

National NAGPRA FY08 Final Report

For the period October 1, 2007 – September 30, 2008

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NAGPRA Introduction

*This report covers activities of the National NAGPRA Program Fiscal Year 2008 (October 1, 2007 – September 30, 2008). All information and statistics reported are current as of close of business, September 30, 2008. Regular reports on National NAGPRA's work are available on the program's Website:
<http://www.nps.gov/history/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, collecting the inventories and summaries,
 - 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 NAGPRA Program serves constituents of the law which are all Federal agencies with land and collections responsibilities, museums that receive federal funds, Native Americans, tribes and Native Hawaiian organizations, and the public.

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.

Summary of the National NAGPRA Program FY 2008

The following are highlights of the year and program statistics in brief.

Collections:

- **Summaries received:** 1,065 total
 - 459 reporting no collection requiring a summary
- **Inventories received:** 1,257 total
 - 279 reporting no collection requiring an inventory
- **Notices of Inventory Completion:**
 - 131 published in FY 2008
 - 1147 published in total
 - account for 36,531 human remains and 771,014 associated funerary objects
- **Notices of Intent to Repatriate**
 - 49 published in FY 2008
 - 425 published in total
 - account for 137,451 unassociated funerary objects, 3,771 sacred objects, 381 objects of cultural patrimony, and 806 objects that are sacred and cultural patrimony, also 215 undesignated cultural items.
- **Notice processing:**
 - 146 received, 180 published in FY2008
 - aging drafts (pre-2003) reduced by 71, 18 published, 34 remaining
- **Culturally Unidentifiable Native American Human Remains:**
 - Found in 684 inventories, from 623 institutions
 - 118,400 minimum number of individuals
 - 2,321 culturally affiliated to date
 - 2,383 transferred as CUI in dispositions
 - In FY2008: 8 Review Committee recommendations for 45 MNI
- **Grants:**
 - Requests in 2008-\$2.9M
 - Awarded in 2008-\$1.6M
 - 23 consultation/document grants awarded
 - 8 repatriation grants awarded
- **Civil Penalties:**
 - 39 investigations of allegations as to 7 museums
 - 8 failures to comply as to 3 museums and 31 unsubstantiated
 - 70 counts investigated total, against 18 museums
 - 3 penalty investigations in 2008, payment pending
 - Penalty amount collected \$6,250 total
- **Review Committee**
 - October 15-16, 2007, Phoenix, AZ.
 - Jan. 8, 2008 teleconference
 - May 15-16, 2008, De Pere, WI.
 - 13 requests for disposition of 752 culturally unidentifiable, individuals/no associated funerary objects, 8 recommendations
 - no disputes heard in FY 2008

Excavation and Discoveries:

- 73 Notices of Intended Disposition, 315MNI, 3,741 AFO, 25UFO, 4CP

NAGPRA Regulations 43 CFR 10:

- 10.11 Culturally Unidentifiable - proposed rule published October 16, 2007
- 10.13 Future Applicability – final rule effective April 20, 2007
- 10.7 Unclaimed – Under development

Technical Assistance and Reports:

- Training given to 1188 individuals in 27 training events
- 6 responses to Congressional requests and 2000 responses to requests for information

Collections

The sections of NAGPRA relating to collections describe the inventories, summaries, grants, notices, 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 September 30, 2008.

The National NAGPRA Program continued an effort during this reporting period to work with museums and Federal agencies that submitted draft documents from 1995 to 2003, but which had not given their approval to the National NAGPRA Program to publish a notice, in order to bring those items to resolution. The preferable resolution was the publication of a notice and 18 aging submissions resulted in published notices in this reporting period. Of the remaining items, 53 were abandoned by the originator, in favor of further consultation to inform a new submission. At the end of this period 34 aging drafts remain, but these appear to be on the cusp of publication. The National NAGPRA Program has never and does not withdraw published notices.

To be in compliance with the law, museums and Federal agencies are required, in consultation with tribes, to publish notices, which reflect the cultural affiliation determinations in the inventories. Submission of a document to the National NAGPRA Program, without authorization from the originator for publication, does not fulfill compliance obligations under the law. When a Federal agency or museum makes a decision to abandon an aging draft and return to consultation with tribes, the National NAGPRA Program issues a letter confirming their decision and sends copies to those tribes listed in the draft as a consulting party. The National NAGPRA Program has not tracked the number of withdrawn drafts that return as published notices. The key to compliance is the publication of a Notice of Inventory Completion for all of the human remains listed in the inventory as culturally affiliated to a federally recognized tribe.

For more information on notices, contact Jaime Lavalley, notice backlog reduction project, National NAGPRA Program, (Jaime_Lavalley@contractor.nps.gov).

Summaries and Notices of Intent to Repatriate:

Summaries have been received from 1065 institutions. Additionally, 459 statements of “no summary required” have been received.

