

National Park Service | U.S. Department of the Interior

Cultural Resources, Partnerships and Science

National NAGPRA Program



Facilitating Respectful Return



NAGPRA Regulations

- Systematic process **to determine rights** to Native American human remains and other cultural items
- Regulations published as final in 1995, 2003, 2007, 2010, and 2015
- From 2010 to 2012, consultation, listening sessions, and written comments on full revision of the rule

Goals of Proposed Changes

- Simplify and improve the regulatory process
- Advance the goals of racial justice, equity, and inclusion
- Streamline existing regulatory requirements by simplifying burdensome and complicated requirements and clarifying timelines.

Proposed Organization

A — GENERAL

§ 10.1 Introduction.

§ 10.2 Definitions for this part.

§ 10.3 Cultural Affiliation.

B — FEDERAL OR TRIBAL LANDS AFTER NOVEMBER 16, 1990

§ 10.4 General.

§ 10.5 Discovery.

§ 10.6 Excavation.

§ 10.7 Disposition.

C — MUSEUM OR FEDERAL AGENCY HOLDINGS OR COLLECTIONS

§ 10.8 General.

§ 10.9 Summary of unassociated
funerary objects, sacred objects, &
objects of cultural patrimony.

§ 10.10 Inventory of human remains &
associated funerary objects.

§ 10.11 Civil penalties.

D — REVIEW COMMITTEE

§ 10.12 Review Committee.

A. General

Existing Regulations

- No duty of care, standard deadlines, or instructions on delivery of documents
- Complicated and confusing definitions
- Perceived higher standard for cultural affiliation

Proposed Changes

- Add requirements, provide instructions, and consolidate general information
- Remove or clarify confusing terms
- Simplify and prioritize cultural affiliation

A. General

Definitions for this part

Removed

Culturally unidentifiable

Possession

Federal agency official

Museum official

Indian tribe official

Native Hawaiian*

*Incorporated into NHO
definition

New

Ahupua'a

ARPA Indian lands

ARPA Public lands

Consultation

Cultural items

Geographical affiliation

Holding or collection

Tribal lands controlled by a NHO

Tribal lands controlled by DHHL

United States

A. General

Definitions for this part

Human remains

If incorporated into an object or item,

(2) considered part of the NAGPRA cultural item rather than human remains.

(3) considered human remains if not part of a NAGPRA cultural item.

Lineal descendant

(1) A living individual tracing his or her ancestry...to a **known Native American** individual ...or

(2) A living individual tracing his or her ancestry...to **all the known Native American individuals** represented ...

Native Hawaiian Organization

Includes definition for Native Hawaiian and identifies:

- The Office of Hawaiian Affairs established by the constitution of the State of Hawaii;
- Native Hawaiian organizations who are registered with the Secretary's Office of Native Hawaiian Relations; and
- Hawaiian Homes Commission Act (HHCA) Beneficiary Associations and Homestead Associations as defined under 43 CFR 47.10

