

National NAGPRA FY07 Midyear Report

For the period October 1, 2006 – March 31, 2007

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NAGPRA Introduction

This report covers activities of the National NAGPRA Program for the first half of fiscal year 2007 (FY 2007- October 1, 2006 – March 31, 2007). All information and statistics reported are current as of close of business, March 31, 2007. Regular reports on National NAGPRA's work are available on the program's Website:

<http://www.cr.nps.gov/nagpra/DOCUMENTS/INDEX.htm>.

The Native American Graves Protection and Repatriation Act (NAGPRA) was enacted on November 16, 1990 to address the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony. The Act assigned implementation responsibilities to the Secretary of the Interior, including:

- Administering the obligations of museums and Federal agencies with regard to collections of cultural items, as follows:
 - Extending inventory deadlines for museums that demonstrate a good faith effort to comply with the law,
 - Publishing notices for museums and Federal agencies in the Federal Register,
 - Creating and maintaining a database of Culturally Unidentifiable Human Remains,
 - Making grants to assist museums, Indian tribes, and Native Hawaiian organizations in fulfilling museum responsibilities and the opportunities for tribes under the Act,
 - Assessing civil penalties on museums that fail to comply with provisions of the Act, and
 - Establishing and providing staff support to the Native American Graves Protection and Repatriation Review Committee;
- Providing oversight and technical assistance in those instances where there are excavations and discoveries of cultural items on Federal and Indian lands;
- Promulgating implementing regulations;
- Providing technical assistance, through:
 - Training programs,
 - Website information,
 - Reports prepared for the Review Committee, and
 - Supporting law enforcement investigation allegations of illegal trafficking in Native American human remains and cultural items.

The National Park Service was delegated some of these responsibilities shortly after NAGPRA became law. The National Park Service also has compliance obligations for parks. National NAGPRA is the omnibus compliance program, the constituents groups of which are all federal agencies, museums that receive federal funds, tribes and Native Hawaiian organizations.

This report and subsequent reports will follow the organization of the National NAGPRA program and its responsibilities pertaining to collections, excavations/discoveries, regulations, and technical assistance given to tribes and the museums and Federal agencies that have obligations for NAGPRA compliance.

Collections

The sections of NAGPRA relating to collections describe the inventories, summaries, grants, civil penalties and the Review Committee which further aspects of the administration of the law. These provisions pertain to the responsibilities of Federal agencies and museums that receive Federal funds to inventory collections of Native American human remains and associated funerary objects in consultation with potentially affiliated tribes and to submit an itemized list to the National NAGPRA Program. The cultural affiliation decisions of agencies and museums made in inventories are reflected in Notices of Inventory Completion and in the list of Culturally Unidentifiable Human Remains, which are available on public access databases. Summaries of the remainder of the Native American collections in the possession or control of Federal agencies and museums generally describe the Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony which inform consultation of museums and Federal agencies with tribes on repatriation. Decisions to effectuate repatriation of unassociated funerary objects, sacred objects and objects of cultural patrimony are reflected in the published Notices of Intent to Repatriate.

***Final regulations published on March 21, 2007, effective April 20, 2007, require museums and Federal agencies receiving a new collection, or having collections of new Indian tribes, to prepare or update inventories within 2 years and summaries within 6 months. If the museum receives Federal funds for the first time, summaries are due in 3 years and inventories in 5 years.

Grants are available to museums and tribes to fund projects for consultation and accomplish cultural identification of items and to cover costs of repatriation. Civil penalties may be imposed upon museums found in non-compliance with the law by failing to submit inventories and summaries, consult with tribes, and to repatriate cultural items in a timely manner. The entire NAGPRA process pertaining to collections is within the jurisdiction of the Native American Graves Protection and Repatriation Review Committee which advises the Secretary on implementation and makes recommendations toward the resolution of disputes.

The following overview of summaries, inventories and culturally unidentifiable human remains reflect an update from numbers reported in prior reports and based upon a review of the National NAGPRA Program records as of March 31, 2007. For more information on notices, contact Jaime Lavallee, notice backlog reduction project, National NAGPRA, (Jaime_Lavallee@contractor.nps.gov).

Summaries and Notices of Intent to Repatriate:

Summaries have been received from 1063 institutions. Additionally, 459 statements of “no summary required” have been received.

