

Request for Tribal Input on:
(1) DOJ Consideration of Policy Regarding Eagle Feathers;
and (2) Federal/Tribal Training Program on Enforcement of
Wildlife and Other Environmental Laws

In meetings that the Departments of Justice and the Interior have had with federally recognized Indian tribes and tribal organizations, tribal representatives have raised questions and concerns about federal enforcement of wildlife laws protecting eagles and other birds. Among other things, tribes have expressed concern that federal enforcement efforts are having a chilling effect on tribal members who wish to engage in religious and cultural practices that involve eagle feathers. Both Departments look forward to continuing a productive dialogue with tribes and tribal organizations on these issues.

In furtherance of this dialogue, the Department of Justice welcomes tribal input on two specific proposals. First, the Department of Justice is considering adopting a formal policy that would memorialize and clarify its practice of enforcing federal wildlife laws in a manner that facilitates the ability of members of federally recognized tribes to use eagle feathers and other bird feathers and parts for cultural and religious purposes. Second, in response to the expressed desire of tribal representatives that tribes become more involved in the enforcement of laws related to eagle feathers, the Department of Justice has begun to develop a joint federal and tribal training program on enforcement of such laws, as well as other environmental laws.

Tribal views and recommendations on all aspects of these two proposals are welcome. This paper is designed merely to provide background information and to frame issues to invite tribal input. This paper is not itself intended to be, nor should it be construed as, a statement of Department policy.¹

¹ The Department is taking this opportunity to seek tribal input on these proposals, even though these proposals do not fall under Executive Order 13175.

I. Should the Department of Justice Formalize Its Policy Regarding Possession of Eagle Feathers by Tribal Members?

The Department of Justice recognizes that members of federally recognized tribes have a significant interest in practicing and preserving their cultures and religions. Eagle feathers, and other bird feathers or parts, play a unique and important role in the religious and cultural life of many Indian tribes and their members.

In light of the important government-to-government relationship that the United States shares with federally recognized tribes, the United States has a strong interest in accommodating the interests of tribes in protecting the ability of their members to meaningfully practice their religion and preserve their culture.

The Department of Justice is considering whether to adopt a formal policy that would memorialize and clarify its practice of enforcing federal wildlife laws in a manner that respects and protects the ability of members of federally recognized tribes to use eagle feathers and other bird feathers and parts for cultural and religious purposes. In particular, the Department is considering formally issuing a prosecution policy consistent with the Department of the Interior's long-standing "Morton Policy." (The Morton Policy, which was issued in 1975 as a policy statement by then-Secretary of the Interior Rogers C. B. Morton, is attached to this document.) The Department is interested in soliciting tribal input on this proposal.

Background

Tribal officials, tribal members, and tribal organizations have raised a number of concerns about enforcement issues that affect tribal members' possession and use of eagle feathers for cultural and religious purposes. One of the concerns that the Department has heard is that tribal members are unsure of how federal enforcement policy affects use and possession of eagle feathers, and that

the resulting fear of prosecution chills the ability of tribal members who have eagle feathers to engage fully in important religious and cultural practices.

The Department of Justice works closely with the Department of the Interior to enforce federal laws protecting eagles and other birds, including the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. The Department of the Interior has a long-standing policy, the Morton Policy, which recognizes tribal interests in the use of eagle feathers for cultural and religious purposes. In general, the Morton Policy permits members of federally recognized tribes to possess and use eagle feathers and other bird feathers and parts, and to engage in other specified activities, for religious and cultural purposes. The Morton Policy has guided the Department of Justice's prosecution efforts in this area for more than three decades, but the Department of Justice has not formally adopted guidance or a policy to memorialize its practice of following the Morton Policy.

