

## **Eagle Feather Working Group Update**

### **Overview:**

On May 20, 2010, tribal leaders, Native religious leaders, and members of tribal organizations and advocacy groups met with federal officials at the Embassy of Tribal Nations in Washington D.C. to discuss concerns surrounding Native American possession of eagle feathers and parts.

### **Participants:**

Individuals representing Native interests:

Association on American Indian Affairs (AAIA)

- Jack Trope, Executive Director

ABNDN (Native American Church of the Navajo Nation)

- David Tsosie, President
- Floyd Stevens, Vice President

DNA-People's Legal Services

- Levon Henry, Executive Director
- Nick Mattison, Attorney

Ho-Chunk Nation

- Wilfrid Cleveland, President
- Lawrence Walker, Representative
- Hope Smith, Representative

Nanticoke Lenni-Lenape

- John Norwood

National Congress of American Indians (NCAI)

- Jessica LePak, Legislative Fellow
- Katy Jackman, Staff Attorney
- Robert Holden, Deputy Director

Native American Rights Fund (NARF) (also representing the Native American Church of North America)

- Steve Moore, Senior Staff Attorney

Individuals representing the Federal Government:

Department of the Interior

- Larry Echohawk, Assistant Secretary of the Bureau of Indian Affairs (BIA)

#### The White House

- Jodi Gillette, Deputy Associate Director of the Office of Intergovernmental Affairs

#### Congress

- Josh Pitre, House Natural Resources Committee

#### United States Fish & Wildlife Service (USFWS)

- Benito Perez, Chief of Law Enforcement
- Jerome Ford, Director of the Migratory Bird Program
- Pat Durham, Native American Liaison
- Christine Eustis, Deputy Assistant Director for External Affairs

#### United States Department of Justice (DOJ)

- Daphna Renan, Council to the Deputy Attorney General, Office of the Deputy Attorney General
- Brian Hauck, , Senior Council and Chief Staff to the Associate Attorney General, Office of the Associate Attorney General
- Civil Rights Division
  - Les Jin, Council to the Assistant Attorney General
- Office of Tribal Justice (OTJ)
  - Tracy Toulou, Director
  - Gaye Tenoso, Deputy Director
  - Christopher Chaney, Deputy Director
- Environment and Natural Resources Division (ENRD)
  - Ethan Shenkman, Deputy Assistant Attorney General
  - Craig Alexander, Chief, Indian Resources Section
  - John Webb, Assistant Chief of Environmental Crimes
  - Stacy Stoller, Attorney Advisory Law and Policy
  - Kathryn Kovacs, Attorney Advisory Appellate

#### **Discussion:**

The primary focus of the meeting was enforcement of the Bald and Golden Eagle Act (BGEPA) through the use of undercover operations and, to a lesser extent, distribution of eagle feathers was discussed. Although there was brief mention of possible statutory and regulatory changes, more attention was directed toward the pressing question of administration of the current system. Here is a brief summary of the topics discussed:

- **Statistics Concerning the Undercover Operation.** USFWS stated that in the last round of enforcement activity, USFWS conducted 195 criminal investigations into the illegal possession of eagle feathers and/or parts.

Next steps:

- Native leaders requested that USFWS and DOJ officials produce detailed information (none that would raise Privacy Act concerns, such as names of persons who were targeted, investigated, prosecuted, etc.) about the extent of the sting operation, including information on arrests, seizures, prosecutions, and forfeitures. Forthcoming information should include the outcome of cases, the quantity of feathers or parts involved by case, the race of the targeted individual, the location of the operations, the involvement of tribal officials or religious leaders, and so forth.
- **BGEPA Enforcement Policies.** Native leaders raised concerns that the undercover operation had been so broad as to place many innocent possessors of eagle feathers in fear that their property could be wrongfully subject to confiscation. USFWS stated that it is sensitive to unwitting victims of its enforcement activity and to the effects of over-aggressive enforcement. As such, USFWS and DOJ explained that they conduct reviews before, during, and after enforcement activities. However, USFWS would not guarantee that innocent owners of illegal feathers would not be affected by enforcement operations; however, they conceded that involvement would likely be limited to feather seizure rather than prosecution in such instances.

Next Steps:

- Federal officials will compile fact sheets specific to its enforcement of BGEPA and related laws that explain their policies in clear terms.
  - Federal officials will continue discussions with Native leaders and representatives about ways to make Tribes and traditional leaders effective partners in enforcement of federal law and in implementation of law enforcement activities, where necessary.
  - Efforts will be made to include U.S. Attorneys that are part of the Native American Issues Subcommittee in future meetings so that issues of coordination between the U.S. Attorneys, Fish and Wildlife Service, and tribes can be fully explored.
- **Handling of Sacred Objects During Investigations.** Native leaders explained their concern about the mishandling of religious items during investigations. DOJ stated that it allowed individuals targeted by the investigation to identify objects they considered sacred and claimed that DOJ officials would then treat these objects with special care.
- Next Steps:
- Federal officials should explore the possibility of closer involvement with Tribal or religious leaders, perhaps even to the extent of allowing tribes to retain contraband eagle feathers/parts, even when such items are evidence in ongoing prosecutions.
- **Forfeiture of Eagle Feathers.** Native leaders questioned the extent to which federal officials were seeking the forfeiture of seized property, even from individuals who had no knowledge that the feathers they possessed were technically contraband. DOJ clarified that the law currently allows the forfeiture of illegally possessed eagle feathers or parts, even by completely innocent individuals, but does not require it. Moreover, DOJ has a

policy for mitigation of forfeiture when forfeiture would be unfair (which it likened to obtaining a pardon after having committed a crime).