There have been 360 Notices of Intent to Repatriate published, an increase of 15 notices thus far in FY 2007. These 360 notices account for 118,442 funerary objects, 3,585 sacred objects, 296 objects of cultural patrimony, and 768 sacred objects that are also cultural patrimony. The 15 new notices represent 15,989 unassociated funerary objects, 15 sacred objects, 15 objects of cultural patrimony, and 59 sacred objects that are also objects of cultural patrimony.

Inventories and Notices of Inventory Completion:

Inventories have been received from 969 institutions. Of these, 550 contain decisions as to cultural affiliation of Native American human remains, and 636 contain listings of culturally unidentifiable Native American human remains. Note: There may be duplication of reporting for collections as the law directs those museums with possession or control of collections to submit an inventory and several museums may have collections belonging to Federal agencies, where both the museum and federal agency submitted an inventory.

There have been 961 Notices of Inventory Completion published accounting for 32,106 human remains and 670,167 associated funerary objects. There were 22 notices published thus far in FY 2007, accounting for 148 human remains and 722 associated funerary objects.

Culturally Unidentifiable Human Remains:

As part of providing administrative support for the Review Committee, National NAGPRA has compiled the Review Committee's inventory of culturally unidentifiable (CUI) human remains, as required by 25 U.S.C. 3006 (c)(5). National NAGPRA has entered 680 inventories from 682 institutions containing determinations of culturally unidentifiable Native American human remains accounting for 118,357 individuals for whom cultural affiliation has not yet been determined and 852,660 funerary objects associated with those individuals. The number of CUI subsequently culturally identified to date is 2,175 and the number of CUI transferred by a disposition to a tribe is 4 individuals thus far this year, for a total of 2,374. Pending regulations that will specify a process for disposition of CUI, requests for recommendations for disposition can be presented to the Review Committee which makes recommendations to the Secretary. Notices of disposition are published upon receipt of Secretarial authorization to allow 30 days for competing claims to be lodged prior to transfer of control.

Grants:

Congress appropriated \$ 2.4 million for grants in FY 2007. The grant application deadline for consultation/documentation grants was March 1, 2007. Repatriation grants are received on a rolling basis. A total of 50 grants applications have been received: 47 consultation/documentation proposals and 3 repatriation funding requests. Of these 35 are from Indian tribes and Native Hawaiian organizations and 15 are from museums. The total amount of the requests and funds held for repatriation grants during FY 2007 is \$3 million. The number of requests from museums has increased slightly, while the number of requests from tribes has dropped by 23%.

Grant applications for consultation/documentation projects are reviewed by an outside panel, which will meet on May 7-8, 2007. Each applicant will receive an individualized letter from the grants coordinator containing valuable feedback obtained from the panel to assist applicants in preparing better grant proposals in the future and in administering successful projects. For more information on grants, contact Michelle Joan Wilkinson, grants coordinator, National NAGPRA, (Michelle_J_Wilkinson@nps.gov).

Civil Penalties:

The civil penalties rule (43 C.F.R. 10.12) was published in 1997 as an interim rule, and in 2003 as a final rule. In May 2005, the Secretary of the Interior issued a Secretarial Order placing

responsibility for civil penalties within the National NAGPRA program to provide staff support to the Assistant Secretary Fish and Wildlife and Parks, in a consultative relationship with the Assistant Secretary Indian Affairs. The NAGPRA civil penalty coordinator, who serves in the National NAGPRA Program, and a National Park Service law enforcement agent work as a team and provide staff support to the Assistant Secretary. For more information on civil penalties, contact David Tarler, enforcement coordinator, National NAGPRA, (David_Tarler@nps.gov).

The NAGPRA regulations set forth 8 ways that a museum might fail to comply with the Act or its regulations (43 C.F.R. 10.12 (b)(1)):

1. Sale or transfer of NAGPRA items contrary to NAGPRA.
2. Failure to complete a summary.
3. Failure to complete an inventory.
4. Failure to notify tribes after completion of the inventory within 6 months.
5. Refusal to repatriate.
6. Repatriation prior to publishing a notice in the Federal Register.
7. Failure to consult with tribes and/or lineal descendants.
8. Failure to inform recipients of pesticide treatment on the items.

A priority of the civil enforcement team has been an assessment of all pending files and the establishment of file controls and templates for notice letters to be issued by the Assistant Secretary. The National NAGPRA website contains guidance on allegations that a museum has failed to comply, complete with a template letter for reporting a violation.

www.cr.nps.gov/nagpra/civil_penalties

To date, the investigation of 20 allegations of failure to comply, made against 7 museums, has yielded a determination of failure to comply on 5 counts and a determination that the allegation was unsubstantiated on 15 counts. The 5 substantiated counts of failure to comply include 1 count of sale or transfer of NAGPRA items contrary to NAGPRA (43 C.F.R. 10.12 (b)(1)(i)) and 4 counts of failure to complete an inventory (43 C.F.R. 10.12 (b)(1)(iii)). During the first half of FY2007, the investigation of 7 allegations of failure to comply, made against 4 museums, has yielded a determination of failure to comply on 3 counts and a determination that the allegation was unsubstantiated on 4 counts.