The Department is now considering whether to formalize a policy that memorializes its approach in applying federal bird-protection laws to tribal religious and cultural activities. In particular, the Department is considering whether to issue a policy that would inform tribal members that, consistent with the Morton Policy and the Department's traditional exercise of its discretion, they will not be subject to prosecution merely for possessing or using eagle feathers or other bird feathers or parts. The Department anticipates that the policy would also provide that tribal members are free to engage without fear of prosecution in all of the activities permitted under the Morton Policy, such as giving or loaning such bird feathers or parts to other tribal members or exchanging them with other tribal members for other bird feathers or parts, without compensation of any kind.

At the same time, and like the Morton Policy, a Department policy in this area should reflect the Department's commitment to protecting this Nation's scarce and precious wildlife resources, including the eagle and other migratory birds. The policy would therefore need to make clear that the Department will continue to prosecute tribal members and non-members alike for violations of federal law that involve killing eagles or other birds, or that involve the buying or selling of, or other commercial activities involving, eagle feathers or other bird feathers or parts.

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In formulating a policy in this area, the Department would seek to reflect its commitment to balance enforcement of the Nation's wildlife laws with acknowledgment of the religious and cultural needs of members of federally recognized tribes. The goals of the policy would be to clarify how federal enforcement policy affects use and possession of feathers and other bird parts, and to assure tribal members that they may practice their religion without fear of prosecution.

To that end, the Department invites tribal input on the following:

Should the Department of Justice formally adopt a policy, consistent with the Morton Policy, addressing tribal use of eagle feathers and other bird feathers and parts? In particular:

- A. Would issuance of a Department policy help to allay the concerns of tribal members who fear their use of eagle feathers as part of their religious or cultural practices may subject them to federal prosecution?**

- B. Would issuance of a Department policy provide useful clarification for tribal members who use eagle feathers in their religious or cultural practices?**

- C. Are there any terms used in the Morton Policy that should be clarified or defined if also used in a policy issued by the Department of Justice?**

The Department of Justice also welcomes comments and input on other aspects of the policy.

II. Development of New Federal and Tribal Training Program on Enforcement of Wildlife and Other Environmental Laws

The Department of Justice is developing, through its National Indian Country Training Initiative, a training program on enforcement of wildlife and pollution-control laws in Indian country.

Our goal is to develop a training program that will, among other things, promote federal-tribal partnerships in this area, foster communication between federal and tribal enforcement officials, and help build tribal capacity to assume additional responsibility for enforcement of such laws.

The National Indian Country Training Initiative is working with the Department's Environment and Natural Resources Division, Office of Tribal Justice, and several U.S. Attorneys' Offices, as well as with the Environmental Protection Agency and the Department of the Interior, to develop this training program.

We are seeking input from tribal leaders and organizations to ensure that the training meets the needs of tribal prosecutors, tribal law enforcement, and other tribal personnel. In addition, we wish to gauge the level of interest in this training program.

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The training could address a broad range of issues related to the enforcement of laws protecting wildlife and prohibiting pollution on tribal lands.

To that end, the Department welcomes tribal input regarding which of the following topics would be of most interest to tribal personnel:

- Introduction to wildlife laws and the prosecution of wildlife crimes;
- Providing law enforcement officers and prosecutors with the tools for effective and culturally sensitive wildlife enforcement;
- Enforcement concerns related to use of eagle feathers;

- Development of tribal wildlife codes;
- Building and developing federal-tribal enforcement partnerships;
- Collecting evidence and preserving the sanctity of seized items;
- Application of Lacey Act and other federal wildlife and hunting/fishing laws on tribal lands;
- Forfeiture and related issues;
- Advanced investigative techniques in plant and animal cases;
- Introduction to pollution control law and enforcement;
- Case studies of environmental enforcement in Indian country;
- Technical support for environmental investigations; and
- Civil and criminal jurisdiction issues.

We also welcome input as to what additional topics should be included in the training program, what audiences would be most appropriate to include (e.g., prosecutors, law enforcement officers, wildlife and natural-resource administrators, etc.), and any other matters related to the development of the program.

