



Determining Cultural Affiliation Within NAGPRA

25 U.S.C. 3001 (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.

43 C.F.R. 10.2 (d)(1)

For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.

43 C.F.R. 10.2 (e)

What is cultural affiliation? Cultural affiliation means that there is 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. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion.

43 C.F.R. 10.14: Lineal Descent and Cultural Affiliation

(a) General. This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

(b) Criteria for determining lineal descent. A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

(c) Criteria for determining cultural affiliation. Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

- (1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and
- (2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:
 - (i) Establish the identity and cultural characteristics of the earlier group,
 - (ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or
 - (iii) Establish the existence of the earlier group as a biologically distinct population; and

(3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

(d) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

(e) Evidence. Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: Geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

(f) Standard of proof. Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a **preponderance of the evidence**. Claimants do not have to establish cultural affiliation with scientific certainty.

Cultural Affiliation FAQ

Who is responsible for determining cultural affiliation?

The museum or Federal agency that has control of Native American human remains and other cultural items is responsible for determining their cultural affiliation.

What is the role of consultation in determining cultural affiliation?

Museums and Federal agencies must determine the cultural affiliation of Native American human remains and associated funerary objects when they complete their inventories. NAGPRA requires that the inventory be prepared in consultation with lineal descendants, Indian tribe officials, and traditional religious leaders (43 C.F.R. 10.9 (b)). For unassociated funerary objects, sacred objects, and objects of cultural patrimony, museums and Federal agencies must initiate consultation with lineal descendants, Indian tribe officials, and traditional religious leaders not later than the completion of the summary, and must document information and evidence related to cultural affiliation (43 C.F.R. 10.8 (d) and (e)).

Must a claimant prove cultural affiliation beyond a reasonable doubt?

No. Claimants must be given the opportunity to present information during consultation, and museums and Federal agencies must consider this information when making determinations of cultural affiliation. The standard for determining cultural affiliation is the preponderance of the evidence, not scientific certainty.

What does 'preponderance of the evidence' mean?

"As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is **more probable than not**." (Black's Law Dictionary, 6th Edition)