There have been 425 Notices of Intent to Repatriate published, an increase of 49 notices in FY 2008. These 425 notices account for 137,451 funerary objects, 3,771 sacred objects, 381 objects of cultural patrimony, 806 sacred objects that are also cultural patrimony, and 215 undesignated cultural items. The 49 new notices represent 7,962 unassociated funerary objects, 173 sacred objects, 78 objects of cultural patrimony, 33 sacred objects that are also objects of cultural patrimony, and no undesignated cultural items.

Inventories and Notices of Inventory Completion:

Inventories have been received from 1257 institutions. Of these, 556 contain decisions as to cultural affiliation of Native American human remains, and 684 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.

The decisions reflected in the inventories are those of the museum or Federal agency and not the National NAGPRA Program. The Program facilitates the publication of notices, which contain the decisions of the originator and which serve to establish rights of lineal descendants and tribes to request human remains and their funerary objects. The National NAGPRA Program does not audit the collections of the reporting museum or Federal agency unit. Inventories are self-reports of the collection. The National NAGPRA Program does receive amended inventories when museums and Federal agencies find new items in their collections, change prior determinations after further

consultation with tribes, or under the continuing duty to report collections as specified in the regulation which indicates future applicability of the law, 43 C.F.R. 10.13, receives new collections, have collections affiliated with newly recognized tribes, or the museum receives initial Federal funding.

There have been 1,147 Notices of Inventory Completion published accounting for 36,531 human remains and 771,014 associated funerary objects. There were 131 notices published in FY 2008, accounting for 3,825 human remains and 85,950 associated funerary objects.

The table below reflects the status of submissions during this period:

Table 1. Document Processing FY 2008

Year 2008	Beginning	Received	Pulled by Originator	Published	In Processing end of FY 2008
NIC	184	102	53	131	102
NIR	25	44	2	49	18
Total:	209	146	55	180	120

Table 2. Table of Notices Published FY1992 through FY2008.

Year	Published	MNI	AFO	UFO	SO	OC P	SO & OCP	UCI	Rec'v
1992	2	15	12,225	0	0	0	0		3
1993	14	40	60,071	0	1	0	7		14
1994	13	1,851	275	31,681	1	1	1		19
1995	36	806	18,710	6	243	3	4		37
1996	59	2,290	116,002	32	91	17	10		198
1997	122	1,197	49,392	5,061	116	67	92		187
1998	82	5,278	31,082	2,484	14	62	165		202
1999	108	6,435	30,907	680	106	70	78		156
2000	110	2,026	21,983	3,245	552	11	28		186
2001	199	2,959	167,252	25,583	6	25	5		130
2002	143	3,157	25,301	5,903	110	3	121		109
2003	85	666	31,392	1,195	101	4	135		83
2004	103	1,528	13,924	14,294	37	9	13		63
2005	108	2,337	54,918	1,986	2,183	3	5		77
2006	100	1,373	36,011	10,303	9	6	45		96
2007	108	748	15,619	27,036	28	22	64	215	135
2008	180	3,825	85,950	7,962	173	78	33		146
Totals	1,572	36,531	771,014	137,451	3,771	381	806	215	1841

Culturally Unidentifiable Human Remains:

As part of providing administrative support for the Review Committee, the National NAGPRA Program has compiled the Review Committee’s inventory of culturally unidentifiable (CUI) human remains, as required by 25 U.S.C. 3006 (c)(5). The Program has entered 684 inventories from 623 institutions containing determinations of culturally unidentifiable Native American human remains accounting for 118,400 individuals for whom cultural affiliation has not yet been determined and 828,641 funerary objects associated with those individuals. The number of CUI subsequently culturally affiliated to date is 2,321 and the number of CUI transferred by a disposition to a tribe is one individual thus far this year, for a total of 2,384.

Pending regulations 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. There have been 40 disposition authorizations granted by the Secretary out of 55 requests, accounting for 752 individuals. In this reporting period there were 13 requests for disposition recommendations, of which 8 were submitted by the Review Committee to the Secretary, accounting for 45 individuals. The Review Committee has established guidelines and a matrix for bringing a request for disposition recommendation, which can be found at www.nps.gov/history/NAGPRA/RevCom/.

Table 3. Dispositions of Culturally Unidentifiable Native American Human Remains

Request #	35th Review Committee Meeting:Oct. 2007	MNI/AFO
44.	Binghamton University, NY-approve	2/0
45.	Hastings Museum of Natural History, NE	11/0
46.	Michigan Technological University-approve	1/0 notice pub
47.	U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, IA, approve	6/0
48.	U.S. Department of the Interior, National Park Service, Gulf Islands National Seashore, FL	13/0
	36 th Review Committee meeting no requests	
	37th Review Committee Meeting:May 2008	
40b	Colorado Historical Society, approve	Protocol
49.	Hastings Museum of Natural History, NE approved	5/0 notice published
50.	Kingman Museum, approved	4/0 notice pub
51.	Mackinac State Historic Parks, approved	11/0
52.	Muskegon County Museum, approved	8/0
53.	Putnam County Commission, WV	664/0
54.	Tennessee Division of Archaeology	20/0
55.	U.S. Department of Agriculture, Forest Service, Daniel Boone National Forest approved disposition	8/0

Grants:

Congress appropriated \$ 2.4 million for grants in FY 2008. The grant application deadline for consultation/documentation grants was March 3, 2008. Repatriation grants are received on a rolling basis. A total of 41 grants applications were received: 33 consultation/documentation proposals and 8 repatriation funding requests. Of these, 29 were from Indian tribes and Native Hawaiian organizations and 12 were from museums. The total amount of grant requests in FY 2008 was \$2,253,214. Grant applications for consultation/documentation projects are reviewed by an outside panel, which met on May 5-6, 2008. Each applicant received 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.