Of course, in addition to this new training program, both the Department of Justice and the Department of the Interior recognize that continued training of *federal* officers on tribal issues — including respect for tribal concerns and sensitivity to tribal cultural and religious issues — is a critical part of ensuring appropriate enforcement of federal wildlife protection laws and of developing federal-tribal partnerships in this area. We also welcome tribal input as to what training on tribal issues is helpful for federal officers.

The Department of Justice looks forward to continuing our discussions on these important topics.

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For further inquiry or to submit comments, please contact the Department of Justice Office of Tribal Justice at (202) 514-8812.

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ATTACHMENT

DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

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MORTON ISSUES POLICY STATEMENT ON INDIAN USE OF BIRD FEATHERS

Secretary of the Interior Rogers C. B. Morton today issued a policy statement concerning Indian cultural and religious use of migratory bird feathers and parts. Following is the text of the statement.

"I am aware that American Indians are presently experiencing uncertainty and confusion over the application of Federal bird protection laws to Indian cultural and religious activities. Apparently, this confusion and concern may have resulted, in part, from this Department's enforcement activities under such laws. This statement is intended to clarify the Department of the Interior's responsibilities and intentions, and to ease the minds of American Indians.

"The Department of the Interior recognizes the unique heritage of American Indian culture. It also recognizes that American Indians have a legitimate interest in expressing their cultural and religious way of life. At the same time, both the Department of the Interior and American Indians share an additional responsibility to conserve wildlife resources, including federally protected birds.

"As a result of meetings between agencies of the Department of the Interior, the Association for American Indian Cultural and Traditional Activities, and others, I can assure American Indians that our policy is to permit them to engage in the following activities without fear of Federal prosecution, harassment, or other interference.

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"1. American Indians may possess, carry, use, wear, give, loan, or exchange among other Indians, without compensation, all federally protected birds, as well as their parts or feathers.

"2. American Indians who wish to possess bird feathers or parts to be worked on by tribal craftsmen for eventual use in Indian religious or cultural activities may transfer such feathers or parts to tribal craftsmen without charge, but such craftsmen may be compensated for their work.

"However, the Department of the Interior will continue to enforce against all persons those Federal laws prohibiting the killing, buying or selling of eagles, migratory birds, or endangered species, as well as those laws prohibiting the buying or selling of the parts or feathers of such birds and animals.

"I encourage American Indians to express their identity and to freely pursue their cultural and religious practices. At the same time, I encourage them to support the purposes of the Federal bird protection laws. There is much work to be accomplished to further clarify the rights and obligations of American Indians with respect to Federal bird protection laws, and special efforts will be made to conduct a two-way education process between Government employèes and Indian communities. In addition, we have agreed to work in a spirit of cooperation with the Association for American Indian Cultural and Traditional Activities, and other interested Indian representatives, in order to harmonize the policies, practices, and procedures for enforcement of the Federal bird protection laws with the legitimate needs of Indians. This includes review of Federal regulations, with probable changes where the legitimate needs of American Indians can be legally recognized without harming federally protected birds.

"In this regard, one area of discussion should be the possibility of American Indians sharing with Federal officials the responsibilities of wildlife management and enforcement through the adoption of tribal ordinances designed to conserve federally protected birds.

"In the past, one problem has been that legitimate sources of feathers, which might have been available to the Department for distribution to American Indians, have not been fully utilized. We are presently developing better procedures to collect and distribute eagle feathers from the Fish and Wildlife Service repository at Pocatello, Idaho, where feathers of eagles found dead are stored. In addition, we will make an effort to distribute the feathers and parts of other migratory birds to Indians.

"I hope that this statement will help to take away the uncertainty and confusion presently experienced by American Indians. I hope also that our efforts will encourage tradition, culture, and religious activities among American Indians, while at the same time promoting a mutual effort to protect and conserve federally regulated birds.

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