

**Testimony of Ms. Jacqueline Pata
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**Submitted to the
Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs
United States House of Representatives
Legislative Hearing on HR3109 to amend the Migratory Bird Treaty Act**

Introduction

Thank you for the opportunity to testify on a bill that has great significance for Alaska Natives.

My name is Jackie Johnson Pata and my Tlingit name is *Kuseen*. I am Raven of the *Lukaax.ádi* Sockeye clan and the Raven House in Haines, Alaska. I am also the Vice Chair of Sealaska Corporation that was created by Congress to implement the Alaska Native Claims Settlement Act and that holds a portion of our aboriginal land base in Southeast Alaska.

Alaska Natives have used migratory birds and bird parts, including feathers, for thousands of years in the making of traditional handicrafts such as masks, garments, jewelry, clothing and dance regalia (fans, hats rattles), and hunting equipment such as spears and arrows. For just as long, these items have been bartered, traded, and sold by Alaska Natives in a sustainable fashion.

I believe that there are many misconceptions about the use of migratory bird parts and erroneous assumptions that convey a false impression that this amendment will facilitate an exponential growth in the use of migratory bird parts or feathers. This is simply untrue.

First, let me begin by sharing with you our cultural values that guide the use of our land and resources. Indigenous Peoples have lived in our homeland for more than 10,000 years, and our core cultural values ensure cultural and economic sustainability for future generations. Those cultural values include *Haa Aaní* that speaks to both using our land while respecting our land and resources. *Haa Shuká* establishes links between the current generation and our ancestors and it dictates our responsibility for the survival of future generations. These cultural protocols have ensured sustainability for thousands of years and have been in place prior to the unregulated commercial harvest of migratory birds that led to the near extinction of the migratory bird populations.

I would like to offer you some examples of our use of migratory bird parts and feathers in a collection of images that I have submitted with my testimony. The first photo is of a *shaakee.át* or hat, which as you can see does not constitute a massive use of bird parts. With less than 500 traditional artists and a fewer number within our tribe who produce objects or hats that use feathers, we do not anticipate an unchecked growth in the use of bird parts. I also offer you another photo of a rattle with puffin beaks. Puffin beaks are traditionally gathered each year

after the puffins naturally shed them following their mating season---a sustainable use that does not threaten the population.

Alaska Native people are not looking to commercialize the use of feathers, but rather, to continue a tradition and culture that respects our ancient cultural values and the principles of conservation and allows a small number of Alaska Native artists, who have fashioned painstakingly and with great skill, art, handicrafts and clothing in the footsteps of those who came before them. For us, the benefits are two-fold. Alaska Natives can revitalize a suppressed cultural practice and art form while simultaneously allowing the sale of these handicrafts as a vital source of a modest income with which we can purchase a few of the basic human needs such as heating fuel or baby formula.

Our communities are economically depressed and suffer the highest unemployment and poverty rates in the country. All that we are asking through HR 3109 is to be able to begin helping ourselves in a very small way by providing a modest income to severely impoverished communities through a traditional means.

Ignorance of the law is not an excuse for violation of a law. However, in reality, we were not aware that we could not sell arts with feathers until one of my fellow tribal members was cited for creating and attempting to sell two Tlingit clan hats one of which is featured in the photograph I've shared with you. It underscored that our culture and the future of our arts were in jeopardy. We then advanced language to amend the Migratory Bird Treaty Act (MBTA) to allow for the use of non-edible bird products in Alaska Native handicrafts.

It is germane to this discussion to know that this amendment parallels the Marine Mammal Protection Act exemption for Alaska Native handicrafts. The MMPA "Native Handicraft exemption" was previously supported and recognized by Congress as being "morally bound to respect the traditions and lifestyle of these people" and that by "stripping these rights from them, they will face the certain fate of cultural extinction."

We find it disheartening that the MBTA and subsequent regulations were certain to preserve the rights under 50 CFR 20.91 to make and sell pillows, blankets or fishing flies:

"any person may possess, purchase, sell, barter, or transport for the making of fishing flies, bed pillows, and mattresses, and for similar commercial uses the feathers of migratory waterfowl (ducks, geese, brant, and swans) killed by hunting pursuant to this part, or seized and condemned by Federal or State game authorities...."

Unfortunately, protecting Alaska Native culture and its utilization of migratory bird feathers and parts was less important in 1918.