Next Steps:

- Federal officials have been requested to publicize methods by which innocent possessors of eagle feathers and parts can have their seized items returned.
- USFWS and DOJ should consider developing an internal policy of exercising federal discretion to decline to forfeit illegal eagle feathers in cases where such feathers were found in the possession of innocent Native Americans.

- **Disposition of Forfeited Eagle Feathers.** Native leaders expressed widely-held concerns that forfeited feathers were being burned after forfeiture. Federal officials stated that seized feathers were returned to the Repository, not burned.

Next Steps:

- Federal officials should document the methods by which seized items are handled to ensure proper handling of the sacred items of our nation's First Americans.
- USFWS should consider ways in which to streamline or make easier for traditional Native persons the bureaucratic processes for recovering seized feathers and other materials. Often-times these individuals do not have access to attorneys to represent them in these processes. Perhaps the burden can be put on the agency to facilitate the return of seized materials.

- **Involvement of Tribal Officials and Native Religious Leaders in Undercover Operations.** The group considered a range of recommendations, from informing tribes and tribal religious leaders about future undercover operations and consulting with tribal leaders in carrying out such operations to ideas about securing funding for the training or cross-designation of tribal fish and wildlife agents to assist or carry out federal operations. There seemed to be consensus among tribal leaders and their representatives that if tribes and Native religious groups were more closely involved with enforcement of BGEPA, USFWS might be able to abandon or reduce its practice of using undercover operations. It was even suggested that tribes be given full responsibility for enforcing the BGEPA on Indian lands. DOJ pointed out that funds are already available for the training of tribal fish and wildlife officers, for instance through the DOJ COPS program. There was uncertainty as to the ability of authority to be devolved to the tribes in a manner similar to the 638 model.

Next Steps:

- Federal officials should develop and implement a formal policy that requires the notification of tribal officials prior to the execution of undercover operations.
- Federal officials should formulate an official policy of delegating the maximum amount of authority to the tribes in eagle feather investigations and clarify the preconditions so that tribes will more likely cooperate.
- Federal officials should compile a list of funding sources for the development of tribal fish and wildlife codes, as well as sources that will

enable tribal authorities to play a greater role in these investigations more generally.

- Federal officials should work with tribal attorneys and their clients to identify possible legal frameworks that would allow for delegation of federal authority on these issues, deference to tribal authority, and cross-deputization of tribal law enforcement officers.

- **Training of Federal Officials.** Native leaders offered to share their knowledge and expertise with the federal officials and agents charged with enforcing BGEPA. USFWS suggested that tribal or religious leaders be involved in the training of the next round of agents, which should be occurring in the late summer or early fall.

Next Steps:

- USFWS will coordinate with the Eagle Feathers Working group to arrange for Native leaders to provide training for its group of incoming agents.

- **Distribution of Eagle Feathers through the Repository.** Native leaders pointed out the extreme ineffectiveness of the current distribution system. USFWS admitted that processing times are quite slow, and indeed that as matters currently stand, the Repository could be more efficient.

Next Steps:

- Federal officials should consult with tribes to develop ways to increase the efficiency of the distribution system, which may include the use of volunteers, the harvesting of secondary feathers that are currently burned, and so forth.

- **Alternative Sources of Eagle Feathers.** USFWS pointed to tribal aviaries as a means of securing feathers without going through the Repository. Currently, USFWS Tribal Wildlife Grants can provide funding to tribes seeking to take on responsibility in this area.

Next Steps:

- Create federal funding streams dedicated solely to the planning and creation of new tribal aviaries.
- Consider developing a federal policy that would allow tribes to keep and distribute eagle parts and feathers found on tribal land or in local zoos.
- Consideration of ways to deal with these issues in Alaska. The current situation in Alaska is problematic and needs improvement. Can a sub-repository be set up there to meet the needs of the Alaskan Native community?

- **Creation of an Advisory Committee.** Both Native leaders and federal officials expressed interest in the creation of an advisory committee to serve as a long-term authority and liaison on matters relating to eagle feathers.

Next Steps:

- Further discussion needed.

- **Changes to the Laws and Regulations Governing Eagle Feathers.** Although such changes were not extensively discussed, all parties agreed that changes to the governing laws and regulations concerning eagle feathers could result in significant improvement of the current system.

Next Steps:

- Additional research needs to be done about the possibility of reinstating and strengthening the “innocent owner” defense within the general criminal statutes on contraband, and about the feasibility of legalizing an eagle feathers/parts “barter” system within tribal communities.
  - Further discussion needed.
- **Other Issues.** The group discussed the impact of BGEPA on state-recognized tribes; the possibility of creating preferences for certain Native individuals seeking feathers, such as veterans; travel with regulated items (including military travel), particularly, handling of religious objects by Customs officials; and access to other sorts of birds for Native American religious purposes.

Next Steps:

- Further discussion needed.

### **Procedural Next Steps:**

An update of recent developments on the eagle feather issue, as well as other religious and cultural concerns, will be given in June during the National Congress of American Indians’ Mid-Year Conference in Rapid City, South Dakota. Levon Henry, Executive Director of DNA-People’s Legal Services, Inc., will be delivering the eagle feathers update as part of the Human, Religious, & Cultural Concerns Subcommittee meeting that will take place on Tuesday, June 22, 2010 from 4:30p.m.-5:30p.m. in Room LaCroix C of the Rapid City Civic Center.

Another meeting between the Eagle Feathers Working Group and federal officials has been tentatively scheduled for this fall, although specific details of that meeting have yet to be determined.