native American Graves Protection and Repatriation Act".

SEC. 2. DEFINITIONS.

For purposes of this Act, the term-

(1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "cultural affiliation" means that there is 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.

(3) "cultural items" means human remains and-

(A) "associated funerary objects" which shall mean objects that, as a part of the 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, and both the human remains and associated funerary objects are presently in the possession or control of a Federal
agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "unassociated funerary objects" which shall mean objects that, as a part of the 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, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

(C) "sacred objects" which shall mean 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, and

(D) "cultural patrimony" which shall mean an object 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 regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.
(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971.

(6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.
(11) "Native Hawaiian organization" means any organization which--

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c), result in a Fifth Amendment taking by the United States as determined by the United States Claims Court pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.
(15) "tribal land" means-

   (A) all lands within the exterior boundaries of any Indian reservation;

   (B) all dependent Indian communities;

   (C) any lands administered for the benefit of Native Hawaiians pursuant to the
       Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

SEC 3. OWNERSHIP.

   (a) NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.--The
       ownership or control of Native American cultural items which are excavated or
       discovered on Federal or tribal lands after the date of enactment of this Act shall be (with
       priority given in the order listed)-

       (1) in the case of Native American human remains and associated funerary objects,
           in the lineal descendants of the Native American; or

       (2) in any case in which such lineal descendants cannot be ascertained, and in the
           case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—
           (A) in the Indian tribe or Native Hawaiian organization on whose tribal land
               such objects or remains were discovered;

           (B) in the Indian tribe or Native Hawaiian organization which has the closest
               cultural affiliation with such remains or objects and which, upon notice, states a claim for
               such remains or objects; or

           (C) if the cultural affiliation of the objects cannot be reasonably ascertained and
               if the objects were discovered on Federal land that is recognized by a final judgment of
               the Indian Claims Commission or the United States Court of Claims as the aboriginal
land of some Indian tribe--

(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

Regulations.

(b) UNCLAIMED NATIVE AMERICAN HUMAN REMAINS AND OBJECTS. --

Native American cultural items not claimed under subsection (a) shall be disposed of in accordance with regulations promulgated by the Secretary- in consultation with the review committee established under section 8,-Native American groups, representatives of museums and the scientific community.

(c) INTENTIONAL EXCAVATION AND REMOVAL OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS.--The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if--

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of
tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b); and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) INADVERTENT DISCOVERY OF NATIVE AMERICAN REMAINS AND OBJECTS.--(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands—after the date of enactment of this Act shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.
(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) RELINQUISHMENT.--Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

SEC. 4. ILLEGAL TRAFFICKING.

(a) ILLEGAL TRAFFICKING.--Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

" 1170. Illegal Trafficking in Native American Human Remains and Cultural Items

"(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both."
"(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both."

(b) TABLE OF CONTENTS.--The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1170. Illegal Trafficking in Native American Human Remains and Cultural Items."

SEC. 5. INVENTORY FOR HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS.

(a) IN GENERAL.--Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b) REQUIREMENTS.--(1) The inventories and identifications required under subsection (a) shall be--

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment
of this Act, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) EXTENSION OF TIME FOR INVENTORY.--Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B). The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.
(d) NOTIFICATION.--(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information--

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

(e) INVENTORY.--For the purposes of this section, the term "inventory" means a simple itemized list that summarizes the information called for by this section.

SEC. 6. SUMMARY FOR UNASSOCIATED FUNERARY OBJECTS, SACRED OBJECTS, AND CULTURAL PATRIMONY.

(a) IN GENERAL.--Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated
funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b) REQUIREMENTS.-- (1) The summary required under subsection (a) shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

(C) completed by not later than the date that is 3 years after the date of enactment of this Act.

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

SEC. 7. REPATRIATION.

(a) REPATRIATION OF NATIVE AMERICAN HUMAN REMAINS AND OBJECTS POSSESSED OR CONTROLLED BY FEDERAL AGENCIES AND MUSEUMS.--

(1) If, pursuant to section 5, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian
organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5, or the summary pursuant to section 6, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) and, in the case of unassociated funerary objects, subsection (c), such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.
(5) Upon request and pursuant to subsections (b), (c) and (e), sacred objects and objects of cultural patrimony shall be expeditiously returned where--

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendent, upon notice, have failed to make a claim for the object under this Act.

(b) SCIENTIFIC STUDY.--If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

(c) STANDARD OF REPATRIATION.--If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects
unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) SHARING OF INFORMATION BY FEDERAL AGENCIES AND MUSEUMS.--Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) COMPETING CLAIMS.--Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(f) MUSEUM OBLIGATION.--Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

SEC. 8. REVIEW COMMITTEE.

(a) ESTABLISHMENT.--Within 120 days after the date of enactment of this Act, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7.

(b) MEMBERSHIP.--(1) The Committee established under subsection (a) shall be composed of 7 members,
(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) RESPONSIBILITIES.--The committee established under subsection a) shall be responsible for-

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5
and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to-

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

(d) Any records and findings made by the review committee pursuant to this Act
relating to the identity or cultural affiliation of any cultural items and the return of such
items may be admissible in any action brought under section 15 of this Act.

(e) RECOMMENDATIONS AND REPORT.--The committee shall make the
recommendations under paragraph (c)(5) in consultation
with Indian tribes and Native Hawaiian organizations and appropriate scientific and
museum groups.