FY2007 grantees are midway through their grant cycle and interim reports will be due at the end of April. Based on their grant applications, over 700 human remains will be documented for repatriation as well as thousands of sacred objects and objects of cultural patrimony. In addition, several coalitions have planned education and outreach events. The 36 grantees represent over 221 partnerships and consultations between tribes and museums across the United States.

Sangita Chari joined the NAGPRA staff as Grants Coordinator in January 2008. In addition, Bob Ruff, NAGPRA Grants Administrator, was replaced by Vedet Coleman in May. Sangita and Vedet worked together to conduct a complete audit of all open grants since 2003 and worked with all non-compliant grantees to bring their programs into compliance. Most grants that had gone out of compliance suffered from high turnover at the tribe or museum program and administration level. It is especially important to work with these grantees to conform to reporting requirements so that the museum or tribe is not penalized by the actions of their predecessors. A combination of stricter disbursement rules and stronger communication between the grant administrator and NAGPRA staff through a shared database, and repeated contact with grantees, has resulted in much higher rates of compliance. All 2003 grantees have closed out their grants, and most grants disbursed from 2004-2006 have been brought into compliance. In addition, all 2007 grantees have submitted their interim reports.

In an attempt to improve reporting and develop stronger evaluation measures for the program, the interim and final report forms were revised. The final report forms now include a section requesting quantifiable information regarding the results of consultation and repatriation efforts, partnerships and collaborations, and education and training efforts. Grantees will be required to submit interim reports every six months rather than once per grant. This will allow National NAGPRA Program staff to better monitor grant activities and quickly identify potential problems.

The actual number of grant applications was down this year. The National NAGPRA Program continues to look for ways to attract applicants and help them to submit

successful proposals. This began in this period with a complete revision of the grant application and guidelines. Several questions were added to the application in an attempt to help applicants better describe their project and how it relates to the mission and goals of NAGPRA. A full outreach plan is being developed that includes a plan for identifying tribes and museums that are poised to benefit from a NAGPRA grant; and training and technical assistance for those needing further guidance on the NAGPRA process before they apply. An optional survey added to the 2009 grant application requests feedback regarding applicants' experience applying for grants and receiving training. The survey will be used to inform future grants training.

Two trainings were conducted this year by the National NAGPRA Program specifically on grants. A one-half day training was conducted at the American Association of Museums annual conference in May. A second presentation on the grants program was given in September at the NATHPO conference. For more information on grants, contact Sangita Chari, grants coordinator, National NAGPRA, (Sangita_Chari@nps.gov).

Table 4. Grants Awarded in FY 2008

Arkansas State University, AR	\$ 31,381
Bear River Band/ Rohnersville Rancheria, CA	\$ 74,993
Caddo Nation, OK	\$ 74,656
Cape Fox Corporation, AK	\$ 42,800
Central Council, Tlingit and Haida, AK	\$ 72,939
Denver Museum of Nature and Science, CO	\$ 74,974
Field Museum of Natural History, IL	\$ 34,430
Greenville Rancheria, CA	\$ 73,000
Huna Totem Corporation, AK	\$ 74,922
Hydaburg Cooperative Association, AK	\$ 74,978
Kashia Band of Pomo of Stewarts Point Rancheria (CA)	\$ 73,625
Maryland Historical Trust, MD	\$ 6,960
Pawnee Nation, OK	\$ 75,000
Public Museum of West Michigan, MI	\$ 74,787
Robinson Rancheria, CA	\$ 55,936
Seminole Nation of Oklahoma, OK	\$ 71,657
Sealaska Corporation, AK	\$ 67,121
Smith River Rancheria, CA	\$ 75,000
State University of NY Research Foundation, NY	\$ 75,000
University of California, CA	\$ 75,000
University of Colorado, CO	\$ 75,000
Yakutat Tlingit Tribe, AK	\$ 55,336
Yurok Tribe, CA	\$ 75,000
Total Consultation/Documentation Grants	\$1,484,495

Repatriation Grants	
Cape Fox Corporation, AK	\$ 14,864
Central Council of Tlingit and Haida, AK	\$ 12,750
Comanche Nation, OK	\$ 10,189
Field Museum of Natural History, IL	\$ 13,636
Little Traverse Bay Band of Odawa Indians, MI	\$ 4,938
Peabody Museum, MA	\$ 14,844
The Regents of the University of Colorado, CO	\$ 14,246
Suquamish Indian Tribe of the Port Madison Reservation, WA	\$ 9,850
Total Repatriation Grants	\$ 95,317
Total Awarded in FY2008	\$1,579,812

