

INTERNATIONAL REPATRIATION

LISTENING AND CONSULTATION SESSIONS WITH THE U.S. DEPARTMENT OF THE INTERIOR

Introduction

A number of tribes have Ancestors held in museums in foreign countries, and many tribes are concerned about sacred objects, objects of cultural patrimony, or funerary objects being sold in foreign markets, including at auction in France. In addition to these cultural items, museums in foreign countries in some cases are holding cultural objects that are important to the heritage of tribes even if they are not considered sacred objects or cultural patrimony under Federal law.

The United States government is committed to helping to repatriate such Native American cultural heritage that was stolen, looted, trafficked, or otherwise illicitly acquired, upon request. The Federal government is also committed to facilitating tribes' access to other Native American cultural heritage held abroad. However, current Federal laws have very limited reach with respect to export or foreign sale or possession. The Department of the Interior (DOI) and other Federal agencies are exploring options for addressing these limitations. Members of Congress have announced interest in legislation to control or prohibit export of these items.

DOI will be carrying out Federal listening sessions to seek tribal views on how to strengthen mechanisms to repatriate Native American cultural heritage from abroad. DOI will inform tribes about this international issue and receive views from tribes on concerns, sensitivities, and actions that should be taken. Other Federal agencies will also likely attend at least some sessions. DOI intends to build upon past engagements with tribes, including sessions relating to the 2014 World Conference on Indigenous Peoples, Tribal Nations conferences, and sessions hosted by the National Congress of American Indians (NCAI). DOI intends that later sessions will be conducted as government-to-government consultations.

Discussion

The possession, display, or sale of Native American cultural heritage abroad has caused great concern to numerous Indian tribes. Repatriation of tribal cultural heritage is a U.S. priority for implementation of the outcomes of the U.N. World Conference on Indigenous Peoples. The main Federal statutes for protection of cultural items, in particular the Native American Graves Protection and Repatriation Act (NAGPRA), have very limited reach with respect to export or foreign sale. Members of Congress have announced interest in legislation on exports such as amendments to NAGPRA.

Since 2013, Paris auction houses have held a series of sales offering Native American cultural heritage, including sacred objects. At the request of concerned tribes, the U.S. Embassy

intervened with the auction houses and the French government in a number of cases. DOI has established an internal working group to provide assistance and coordinate with the Department of State (DOS), upon request by tribes.

In December 2015, Secretary of the Interior Sally Jewell met with the French Minister of Justice to emphasize U.S. concerns. The Secretary and the Minister agreed to explore pathways that might provide greater protection for U.S. tribes seeking to repatriate their cultural heritage. DOS followed up with a formal diplomatic request to the Government of France for an initial meeting, but is still awaiting a response.

Most recently, on May 30, 2016, an auction house in Paris held a sale that included a number of Native American cultural items, including sacred objects. Prior to the auction, the National Museum of the American Indian held an emergency meeting and press briefing in which representatives from some affected tribes, Congressman Steve Pearce (R-NM), and officials from DOS and DOI participated. Secretary Jewell publicly criticized the sale. DOS conducted significant outreach to French authorities. In response to pressure from tribes and the U.S. government, one item was temporarily withheld from auction pending investigation of the legality of its acquisition. However, a number of sacred items were sold. Based on past experience, at least one more auction is likely in 2016.

In light of recurring auction house sales, DOS continues to seek a dialogue with French officials. Secretary Jewell instructed DOI staff to cooperate with tribes and other Federal agencies, including DOS and the Department of Justice, to review the circumstances by which sacred objects and other Native American cultural heritage are entering foreign markets. She also called for amending current laws to strengthen the ability to monitor and prevent exports of wrongfully acquired tribal cultural items. Meanwhile, DOS and DOI are supporting tribal efforts to repatriate cultural heritage from museums in foreign countries, including Germany and Sweden.

Request for Views

To help the United States government address the principal concerns of Indian tribes, we are seeking input on options for international and domestic actions to strengthen mechanisms to repatriate cultural heritage from abroad. DOI seeks views from tribes on concerns, sensitivities, and proposals for action. DOI is open to all relevant ideas and information, but in particular invites views on the following options which have been raised repeatedly in past discussions:

- Developing legislation to address exports, e.g., controls on export of cultural items as defined under NAGPRA or prohibition of export of items obtained in violation of NAGPRA, the Archaeological Resources Protection Act, other Federal law and/or tribal law.
- Recognizing tribal inventories of cultural items, which could be used as evidence of wrongful acquisition of a cultural item, if a tribe chooses to prepare one. This could include, for instance, legal protections against public disclosure.
- Seeking a bilateral arrangement with France, which could address issues such as the sovereign legal status of Federally recognized tribes (to date, French courts have not

recognized Indian tribes' status to have standing in court); or advance notice of auctions and release of provenance information to give tribes the chance to investigate problematic items.

- Developing a “red list” or guidance publication which outlines the types of objects that may be sensitive (with appropriate deference to privacy concerns), to help foreign governments and dealers recognize potentially sensitive objects and act accordingly.
- Seeking broader international attention or action on this issue in the context of international forums such as the World Council on Indigenous Peoples or UNESCO.
- Convening of auction houses and/or museums from both sides of the Atlantic to share best practices regarding repatriation and dialogue with indigenous representatives;
- Sharing of experiences with successful repatriation of Native American cultural heritage.
- Raising public awareness, both in the U.S. and abroad, about the authentic artworks and crafts produced and marketed for sale by artists who are Native American tribal members. Trade in these authentic objects supports tribal jobs and economies, and shares tribal culture and art with appreciative collectors and communities. Publicity could also be given to the prohibitions in the U.S. against the deliberate sale of inauthentic objects as Native American under the Indian Arts and Crafts Act.

DOI conducted the first listening session on May 17, 2016, with the United South and Eastern Tribes' Culture and Heritage Committee in Atmore, Alabama. Additional listening sessions were held May 23-26, 2016 in Grande Ronde, Oregon. Further sessions are planned alongside the following events:

- Spokane, Washington, June 27-30 (National Congress of American Indians);
- Ignacio, Colorado, August 29-September 2 (National Association of Tribal Historic Preservation Officers) (consideration is being given to this being the kick-off for consultations);
- Albuquerque, New Mexico, September 26-28 (Association on American Indian Affairs);
- Phoenix, Arizona, October 9-16 (NCAI);
- Fairbanks, Alaska, October 20-22 (Alaska Federation of Natives); and
- Cherokee, North Carolina, October 24-26 (United South & Eastern Tribes).

A session may also be scheduled alongside a meeting of the NAGPRA Review Committee.

In addition to attending the sessions, we also welcome written input. Please submit by email to Eric Wilson, eric.wilson@bia.gov, or by mail to Attention: Repatriation, Office of the Assistant Secretary for Indian Affairs, Department of the Interior, 1849 C St. NW, Washington, DC 20240. Thank you.