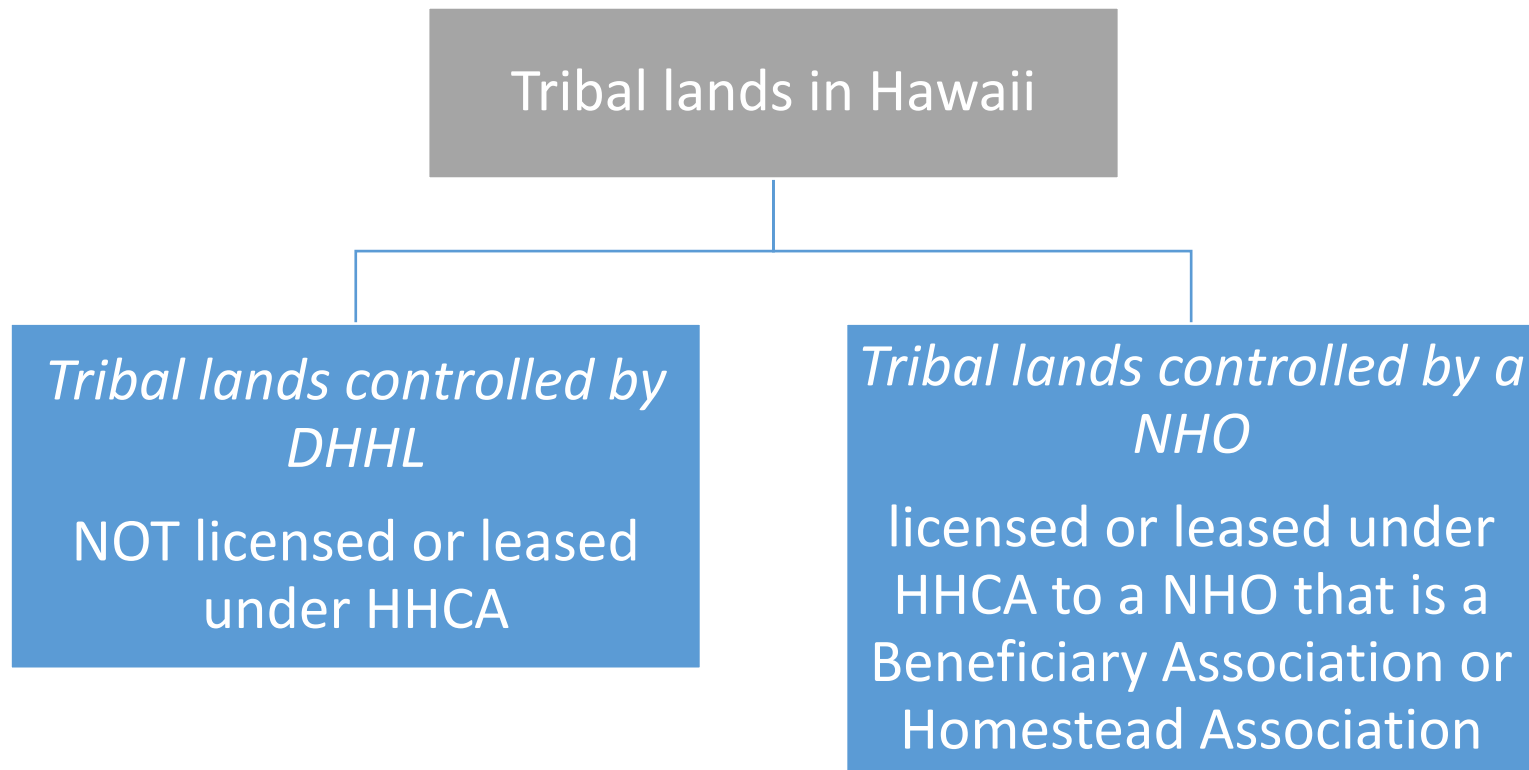
A. General

Tribal lands in Hawaii

Statute	<p>“tribal land” means ...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</p> <hr/>
Existing	<p>“tribal land” means all lands which ...are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86-3; 73 Stat. 6)</p> <hr/>
Proposed Change	<p><i>Tribal lands</i> means...all lands administered by the Department of Hawaiian Home Lands (DHHL) under the Hawaiian Homes Commission Act of 1920 (HHCA, 42 Stat. 108) and section 4 of the Act to Provide for the Admission of the State of Hawaii into the Union (73 Stat. 4), including “available lands” or “Hawaiian home lands”</p>

A. General

Tribal lands in Hawaii – Proposed changes



A. General

Cultural Affiliation – Proposed Changes

For competing claims or requests, closest culturally affiliation NHO, in order, is the organization with a:

1. Familial or kinship relationship, but not a lineal descendant (lineal descendant has priority)
2. Relationship to only the relevant ahupua'a
3. Relationship to relevant ahupua'a and other ahupua'a on the same island
4. Relationship to relevant island, but not any other island
5. Continuous existence from a date prior to 1893 and relationship to more than one island
6. Any other culturally affiliated NHO

B. On Federal or Tribal Lands

Existing Regulations

- Confusing procedures, burdensome timelines, and little protection for sensitive information
- On Tribal land, no requirement for Indian Tribes, NHOs, or DHHL to act and jurisdiction issues for privately owned Tribal land

Proposed Changes

- Reduce and streamline requirements to prioritize protection of cultural items and meaningful consultation
- Require Indian Tribes, NHOs, or DHHL to respond to a discovery, certify resuming an activity, authorize an excavation, and document disposition. Clarify jurisdiction for ARPA permits.