Table 5. Grants Requested and Awarded FY 1994 – FY 2008

TRIBES				MUSEUMS			
Year	Number of Applications Received	Amount Requested \$	Amount Rewarded \$	Year	Number of Applications Received	Amount Requested \$	Amount Rewarded \$
1994	106	6,091,594	1,023,200	1994	113	6,643,200	1,116,800
1995	63	3,842,289	1,387,925	1995	56	2,408,165	854,075
1996	54	3,490,414	1,150,985	1996	33	1,530,039	946,905
1997	54	3,148,112	1,425,600	1997	20	1,055,915	550,650
1998	61	3,547,254	1,557,165	1998	23	1,025,061	775,720
1999	57	3,296,264	1,648,220	1999	22	2,251,415	687,780
2000	84	4,814,432	1,629,170	2000	27	1,276,774	622,830
2001	53	3,048,377	1,802,180	2001	20	1,042,261	635,820
2002	57	3,460,873	1,708,268	2002	16	961,775	537,552
2003	60	3,708,782	1,703,194	2003	12	668,730	497,806
2004	41	2,369,685	1,535,659	2004	17	1,037,649	646,341
2005	41	2,344,891	918,560	2005	17	1,060,299	471,669
2006	52	2,999,228	1,500,965	2006	17	825,172	393,893
2007	36	2,100,960	1,247,243	2007	16	815,239	548,825
2008	29	1,691,220	1,089,554	2008	12	559,317	490,258

Civil Penalties:

The civil penalties rule (43 C.F.R. 10.12) was published as an interim rule in 1997 and as a final rule in 2003. In May 2005, through a Secretarial Order, the Secretary of the Interior gave the National NAGPRA Program the responsibility of providing staff support to the Secretary's designee on civil penalties, the Assistant Secretary for Fish and Wildlife and Parks. Since the beginning of FY 2006, the NAGPRA civil penalty coordinator, who serves in the National NAGPRA Program, and a National Park Service law enforcement officer have been working as a team to support the Assistant Secretary. For more information on civil penalties, contact David Tarler, enforcement coordinator, National NAGPRA (David_Tarler@nps.gov).

The civil penalties investigative function is housed within the National Park Service’s Law Enforcement, Security and Emergency Services (LESES) branch. Civil penalty investigations are carried out by NPS law enforcement officer Bob Palmer, who currently is based at Effigy Mounds National Monument. As needed, NPS also is accommodating the National NAGPRA Program on an ongoing basis with law enforcement agents and officers across the country to assist Bob Palmer in collecting information on allegations of failure to comply.

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 within 6 months after completion of the inventory.
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 that items have been treated with pesticides.

Allegations of Failure to Comply: A Snapshot

Through FY 2008, 130 allegations of failure to comply with the requirements of NAGPRA have been made against 42 museums. The number of counts alleged, by year, is as follows:

Table 6: Total Number of Counts Alleged (by Year)

Year	Total Counts Alleged
1996	1
1997	7
1998	10
1999	2
2000	4
2001	4
2002	25
2003	11
2004	16
2005	10
2006	3
2007	14
2008	23

FY 2008: Investigations and Findings

During FY 2008, 39 allegations of failure to comply, made against 7 museums, were investigated. The investigations yielded determinations of failure to comply on 8 counts, involving 3 museums, and determinations that the allegation was unsubstantiated on 31 counts. Of the unsubstantiated counts, 2 counts, alleged against 1 museum, were found to be unsubstantiated because the deadline for compliance had not yet passed.

New Allegations Received in FY 2008

During FY 2008, 23 new counts, made against 5 museums, were received. By the end of the fiscal year, 19 of these new counts, involving 3 museums, had been investigated and findings made. The results of the investigation of these new allegations are presented in the tables that follow.

Table 7: Disposition of Civil Penalty Allegations FY 2008 and Total

FY 2008	New Counts Received	Number of Counts Found to Be Substantiated	Number of Counts Found to Be Unsubstantiated	Number of Counts Remaining to Be Investigated
	23	3	16	4
Running Total Number of Counts Beginning of FY08	Counts Added In Period (FY08)	Running Total of Substantiated Counts	Running Total of Unsubstantiated Counts	Running Total of Counts Remaining to be Investigated
107	23	17	53	60

Table 8: Disposition of Civil Penalty Allegations by Museum

FY 2008	# Museums Represented in Allegations	# Museums Investigated	# Museums Without Any Substantiated Counts	# Museums With One or More Counts Substantiated	# Museums Remaining to Be Investigated
	5	3	1	2	2
1996-2008	Total Museums Represented In Allegations	Total Museums Investigated	Total Museums With Substantiated Counts	Total Museums with Counts Not Substantiated	Total Museums To be Investigated
	42*	18*	11	7	26*

* The total number of museums that have had allegations made against them is 42, and of this total 18 museums have been investigated. The number of museums yet to be investigated is 26. Of this remaining total, 2 museums have previously been investigated but have had other allegations made against them that are still pending investigation. Consequently, if the total number of museums investigated is added to the total number of museums yet to be investigated, the total equals 44 museums because those 2 museums would be counted twice.