A museum receiving a notice of failure to comply has 45 days to take specific action, as set forth in the NAGPRA regulations, before a penalty assessment may issue. The civil penalty team serves as staff to the Assistant Secretary on penalty assessments. To date 2 notices of penalty assessment have been completed. One of them was issued by the Assistant Secretary in FY2006 and the issuance of the other one is pending. Together, the two notices have assessed \$6,250 in penalties. To date, \$3,750 in penalties has been collected.

Museums receiving a notice of failure to comply or a notice of penalty assessment are entitled to an administrative hearing. Thus far, no museums have requested a hearing, and the 2 museums for which notices of penalty assessment were completed have taken action to come into compliance with the law.

Review Committee:

The members for FY 2007 of the Review Committee are: Ms. Rosita Worl (chair), Mr. Garrick Bailey, Mr. Willie Jones, Mr. Colin Kippen, Mr. Dan Monroe, Mr. Lee Staples, Mr. Vincas P.

Steponaitis. On March 2, 2007, Ms. Rosita Worl was reappointed to a two year term and Mr. Alan H. Goodman was appointed to a four year term, when Mr. Bailey's term expired.

Dr. Timothy McKeown serves as the Review Committee's Designated Federal Officer. The DFO complies with all filings required by the Federal Advisory Committee Act (FACA). For more information on the Review Committee contact, C. Timothy McKeown, Designated Federal Official (Tim_Mckeown@nps.gov).

On November 3-4, 2006, the Review Committee met in Denver, Colorado. The Review Committee made recommendations regarding disposition of culturally unidentifiable Native American human remains, and considered a dispute brought by Apache tribes regarding the repatriation of Ga'an cultural items in the possession of the Field Museum. The Review Committee determined by unanimous vote that the Ga'an items are cultural patrimony and the museum does not have right of possession. See Federal Register, Vol. 72, No. 25, February 7, 2007.

Excavations and Discoveries

Notices of Intended Disposition

An adjusted 66 pairs of notices have been published, an increase of no pairs of notices during FY 2007. Agencies were sent a request to update the National NAGPRA Program of their dispositions not contained in the program records. A listing of these notices is available at: www.cr.nps.gov/nagpra/notices/NID_Tble_Current.pdf.

Regulations

Four reserved sections of the NAGPRA regulations (43 CFR 10) were pending in FY 2007:

- 43 CFR 10.7, Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony, is in development, with consultation with tribes and scientific organizations, and the Review Committee set for April 2007, prior to the drafting of a proposed rule.
- 43 CFR 10.11, Disposition of culturally unidentifiable human remains, has been drafted as a proposed rule, and is under review within the Department of the Interior.
- 43 CFR 10.15(b), Failure to claim where no repatriation or disposition has occurred, is held pending the completion of the above noted regulatory sections.
- 43 CFR 10.13, Future applicability, was published in the Federal Register on March 21, 2007. See Federal Register, Vol. 72, No. 54, 13184-13189.

For more information on regulations contact, C. Timothy McKeown (Tim_Mckeown@nps.gov).

Technical Assistance

Training:

The National NAGPRA Program provides training offered by the program and hosted by tribes, museums and Federal agencies. During this reporting period, staff has presented training and made presentations to 892 participants in addition to supplying training materials for training given by others. For more information on training, contact David Tarler (David_Tarler@nps.gov).

Thus far in FY 2007, National NAGPRA has provided training and program presentations as summarized below with the number of attendees.

- Return to the Earth Indigenous Day (15)
- American University, Washington College of Law (126), two presentations
- Program sponsored training prior to the November Review Committee meeting (55)
- University of Mary Washington (25)
- Federal Training Working Group (30)
- University of Alaska, Anchorage (72)
- University of Alaska, Fairbanks (8)
- National Park Service, Alaska Region Office (15)
- Four Southern Arizona Tribes Conference (198)
- Oklahoma National Guard (40)
- International Repatriation Conference, Greenland (103)
- National Conference of State Historic Preservation Officers (80)
- Maryland Archaeological Conference (47)
- Utah Division of Indian Affairs (13)
- Utah National Guard (20)
- High Plains/Southern Tier Tribes Coalition (45)

Outreach:

During this reporting period the National NAGPRA program provided information to the following:

News outlets and media enterprises:

Honolulu Advertiser, Honolulu Star-Bulletin, Native American Times, Plain Dealer, KQTV St. Joseph City, MO, New York Times, National Public Radio, Rocky Mountain News, Native America Calling (radio), Seattle Times, Cortez Journal, National Journal.