(f) ACCESS.--The Secretary shall ensure that the committee established under
subsection (a) and the members of the committee have reasonable access to Native
American cultural items under review and to associated scientific and historical
documents.

(g) DUTIES OF SECRETARY.--The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary,
and

(2) provide reasonable administrative and staff support necessary for the
deliberations of the committee.

(h) ANNUAL REPORT.--The committee established under subsection (a) shall
submit an annual report to the Congress on the progress made, and any barriers
encountered, in implementing this section during the previous year.

(i) TERMINATION.--The committee established under subsection (a) shall terminate
at the end of the 120-day period beginning on the day the Secretary certifies, in a report
submitted to Congress, that the work of the committee has been completed.

SEC. 9. PENALTY.
(a) PENALTY.--Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

(b) AMOUNT OF PENALTY.--The amount of a penalty assessed under subsection (a) shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors--

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.

(c) ACTIONS TO RECOVER PENALTIES.--If any museum fails to pay courts an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) SUBPOENAS.--In hearings held pursuant to subsection (a), subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.
SEC. 10. GRANTS.

(a) INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS.--The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) MUSEUMS.--The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6.

SEC. 11. SAVINGS PROVISIONS.

Nothing in this Act shall be construed to--

(1) limit the authority of any Federal agency or museum to--

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(2) delay actions on repatriation requests that are pending on the date of enactment of this Act;

(3) deny or otherwise affect access to any court;

(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.
SEC. 12. SPECIAL RELATIONSHIP BETWEEN FEDERAL GOVERNMENT AND INDIAN TRIBES.

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

SEC. 13. REGULATIONS.

The Secretary shall promulgate regulations to carry out this Act within 12 months of enactment.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 15. ENFORCEMENT.

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

Approved November 16, 1990
Appendix C: Society for American Archaeology (SAA)

Principle 1: Stewardship. The archaeological record, that is, in situ archaeological material and sites, archaeological collections, records and reports, is irreplaceable. It is the responsibility of all archaeologists to work for the long-term conservation and protection of the archaeological record by practicing and promoting stewardship of the archaeological record. Stewards are both caretakers of and advocates for the archaeological record for the benefit of all people; as they investigate and interpret the record, they should use the specialized knowledge they gain to promote public understanding and support for its long-term preservation.

Principle 2: Accountability. Responsible archaeological research, including all levels of professional activity, requires an acknowledgment of public accountability and a commitment to make every reasonable effort, in good faith, to consult actively with affected group(s), with the goal of establishing a working relationship that can be beneficial to all parties involved.

Principle 3: Commercialization. The Society for American Archaeology has long recognized that the buying and selling of objects out of archaeological context is contributing to the destruction of the archaeological record on the American continents and around the world. The commercialization of archaeological objects - their use as commodities to be exploited for personal enjoyment or profit - results in the destruction of archaeological sites and of contextual information that is essential to understanding the archaeological record. Archaeologists should therefore carefully weigh the benefits to scholarship of a project against the costs of potentially enhancing the commercial value of archaeological objects. Whenever possible they should discourage, and should themselves avoid, activities that enhance the commercial value of archaeological objects, especially objects that are not curated in public institutions, or readily available for scientific study, public interpretation, and display.

Principle 4: Public Education and Outreach. Archaeologists should reach out to, and participate in cooperative efforts with others interested in the archaeological record with the aim of improving the preservation, protection, and interpretation of the record. In particular, archaeologists should undertake to: 1) enlist public support for the stewardship of the archaeological record; 2) explain and promote the use of archaeological methods and techniques in understanding human behavior and culture; and 3) communicate archaeological interpretations of the past. Many publics exist for archaeology including students and teachers; Native Americans and other ethnic, religious, and cultural groups who find in the archaeological record important aspects of their cultural heritage; lawmakers and government officials; reporters, journalists, and others involved in the media; and the general public. Archaeologists who are unable to undertake public education and outreach directly should encourage and support the efforts of others in these activities.

Principle 5: Intellectual Property. Intellectual property, as contained in the knowledge and documents created through the study of archaeological resources, is part of the archaeological record. As such it should be treated in accord with the principles of
stewardship rather than as a matter of personal possession. If there is a compelling reason, and no legal restrictions or strong countervailing interests, a researcher may have primary access to original materials and documents for a limited and reasonable time, after which these materials and documents must be made available to others.

Principle 6: Public Reporting and Publication. Within a reasonable time, the knowledge archaeologists gain from investigation of the archaeological record must be presented in accessible form (through publication or other means) to as wide a range of interested publics as possible. The documents and materials on which publication and other forms of public reporting are based should be deposited in a suitable place for permanent safekeeping. An interest in preserving and protecting in situ archaeological sites must be taken into account when publishing and distributing information about their nature and location.

Principle 7: Records and Preservation. Archaeologists should work actively for the preservation of, and long term access to, archaeological collections, records, and reports. To this end, they should encourage colleagues, students, and others to make responsible use of collections, records, and reports in their research as one means of preserving the in situ archaeological record, and of increasing the care and attention given to that portion of the archaeological record which has been removed and incorporated into archaeological collections, records, and reports.

Principle 8: Training and Resources. Given the destructive nature of most archaeological investigations, archaeologists must ensure that they have adequate training, experience, facilities, and other support necessary to conduct any program of research they initiate in a manner consistent with the foregoing principles and contemporary standards of professional practice.