FY 2006-2008: Investigations and Findings

To date, the investigation of 70 allegations of failure to comply, made against 18 museums, has yielded a determination of failure to comply on 17 counts, involving 11 museums, and a determination that the allegation was unsubstantiated on 53 counts. Of the unsubstantiated counts, 6 counts, alleged against 3 museums, were found to be unsubstantiated because the deadline for compliance had not yet passed. The 17 substantiated counts of failure to comply were comprised of 1 count of sale or transfer of NAGPRA cultural items contrary to NAGPRA (43 C.F.R. 10.12 (b)(1)(i)); 1 count of failure to complete a summary (43 C.F.R. 10.12 (b)(1)(ii)); 6 counts of failure to complete an inventory (43 C.F.R. 10.12 (b)(1)(iii)); 6 counts of refusal to repatriate (43 C.F.R. 10.12 (b)(1)(v)); and 3 counts of failure to consult with tribes (43 C.F.R. 10.12 (b)(1)(vii)). The trends in allegations made and violations substantiated are reflected in the following charts.

Table 9a: Allegations made by Year and Category

FY	1	2	3	4	5	6	7	8
1996					1			
1997			3				4	
1998	1		7				2	
1999	1	1						
2000	1		1		1		1	
2001		2	1	1				
2002	3	4	3	3	6	3	3	
2003		1	1	1	6		2	
2004	1		6		5		4	
2005	3		2		1		4	
2006			3					
2007	2		1	2	3	1	5	
2008	7	2	4	2	3	1	3	1
Total	19	10	32	9	26	5	28	1

Table 9b: Violation Categories Substantiated by Category for FY 2008 and Total

Violation Type	FY 2008	Total
1 Transfer	0	1
2 No Summary	1	1
3 No Inventory	0	6
4 Not Notify	0	0
5 Not Repatriate	6	6
6 No Notice	0	0
7 Not Consult	1	3
8 Pesticides	0	0

Penalty Assessments

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. To date, 4 notices of penalty assessment, involving 4 museums, have been issued by the Assistant Secretary. In one case, the Assistant Secretary determined, following informal discussion with the museum, that the institution of a civil penalty was not an appropriate remedy (43 C.F.R. 10.12 (d)). Altogether, the 4 notices assessed penalties in the amount of \$12,670. As of the end of FY 2008, \$6,250 in penalties has been paid by 2 of the museums. The 45-day notice period has not yet run for payment of the \$6,420 assessed against the other 2 museums.

Administrative Hearings

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 3 of the 4 museums to which notices of penalty assessment were issued have taken action to come into compliance with the law. A museum may request an informal discussion, which may continue even after a hearing has been requested in the 45 days.

Other Activity in FY 2008

In addition to completing investigation of allegations, a concurrent priority of the civil enforcement team has been the establishment of file controls, the creation of templates for several different types of letters, and the prioritization of backlogged allegations. Regarding template letters, the team has created letters for parties wishing to make an allegation, notice letters to be issued by the Assistant Secretary, and letters to aggrieved parties to help determine both economic and noneconomic damages suffered as a result of a failure to comply. The template letters are available through the civil penalty section of the National NAGPRA website, and can be found at www.nps.gov/history/nagpra/civil_penalties.

Review Committee:

The members for FY 2008 of the Review Committee are: Ms. Rosita Worl (chair), Mr. Alan Goodman, Mr. Willie Jones, Mr. Colin Kippen, Mr. Dan Monroe, Ms. Donna Augustine, and Mr. Vincas P. Steponaitis. The terms of Mr. Monroe, Mr. Steponaitis and Mr. Jones expired in May, 2008. Nominations for the three positions were solicited from traditional religious leaders, Indian tribes, Native Hawaiian organizations, and national scientific and museum organizations and were submitted to the Secretary for appointment. The 2006 Review Committee charter allowed the Committee members to continue to serve until replacements were chosen.

Dr. Timothy McKeown served as the Review Committee's Designated Federal Official until June 30. The DFO complies with all filings required by the Federal Advisory Committee Act (FACA). For more information on the Review Committee contact, David Tarler, Designated Federal Official (David_Tarler@nps.gov).

On October 15-16 2007, the Review Committee met in Phoenix, Arizona. On the agenda were five requests for recommendations regarding the disposition of culturally unidentifiable human remains. The Review Committee made recommendations regarding disposition of culturally unidentifiable Native American human remains and associated funerary objects under the control of Effigy Mounds National Monument, Michigan Technological University, and Binghamton University. The Review Committee also recommended revision of its review and findings procedures to specifically address recommendations for disposition of culturally unidentifiable human remains. The Review Committee deferred to a future meeting recommendations for regulations on the disposition of unclaimed cultural items recovered from Federal or tribal lands after 1990.