Legislative and public information:

Senator Daniel Inouye
Department of State, Organization of American States

In addition to responding to telephone inquiries and email correspondence, including mail sent to the website on a daily basis, in total thus far in FY 2007 approximately 500 inquiries, the

National NAGPRA program receives requests for assistance from college students and faculty conducting research projects which rely on Program information. Aides to research by institution are:

Arizona State University, College of Law
Idaho State University
University of Arizona, Rogers College of Law
University of Florida, College of Law

This year the program produced two brochures, one with general information on National NAGPRA, and the other on NAGPRA Grants. The grants brochure also provides information on other funding sources for Native American cultural projects. The brochures were provided via the web and email to tribes and museums in October and November 2006. There was a targeted mailing to tribes that had applied for but never received a NAGPRA grant, about 100, and a mailing to museums with a high percentage of culturally unidentifiable human remains, about 15-20. A copy of the brochure was sent to the Bolivian delegation to the Organization of American States (OAS) by the State Department and a portion of the general brochure was translated into Spanish and distributed at the February meeting of OAS in Washington, DC. Brochures have been distributed at meetings of the United South and Eastern Tribes and the National Council of State Historic Preservation Officers, both in Washington, DC. To date, 1500 brochures have been distributed and a second printing has been ordered.

Website:

The National NAGPRA website provides an opportunity to supply training and technical guidance on a range of NAGPRA matters. Additional items are under development, including a self tested learning module on the notice process.

Illegal Trafficking:

NAGPRA provides criminal penalties for violations of 18 U.S.C. 1170, Illegal Trafficking in Native American Human Remains and Cultural Items. The cases are investigated by Federal law enforcement agents and handled by United States Attorneys throughout the country. National NAGPRA offers training for attorneys and agents and provides technical assistance upon request. For more information on cultural property law and enforcement, contact David Tarler (David_Tarler@nps.gov).

Program Operations

Operational Management:

The National NAGPRA program employed a software contractor to develop a stable format. The contract is nearing completion.

Externs, Interns:

The National NAGPRA program forms partnerships with the National Center for Preservation Education (NCPE), law schools and universities, and the Cultural Resources Diversity Program within NPS, through the Student Conservation Association (SCA), to offer internships in government service and externships from law schools where students earn course credit.

Intern/extern projects provide numerous benefits to the National NAGPRA program and the communities that it serves.

The externs/interns and the projects in progress thus far in FY 2007 are:

- Selina Cooper, NCPE intern, is reviewing NAGPRA grants to select representative examples that can be posted on the website as models for future proposals, under the direction of Michelle J. Wilkinson; and is compiling “Good News Stories” of NAGPRA repatriations for posting on the NAGPRA website, under the director of Jaime Lavallee, January to May 2007.
- Andrew Kline, NCPE intern, “Who Are the CUI?” research project that will compile descriptive statistics on the CUI database population, under the direction of Sherry Hutt, January to May 2007.
- James DeBergh, extern, American University, Washington College of Law, state burial law project, under the direction of David Tarler, ongoing.

National NAGPRA Staff:

The National NAGPRA staff roster as of March 31, 2007 is:

Program Manager: Sherry Hutt
Program Secretary: Robin Coates
Program Officers: Tim McKeown
David Tarler
Michelle J. Wilkinson

On January 3, 2007, Cynthia Murdock retired from the National Park Service after 23 years of federal service.

The program is assisted by contractors:

Jaime Lavallee
Lesa Hagel

The Civil penalty investigator is Bob Palmer, in cooperation with NPS Law Enforcement, Resource Protection and Effigy Mounds National Park. The National Park Service is accommodating the National NAGPRA Program on an ongoing basis with law enforcement agents across the country to assist Bob Palmer in collecting information on allegations of failure to comply, as needed.

In addition, the National NAGPRA program receives support from other NPS employees:

Bob Ruff, grants administration
Kathleen Murphy, IT support
Jane Fu, IT support
Randall Bohnert, finance
Joe Wallis, finance, long range planning