B. On Federal or Tribal Lands

Proposed Changes for Tribal lands in Hawaii

- *Appropriate official* clearly and explicitly requires the State of Hawaii's Department of Hawaiian Home Lands (DHHL) to take action for discoveries or excavations and to ensure disposition
- An NHO must consent in writing to be responsible for discoveries or excavations on its Tribal lands
- Otherwise, DHHL is the appropriate official on Tribal lands controlled by an NHO as well as Tribal lands controlled by DHHL.

B. On Federal or Tribal Lands

Proposed Steps for Discovery and Excavation

Discovery

- 1 Report any discovery
- 2 Cease ground-disturbing activity
- 3 Respond to a discovery
- 4 Evaluate the potential need for an excavation
- 5 Certify an activity may resume

Excavation on Federal lands and on Tribal lands in Hawaii

- 1 Initiate consultation
- 2 Consult with requesting parties
- 3 Authorize the excavation

B. On Federal or Tribal Lands

Proposed Steps for Disposition

Federal lands or Tribal lands controlled by DHHL

1 Inform Indian Tribes or NHOs	As soon as possible, <u>no later than 1 year</u>
2 Publish a notice of intended disposition	No later than 30 days after Step 1
3 Receive and consider a claim for disposition	After notice publication
4 Respond to a claim for disposition	No earlier than 30 days after notice but no later than 30 days after claim
5 Disposition of the cultural items	No later than 90 days after Step 4

C. In Holdings or Collections

Existing Regulations

- Burden on Indian Tribes and NHOs to initiate consultation and not always referenced in decision-making process
- “Culturally unidentifiable” human remains inhibit and effectively prevent respectful repatriation
- Associated funerary objects can be retained by museums and incentivize museums to determine remains are culturally unidentifiable

Proposed Changes

- Define “consultation” and require museums and Federal agencies initiate and use consultation to inform decision-making
- Replace with “geographical affiliated” to acknowledge connection to present-day Indian Tribes
- Require associated funerary objects to always be repatriated and remove incentive

C. In Holdings or Collections

Proposed Changes

- Requires protection of sensitive information, as identified by a lineal descendant, Indian Tribe, or Native Hawaiian organization in all final process steps (including in B. On Federal or Tribal lands)
- Updates timelines to effective date of the final rule and impose new timelines on pending collections of human remains (from HI-115, from continent 116,000).
- For new holdings or collections previously reported, a museum or Federal agency may rely on previously completed summary or inventory

D. Review Committee

Existing Regulations

- No guidance beyond statutory authority for nominations or disputes
- Advisory role only and recommendations are not binding on any person

Proposed Changes

- Clarifies nominating organizations for museum and scientific organizations
- Reiterates statutory language for nomination by Indian Tribes, NHOs, and traditional religious leaders
- Clarifies informal conflict resolution process for disputes
- Reaffirms advisory role only and recommendations are not binding on any person

Delegation of NAGPRA Authority

- Since 1991, the National Park Service (NPS) has had administrative responsibilities for NAGPRA.
- In 1999, criticism of NPS's approach and conflict of interest resulted in separation of duties and elevation of program administration to an Assistant Director in NPS.
- In 2005, the Secretary elevated civil penalties, regulations, grant awards, and extensions of time to the Assistant Secretary level.

Secretary's Responsibilities

Delegated	Purpose	Statutory (25 USC 3001 et seq)
Secretary (appointee)	Oversight Advice	<ul style="list-style-type: none">• Review Committee
Assistant Secretary (appointee)	Support Enforcement	<ul style="list-style-type: none">• Civil penalties• Award grants• Promulgate regulations• Extend deadlines
NPS Program	Staffing	<ul style="list-style-type: none">• Designated Federal Official to Review Committee• Draft regulations with Solicitor's office• Administrator for grant awards• Receives requests for extensions• Receives allegations of failure to comply• Publish notices in Federal Register

To Make a Comment

- Raise your virtual hand
- Submit a comment
- Provide your name and Indian Tribe
- Indicate if you are a Tribal leader or other official representative
- Hosts will call on you to make a comment and allow access to video and audio
- Hosts will request comment from those on the phone only (to unmute, press *6)

Cultural Resources, Partnerships, & Science

National NAGPRA Program



National Park Service
U.S. Department of the Interior