On January 8, 2008, the Review Committee held a telephonic meeting with the agenda devoted to making comments on the pending proposed rule 43 CFR 10.11, disposition of culturally unidentifiable Native American human remains. The Review Committee requested that the Department of the Interior extend the current comment period, reconsider the Review Committee's 2000 recommendations on the disposition of culturally unidentifiable human remains, revise the proposed rule based on current comments and repropose for additional comment, and seek special appropriations for implementation of the regulations when finalized.

On May 15-16, 2008, the Review Committee met in DePere, Wisconsin. On the agenda were ten requests for recommendations regarding the disposition of culturally unidentifiable human remains. The Review Committee made recommendations regarding disposition of culturally unidentifiable Native American human remains and associated funerary objects under the control of the Kingman Museum, Mackinac State Historic Park, Muskegon County Museum, Hastings Museum, Daniel Boone National Forest, and Colorado Historical Society. The Review Committee approved its Report to Congress and asked that it be distributed. The Review Committee requested an executive summary of the comments received in consultation on regulation 43 CFR 10.7, so that they may focus their review at a future meeting; a matrix be supplied to those submitting disposition requests on culturally unidentifiable Native American human remains, to assist in the organization of requests; and a report on best practices in consultation under NAGPRA, to be presented as agenda items at a future meeting.

Although the Review Committee did not hear disputes during FY2008, their guidance on prior matters continues to be a factor in discussions and consultation meetings, whenever the potential of a dispute arises. A chart of prior recommendations made in disputes brought to the Review Committee is attached to this report. A further report listing issues presented and resolution decisions of the Review Committee is in development.

Excavations and Discoveries

Notices of Intended Disposition

73 Notices of Intended Disposition have been reported by Federal agencies to date, 7 in FY 08, accounting for 315 individuals, 3,741 associated funerary objects, 25 unassociated funerary objects, and 4 objects of cultural patrimony. A listing of these notices is available at: www.cr.nps.gov/nagpra/notices/NID_Tble_Current.pdf.

Regulations

Three reserved sections of the NAGPRA regulations (43 CFR 10) were pending in FY 2008:

- 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 held on October 14, and with the Review Committee on October 16, 2007. The Review Committee deferred to its spring 2009 meeting any formal recommendations on this section.
- 43 CFR 10.11, Disposition of culturally unidentifiable human remains, was published as a proposed rule on October 16, 2007, with a comment period until January 14, 2008. A total of over 950 individual comments contained in 140 unique submissions were received from over 50 Indian tribes, 18 Native American organizations, 37 museums, 14 museum and scientific organizations, 3 federal agencies, the Review Committee, and 25 members of the public. The comments and future actions are now being reviewed.
- 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.

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 given 27 training programs and other presentations to 1188 participants, in addition to supplying materials for training given by others. For more information on training, contact David Tarler (David_Tarler@nps.gov).

In FY 2008, National NAGPRA provided training and program presentations as summarized below, with the number of attendees:

DATE	LOCATION	SPONSOR	# OF TRAINEES
Oct. 8	CA	National Association of Tribal Historic Preservation Officers (NATHPO), “NAGPRA Grants for Tribes”	149
Oct. 11	CA	Western Museums Association, “NAGPRA Grants for Museums”	40
Oct. 13	AZ	National NAGPRA Program Training	55
Nov. 16	IN	Indiana University-Purdue University, “NAGPRA Collections Issues”	43
Dec. 4-5	WA	“Native American Cultural Property Law” (open to tribes, museums, Federal agencies, and the public)	24
Jan. 31	DC	NPS-American University Washington College of Law, “The IRS and Cultural Property”	35
Feb. 7	OK	Cheyenne & Arapaho Tribe of Oklahoma, “NAGPRA Training”	15
Feb. 11	AZ	University of Arizona, NAGPRA Telecast	16
Feb. 12	DC	NPS-Federal Preservation Institute, “How NAGPRA Works”	40
Feb. 19	DC	George Washington University, Museum Studies class, “The NAGPRA Process”	8
Feb. 20	KS	Wyandotte County Historical Museum, “NAGPRA Issues for Tribes & Museums”	50
Feb. 25	CA	Getty Institute, “Building an International Cultural Property Law Bibliography to Assist in Provenance Research”	15
March 4	NY	Cardozo School of Law, Public Symposium “Heritage Resources in War & Peace”	82
March 6-7	CA	California Tribes, “Using NAGPRA”	17

March 18	DC	NPS and USDA-FS, Resource Protection “Using the Civil ARPA Process”	23
March 27	VA	Virginia State Parks, “NAGPRA Compliance”	17
March 27	DC	NPS and USDA-FS, “Indian Law and Cultural Property”	35
April 4	AZ	American Bar Association-Issues in Museum Law, “NAGPRA Issues for Museums”	120
April 15	DC	Georgetown University, “NAGPRA Training”	29
April 22	ID	Shoshone-Bannock Tribal Sovereignty Conference. “Treaty Rights Seminar”	154
May 1	CO	American Association of Museums, “NAGPRA Basics for Museums”	22
May 1	WA	Quinalt Nations, FS and NPS, “Indian Law”	50
May 14	WI	National NAGPRA Program Training	60
Sept. 18	DC	NPS-American University Washington College of Law, “Free Exercise, Historic Religious Properties and Sacred Sites: The Effect of RFRA and RLUIPA”	26
Sept. 24	MI	Talking Circle, Michigan Museum Association	23
Sept. 25	MI	Michigan Anishinaabek Cultural Preservation and Repatriation Alliance, Quarterly Meeting	15
Sept. 26	DC	National Association of Tribal Historic Preservation Officers, “NAGPRA Grants to Tribes”	25
Total			1188
March 17, 24, 31 Broadcast		“Overview of Cultural Resource Protection” (Nine hour series, partnership between NPS, USDAFS, BLM, DOJ, Loras College, Effigy Mounds NM, and Joshua Tree NP)	*

* The total number of participants does not include those accessing the televised training.

