

NMNH Policy for Culturally Unaffiliated Human Remains and Associated Funerary Objects

Approved by NMNH – October 5, 2020

I. Background

The National Museum of the American Indian Act, enacted in 1989, and subsequently amended in 1996 (Public Law 101-185, the “NMAI Act”), provides the basis upon which human remains and funerary objects are eligible to be repatriated to culturally affiliated members of Native American tribes and Native Hawaiian organizations. Although the NMAI Act does not address the status of culturally unaffiliated objects, the Smithsonian’s authority to return or repatriate human remains and funerary objects is not limited by the silence of the NMAI Act on that subject. (See NMAI Act Section 11(e).)

Congress did provide a mechanism for addressing “culturally unidentifiable” (here referred to as culturally unaffiliated) remains and objects in the Native American Graves Protection and Repatriation Act enacted in 1990 (25 U.S.C. 3001-3013, “NAGPRA”), and the Department of Interior promulgated related regulations in 2010 (43 CFR §10.11). Though NAGPRA and its regulations do not apply to the Smithsonian, the Smithsonian has looked to NAGPRA for guidance on matters not expressly covered by the NMAI Act or Smithsonian policies.

II. Definitions and Classifications

The NAGPRA regulations define cultural affiliation as “a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group.” (43 CFR §10.14) Though the term, “culturally unaffiliated” is not defined in NAGPRA or its regulations, Native American human remains and funerary objects from the United States are considered to be culturally unaffiliated when there is insufficient evidence to culturally affiliate them with a federally recognized Native American tribe, Native Alaskans (hereafter both referred to as Indian tribe) or Native Hawaiian organizations.

Native American and Native Hawaiian human remains and funerary objects in the NMNH are classified in three ways: 1) those that have been determined to be culturally affiliated with a federally recognized Indian tribe or Native Hawaiian organization based on an inventory and assessment by the Repatriation Office, 2) those that have been determined to be culturally unaffiliated with a federally recognized Indian tribe or Native Hawaiian organization, based on an inventory and assessment by the Repatriation Office, and 3) the remains of individuals and funerary objects that have been reported in inventories with summarized catalog information that were sent to Indian tribes but that have not been fully assessed by the Repatriation Office in consultation with Indian tribes to determine possible cultural affiliation. Inventories are available to Indian tribes upon request.

III. Process for Repatriation of Culturally Unaffiliated Human Remains and Associated Funerary Objects

Requests for the repatriation of culturally unaffiliated human remains and associated funerary objects at the NMNH may be submitted by federally recognized Indian tribes and Native Hawaiian organizations as more fully set forth below or, in specific cases described later, by Indian groups that are not federally recognized. A request from a federally recognized Indian tribe or a Native Hawaiian organization may be submitted: 1) for the repatriation of human remains and associated funerary objects that have previously been determined to be culturally unaffiliated, and/or 2) for the evaluation of human remains and funerary objects that have been reported in inventories with summarized catalog information that were sent to Indian tribes but that have not been fully assessed by the Repatriation Office in consultation with Indian tribes to determine whether they are culturally affiliated or culturally unaffiliated.

The following process will be followed in connection with requests for repatriation of culturally unaffiliated human remains and associated funerary objects:

- An Indian tribe or Native Hawaiian organization may initiate a request for the repatriation of human remains and/or associated funerary objects, previously identified as culturally unaffiliated, by making a written request to NMNH for their return. (An Indian group that is not federally recognized can request and obtain repatriation of human remains and associated funerary objects under the conditions set forth in a later section.) In the request, an Indian tribe or Native Hawaiian organization must demonstrate a reasonable basis for requesting the repatriation of culturally unaffiliated human remains and associated funerary objects, such as, but not limited to, a connection between the requesting Indian tribe or Native Hawaiian organization and the lands from which the human remains and associated funerary objects were obtained.
- Requested human remains and funerary objects needing an affiliation evaluation will be evaluated in a report prepared by the Repatriation Office of the NMNH based on the preponderance-of-evidence standard using the best available scientific and historical evidence as required by the NMAI Act, including geographical, kinship, biological, archaeological, anthropological, linguistic, oral traditional, historical, or any other relevant information or expert opinion. If the human remains and funerary objects are found to be culturally affiliated, the NMNH will offer to repatriate the human remains and funerary objects to the culturally affiliated Indian tribe(s) or Native Hawaiian organization(s).
- Requests for a repatriation or for support for the repatriation for culturally unaffiliated human remains and associated funerary objects must be submitted on letterhead from the leader or from an officially appointed representative of an Indian tribe or Native Hawaiian organization.

- Upon receipt of a request, the NMNH will consult with tribal representatives on their request and also with other relevant Indian tribes and Native Hawaiian organizations. Relevant tribes are those that may have a connection with the lands from which the human remains and associated funerary objects were obtained. When it is necessary for more than one Indian tribe or Native Hawaiian organization to participate in a repatriation decision for culturally unaffiliated human remains and associated funerary objects based on overlapping aboriginal lands or additional evidence, the Indian tribes and Native Hawaiian organizations will be notified and consulted with by NMNH for their support for the repatriation or their participation in the repatriation.
- Requests for the repatriation of culturally unaffiliated human remains and associated funerary objects will require the NMNH to consult with tribes based on the tribal lands and aboriginal lands from which the remains and objects were removed and seek to reach a solution acceptable to all consulted tribes. Aboriginal lands may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order. When aboriginal lands have not been identified by the above methods, repatriation decisions will be made on a case-by-case basis.
- Indian groups that are not federally recognized tribes do not have standing under the NMAI Act to make repatriation requests. Nevertheless, the NMNH recognizes the importance of the right of descendants to determine the fate of their ancestors where that connection can be established by a preponderance of evidence, regardless of whether the descendant is a member of a federally recognized tribe. Therefore, in the case where human remains and associated funerary objects are classified as culturally unaffiliated because they are not affiliated with a federally recognized Indian tribe but are determined to have a relationship of shared identity with an Indian group that is not federally recognized, the NMNH will consider repatriation to the Indian group that is not federally recognized in accordance with this policy. As with claims from federally recognized tribes, an Indian group that is not federally recognized can initiate a repatriation evaluation if they have a reasonable basis for demonstrating that they have a shared identity with the human remains and funerary objects and that no federally recognized tribe is culturally affiliated with the human remains and associated funerary objects. Federally recognized Indian tribes, identified based on the aboriginal and tribal lands from which the human remains and associated funerary objects were removed, will be consulted when Indian groups that are not federally recognized request the repatriation of culturally unaffiliated human remains and associated funerary objects.