



EXEMPTION FOR ALASKA NATIVE HANDICRAFTS FROM THE PROHIBITION ON THE SALE OR PURCHASE OF MIGRATORY BIRD PARTS

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STATEMENT OF THE ISSUE:

The historical use of non-edible by-products of birds taken for subsistence for the making, barter and sale of authentic Alaska Native handicrafts is currently prohibited. The Migratory Bird Treaty Act (MBTA) implements four migratory bird treaties now in force (the 1916 treaty between the United States and Great Britain (on behalf of Canada), the 1936 treaty between the United States and Mexico, the 1972 treaty with Japan and the 1976 treaty with Russia). The restrictive terms of the Canadian and Mexico treaties and court decisions prevented the US from allowing Alaska Natives from legally participating in the traditional harvest of migratory birds during the spring and summer in Alaska. To remedy that situation, the United States negotiated Protocols amending both treaties to allow for a spring/summer subsistence harvest of migratory birds by Alaska Natives for their nutritional, social, cultural, spiritual, ecological, economic and aesthetic values. Current regulations governing the Migratory Bird Subsistence Harvest in Alaska, however, prohibit the sale or purchase of migratory bird parts, including feathers and parts of birds taken for subsistence. 50 CFR § 92.6. Alaska Natives are allowed to harvest migratory birds for food, but are prohibited from using any non-edible part from these same birds for any other purpose, including the creating of traditional handicrafts, tools, or clothing. There are no exceptions to the prohibition on sale, not even for the use of dead birds found in the wilderness.

Alaska Natives have used bird parts, including feathers for thousands of years in the making of traditional handicrafts, including in masks, garments, jewelry, clothing and dance regalia (fans, hats rattles), hunting equipment such as spears and arrows; and these items have been bartered and sold by Alaska Natives. The Protocol implementing the treaty between Canada and the US expressly provides that “non-edible by-products of birds taken for nutritional purposes incorporated into authentic articles of handicraft by Alaska Natives *may be sold* in strictly limited situations and pursuant to a regulation by the competent authority in cooperation with the management bodies.” The Protocol further provides that “regulations allowing for such harvest will be consistent with the customary and traditional uses of Alaska Native inhabitants for their nutritional *and other essential needs*.” Yet, in April 2012, the federal and state members of the Alaska Migratory Bird Co-Management Council rejected a proposal that called for an amendment to the subsistence regulations to exempt Alaska natives from the prohibition on the sale of bird parts for traditional Alaska Native handicrafts.

THE SOLUTION:

Amend the MBTA and the Lacey Act to exempt possession, sale, barter, purchase, shipping, transporting of any authentic Alaskan Native article of handicraft, clothing or Art on the basis that it contains migratory bird parts (including feathers) so long as the bird was not taken illegally or in a wasteful manner. Congressman Young has circulated a discussion draft bill to exempt Alaska Native art, handicraft or clothing containing migratory bird parts, and we ask the

Senate Indian Affairs Committee to work with the Alaska delegation and the Native leadership to see such legislation enacted.

PROS:

The creation of art, handicrafts and clothing from non-edible parts of migratory birds by Alaska Natives is a customary and traditional use of these parts, is an essential need for many Alaska Natives, and incorporates indigenous knowledge, institutions, and practices. Creation and sale of these articles is consistent with the treaties for the conservation of migratory birds, which authorize the legal taking of migratory birds by Alaska Natives for such customary and traditional uses, so long as the taking is done in a non-wasteful manner. The current prohibition requires body parts and feathers of a bird taken legally for subsistence to be discarded, and even prevents the use of feathers from a dead bird found in the wilderness. The exemption would prevent the waste of these by-products. Such an exemption would be similar to those contained in the Endangered Species Act and the Marine Mammal Protection Act – and would allow Alaska Natives to continue their traditional use of feathers and bird parts in their Art and handicrafts. Native artisans will no longer be targeted for prosecution for making traditional Art, handicrafts or clothing that contain feathers from legally taken birds.

CONS:

The USFWS will argue that it must totally deny a marketplace for migratory birds, even authentic Native handicrafts.

WHAT WILL HAPPEN IF NOTHING IS DONE:

Alaska Natives will be unable to use feathers and non-edible bird parts from legally taken birds, despite the historical use of such items in the creation of traditional handicrafts, Art, ceremonial regalia, and clothing. Those who unwittingly use bird feathers or parts in their art work or handicrafts could be charged with violations of the MBTA and if the item is sold, a Lacey Act violation. Just last fall, a well-respected Southeast Tlingit Artist was charged with violation of the MBTA and the Lacey Act after he attempted to sell a traditional headdress topped with the feathers of a flicker. His case was settled for a fine and his artwork was returned to him minus the feathers. He had no idea that what he did was illegal.