Outreach:

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

News outlets and media enterprises:

- Associated Press
- Indian County Today
- Charleston Gazette
- Columbus Dispatch
- Salem Oregonian
- Native America Calling (radio live broadcast)

Legislative and public information:

- Library of Congress
- Senator Hastings
- Senator Murkowski
- Senator Dorgan
- National Association of Tribal Historic Preservation Officers (NATHPO)
(technical support to Makah Tribe/NATHPO study of Federal agency compliance with NAGPRA and participated at NATHPO conference)

In addition to responding to telephone inquiries and email correspondence, including mail sent to the website on a daily basis, in total for FY 2008 approximately 2000 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:

- University of Arizona, Rogers College of Law
- Harvard University
- American University College of Law

Website:

The National NAGPRA website provides an opportunity to supply training and technical guidance on a range of NAGPRA matters. The web pages and training materials began a wholesale review in FY 2008, which is continuing.

For information on the website contact: Mariah Soriano (Mariah_Soriano@nps.gov) or Sangita Chari (Sangita_Chari@nps.gov).

Additional items are under development, including a self tested learning module on the notice process. For information on this item contact C. Timothy McKeown (Tim_McKeown@nps.gov)

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 in FY 2007-2008 to develop a stable format. That contract is complete. A second contract is underway to develop specific programmed report functions for each of the Program tasks. The competitive bid process began in May and the successful bidder, NuAxis, met with Program staff in August to assess needs. By the end of FY 2008, NuAxis had developed, and put into operation, programs to support reporting of notice processing. At the end of this period, NuAxis had begun programming necessary to support entry of summary and inventory information and report capabilities to draw data for future Program reports. During FY2009, NuAxis will create reporting capabilities for grants, civil penalties and the culturally unidentifiable Native American human remains databases, among other items.

For more information on technical reporting capacity of the National NAGPRA Program, contact Mariah Soriano (Mariah_Soriano@nps.gov).

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 in FY 2008 were:

Project: A Survey of State Laws Affecting Burials

Trevor Gross, third year law student, American University Washington College of Law,
Jillianne Arguello, third year law student, American University Washington College of Law,

Connie Kim, second year law student, American University Washington College of Law,
Earnest Edwards, second year law student, American University Washington College of Law,

Lydia Grunstra, second year law student, American University Washington College of Law

Project: NAGPRA and NPS Archeology Program Summer Intern

Tanner Clark, graduate student, Harvard University

Project: NAGPRA Video

Margaret Spivey, graduating senior, Anthropology Department, Harvard University

For more information on the State Burial Laws Project and the NAGPRA Video, contact David Tarler (David_Tarler@nps.gov).

National NAGPRA Staff:

The National NAGPRA staff roster as of September 30, 2008 is:

Program Manager: Sherry Hutt
Program Secretary: Robin Coates
Program Officers: Tim McKeown
David Tarler
Sangita Chari
Mariah Soriano

In October 2007, Michelle Wilkinson left the National NAGPRA Program to become an Assistant Director of the Reginald Lewis Museum of African American History in Baltimore. Sangita Chari assumed the position of Grants Coordinator on January 7, 2008. Sangita was previously at the Building Museum. The Web and Database Coordinator position was filled on August 17, 2008, by Mariah Soriano. Mariah was previously at the Southeast Region Office of the National Park Service.

The program is assisted by contractors:

Jaime Lavallee
Lesla Hagel
Patricia Zell
NuAxis

The civil penalty investigator is Bob Palmer, in cooperation with NPS Law Enforcement, Resource and Visitor 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 and Vedet Coleman grants administration
Kathleen Murphy, IT support
Jane Fu, IT support
Randall Bohnert, finance
Joe Wallis, finance, long range planning

FY2008 Budget

The National NAGPRA Program receives appropriations from Congress for grants and grants administration. Funding is also provided through the National Park Service. The figures below are in thousands and are approximate pending final invoices.