We understand that FWS proposes to delay action on this bill citing work with the Alaska Migratory Bird Co-Management Council. I would like to point out that all Alaska Native members of the Council, 10 of the total 12 members support this amendment. The other two represent the federal and state government. The Council's protocols require unanimous

consent on any action or position which served to deter expression of a formal position on this amendment.

This amendment is consistent with the Marine Mammal Protection Act and with our national policies and laws that support cultural diversity and tribal self-determination. This bill would allow Native people to practice their tradition and provide a modest income without the fear that they will be suffering the consequences of a law that currently undermines their culture and livelihood.

Let us amend this archaic and discriminatory law and allow this important cultural and artistic use by Alaska Native artists. We urge you to support this bill. Thank you for the opportunity to provide testimony on this important legislation.

Gunulchéesh Aan yatgu sani. Thank you Noble People.

Background

The Migratory Bird Treaty Act of 1918 (MBTA) implements four international treaties that the U.S. holds with Canada, Russia, Japan, and Mexico. These treaties call for the conservation of protected species and groups of birds they cover. The MBTA prohibits the take of protected bird species, including, in part, to kill, capture, pursue, sell, transport, trade, or barter. In this way, the statute broadly covers the somewhat divergent requirements of the four treaties.

With the exception of the treaty with Japan, the treaties have been interpreted to provide for regulated subsistence take of protected birds by Canada and Alaskan Natives. The Mexico treaty provides more broadly that the parties will establish “close seasons” for take, sale, and transport of protected birds. The treaty with Russia provides that the parties will establish laws to govern any exemption to its prohibitions.

The treaty with Canada provides that seasons may be established for subsistence harvest of birds, eggs, and down by indigenous inhabitants of Alaska (meaning Alaska Natives and permanent resident non-natives with legitimate subsistence hunting needs living in designated subsistence hunting areas). The 1996 revised Senate Foreign Relations Committee Protocol for the treaty with Canada further states that “Sale of these items is not permitted, except for limited sale of non-edible by-products of birds taken for nutritional purposes incorporated into authentic articles of handicraft. The harvest of such items must be consistent with ‘customary and traditional uses’ of indigenous inhabitants for their ‘nutritional and other essential needs’.”

The Protocols thus allow for a subsistence harvest of migratory birds and the limited sale of items made with their parts by Alaska Natives, however in implementing the treaties through the MBTA, Congress only allowed the subsistence hunt. Consequently, the non-edible parts are discarded, despite the provisions negotiated into the Protocols to allow their sale.

The United States negotiated Protocols amending the Canadian and Mexican 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 creation 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.

Precedent and Impact of Changing the Law

There is precedent for changing the law. The Bald and Gold Eagle Protection Act (BGEPA) prohibits killing, possessing, or selling bald and golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. 16 U.S.C. 668(a); 50 CFR 22. Native American Religious Purposes Permits and Native American Eagle Aviary Permits are available for various religious activities. Bald and gold eagles are also covered by the MBTA, but through the BGEPA and enacting regulations, Native Americans are able to continue traditional religious practices that use the parts of those birds.

The BGEPA recognized the specific and important cultural needs of Native Americans and expressly allowed for those continued activities contrary to one of the four international treaties.

Exemptions also exist in the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA) to allow Alaska Natives to continue their subsistence practices and associated use of by-products for handicrafts and art. The ESA at 16 USC §1539(e) states that it does not apply to the non-wasteful taking or importation of endangered or threatened species by Alaska Natives for subsistence, and that non-edible byproducts of the species taken pursuant to this section may be sold in interstate commerce when made into authentic Native articles of handicrafts and clothing. The MMPA contains much the same language in its exception for Alaska Natives at 16 USC §1371(b).

Conclusion

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. It is also an essential need for many Alaska Natives and incorporates indigenous knowledge, institutions and practices. Indeed, it is ingrained into many of our cultures not to waste any part of an animal.

Providing such an exemption would have no significant impact on the migratory bird population because currently the feathers and bird parts of migratory birds taken for subsistence are discarded. The exemption would prevent the waste of these by-products.

The possession, sale, barter, purchase, shipping, and transporting of authentic Alaskan Native articles of handicraft, clothing or art that contains migratory bird parts is consistent with the treaties for the conservation of migratory birds.