Grants Appropriations:

Congressional appropriation	\$2,400,000
Used for National NAGPRA Program	500,000

Available for Grants FY2008	<u>1,900,000</u>
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Grants Awarded FY 2008	<u>1,600,000</u>
Plus One-time cooperative agreements	300,000

The grants awarded of \$1,600,000, was based upon recommendations for grant funding of the competitive project grants, by the Grants Panel, and full funding of the repatriation grants by the National NAGPRA Program, which are not competitive and are based upon requests. Since this is an unusual year, in which the grant funding requests were less than the amount available, and based upon the strong recommendation of the NAGPRA Grants Panel that the likely remaining funds be utilized on a one-time basis to build capacity in tribes and museums to submit fundable grant proposals and increase knowledge of the NAGPRA process, the Program funded the following:

A cooperative agreement with National Preservation Institute (NPI) to provide

1. fee waiver for training to tribes from the NPI catalogue,
2. to develop new training given to tribes, museums and government agencies, and
3. a NAGPRA Video for outreach training.

NPI was chosen as a cooperative agreement partner due to the long established, varied catalog of programs in cultural resource management, often attended by tribes, museum and Federal agency staffs. NPI has experience in marketing courses to NAGPRA constituents, developing new training for venues across the country, clear and accurate record keeping for finances and prompt response to requests for funding and materials. The total of this cooperative agreement is \$200,000.

Funds are also attributed to IT programming, including programming searchable data for a retrospective report on the grants program.

NAGPRA Video	\$100,000.
NAGPRA Training	50,000.
NAGPRA New Training development	50,000.
IT Program Support Programming	\$100,000.

Total	<u>\$300,000</u>
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National NAGPRA Program Funding:

National NAGPRA Program support	500,000
Grants administration appropriation	191,000
Operations funding from NPS	249,000
Total of funding sources:	<u>\$ 940,000</u>

Operational Expenses:

Personnel Compensation:	\$ 555
Contractor:	115
Publication (Fed. Reg.)	90
Travel NAGPRA staff, Review Com. (training & Review Committee meetings)	62
Equipment, telephone, fax, copier, mail	2
Supplies	13
Interns	5
Civil penalties Law enforcement	15
Review Committee meeting events	12
Review Committee transcripts	32
Review Committee fees	32
IT	5
Total Expense	<u>\$ 940</u>

See page 3 of this report for a summary of the products achieved.

Appendix 1 STATUS OF DISPUTES HEARD BY THE REVIEW COMMITTEE

Museum/Agency	Tribe/Organization	Cultural Item	Dispute	Recommendation	Resolution
Berkeley I	Hui Malama I Na Kupuna O Hawai'i Nei	Human remains	Cultural affiliation of human remains	Revise determination of cultural affiliation (February 15, 1993).	NIC published June 2, 1993; subsequent repatriation
Berkeley II	Hui Malama I Na Kupuna O Hawai'i Nei	Human remains	Cultural affiliation of human remains	Transfer control for reconsideration of cultural affiliation (February 15, 1993).	Transferred control; NIC published February 25, 1994; subsequent repatriation
Providence	Hui Malama I Na Kupuna O Hawai'i Nei/Office of Hawaiian Affairs	Carved figure	Status of the figure as an unassociated funerary object, sacred object, and object of cultural patrimony	Revise determination as a sacred object (May 1, 1997).	Finding reconsidered by RC, litigation (Providence v. DOI); parties reached settlement; carved figure transferred
Chaco Cultural National Historical Park	Hopi Tribe	Human remains/ funerary objects	Adequacy of consultation process	Reconsider determination of cultural affiliation (February 10, 2000).	Repatriated
Bureau of Land Management	Fallon Paiute Shoshone Tribe	Human remains	Cultural affiliation of human remains	Revise determination of cultural affiliation (April 10, 2002).	Litigation (Fallon Paiute v. BLM), and remand to BLM for reconsideration; human remains still under control of BLM
Denver Art Museum	Western Apache Coalition	Gaan items	Status of items as sacred objects and objects of cultural patrimony	Revise determination as sacred object and object of cultural patrimony (September 12, 2002).	NIR published March 14, 2003; subsequent repatriation
Bishop I	Royal Academy	Kawaihae funerary objects	Adequacy of consultation and repatriation process	Recall loan, reconsider determination of cultural affiliation (August 20, 2003).	Finding reconsidered by RC, and affirmed; litigation (Kawanakoa v. Bishop); funerary objects

					removed from cave and are in the possession of the Bishop Museum
Bishop II	Hui Malama I Na Kupuna O Hawai'i Nei	Molokai moepu	Status of items as unassociated funerary objects	Revise determination of cultural item (June 1, 2005).	Items are still under the control of the Bishop Museum.
Bishop III	Hui Malama O Hawai'i Nei	Kalaina Wawae	Status of items as objects of cultural patrimony	Revise agreement to require consent of Hui Malama O Mo'omomi prior to relocation of Kalaina Wawae (June 1, 2005).	Items are still under the control of the Bishop Museum.
Hawaii Volcanoes	Hui Malama O Hawai'i Nei	Kawaihae funerary objects	Status of items as human remains and associated funerary objects	Proceed with determination (June 1, 2005).	Items are still under the control of Hawaii Volcanoes.
Field Museum	White Mountain Apache Tribe	Gaan items	Status of items as objects of cultural patrimony and museum right of possession	Revise determination of cultural item and right of possession (February 7, 2007).	NIR published August 24, 2007; status of items not known