

EXEMPTION FROM PROHIBITIONS FOR ALASKAN NATIVE
ARTICLES CONTAINING MIGRATORY BIRD PARTS

SEPTEMBER 8, 2014.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

[To accompany H.R. 3109]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3109) to amend the Migratory Bird Treaty Act to exempt certain Alaskan Native articles from prohibitions against sale of items containing nonedible migratory bird parts, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3109 is to amend the Migratory Bird Treaty Act to exempt certain Alaskan Native articles from prohibitions against sale of items containing nonedible migratory bird parts.

BACKGROUND AND NEED FOR LEGISLATION

In 1916, the United States and Great Britain (for Canada) signed the Convention for the Protection of Migratory Birds. The goal of this agreement was to establish an international framework for the protection and conservation of migratory birds. It also established the federal government's authority to manage migratory birds. Under the Migratory Bird Treaty, unless permitted by regulation, it is unlawful at any time to "pursue, hunt, take, capture, kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, export, import any migratory bird, any part, nest, or egg of such bird" protected under the Convention. Migratory bird treaties have also been implemented with Mexico in 1936, Japan in 1972 and Russia in 1976. Congress implemented the provisions of

the original treaty with the enactment of the Migratory Bird Treaty Act of 1918 (16 U.S.C. 701 et seq.).

The term “migratory bird” includes all wild species of crows, ducks, falcons, geese, hawks, snipes, woodcocks and mourning and white-winged doves. There are 972 avian species protected by the Migratory Bird Treaty Act. The Fish and Wildlife Service (FWS) regulates most aspects of the taking, possession, transportation, sale, purchase, barter, export and import of migratory birds. It has promulgated regulations containing restrictions on the “taking” of migratory birds, including what species can be hunted, the length of hunting seasons, bag limits and the use of live decoys or other techniques to hunt migratory birds.

While the bilateral treaties with Japan and Russia recognized the legitimate subsistence needs of indigenous people, the 1916 and 1936 treaties with Canada and Mexico did not. As a result, federal courts prevented the implementation of any subsistence rights because they interpreted the Migratory Bird Treaty Act as requiring the federal government to follow the most restrictive provisions of any of the four international agreements.

Under the 1916 Convention with Canada there is a “closed season” from March 10 to September 1 during which no hunting is permitted except in extremely limited circumstances. The 1936 Convention with Mexico established a similar “closed season” for ducks. In Alaska, migratory birds have left large areas of northern, western and interior regions of the State by mid-September and in these areas they generally do not return before March 10. As a consequence, much of the traditional harvest of migratory birds, which has occurred for thousands of years in rural Alaska, had occurred during the closed portion of the year.

An effort to update these international treaties was initiated in the 1970s and it culminated with the signing of the Protocol between the United States and Canada on December 14, 1995, and the Protocol between the United States and Mexico which was signed on May 5, 1997. The fundamental goal of these Protocols was to allow aboriginal and indigenous peoples to legally hunt protected migratory birds for subsistence and traditional uses in Alaska and Canada. On October 23, 1997, the United States Senate approved the Protocols amending the Migratory Bird Treaties with Canada and Mexico.

Regrettably, when implementing the treaty language, Congress failed to clarify that non-edible parts of the harvest migratory bird could be sold in commercial products. As a result, FWS issued regulations (50 CFR 92.6) that prohibit the sale or purchase of migratory bird parts, including feathers and parts of birds taken for subsistence. In fact, in 2012, a native Alaskan carver was fined \$2,000 for violating the Migratory Bird Treaty Act for using feathers in his handicraft products.

In 2012, the Alaska Federation of Natives adopted a Resolution that urged the State of Alaska and FWS to revise its existing regulations to allow Alaskan natives to sell traditional handicrafts containing feathers or parts of migratory birds. To date, FWS has not recommended any changes to its regulations despite the fact that non-edible bird parts are routinely discarded. In addition, FWS has recently voted not to modify these regulations during a meeting of the Alaska Migratory Bird Co-Management Council.

This legislation would amend the Migratory Bird Treaty Act to exempt certain Alaskan Native articles from the prohibitions on the sale of items containing nonedible migratory bird parts. It defines the term Alaskan native to include any Indian, Aleut, or Eskimo who resides in Alaska. It stipulates that authentic Alaskan native articles or handicrafts include beading, carving, drawing, lacing, painting, sewing, stitching and weaving or any combination thereof. Finally, the exemption will not apply to any handicraft containing any part of a migratory bird that was taken in a wasteful manner. This exception is consistent with a similar provision in the Marine Mammal Protection Act.

COMMITTEE ACTION

H.R. 3109 was introduced on September 17, 2013, by Congressman Don Young (R-AK). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs. On July 23, 2014, the Subcommittee held a hearing on the bill. On July 30, 2014, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs was discharged by unanimous consent. No amendments were offered and the bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 3109—A bill to amend the Migratory Bird Treaty Act to exempt certain Alaskan Native articles from prohibitions against sale of items containing nonedible migratory bird parts, and for other purposes

H.R. 3109 would amend the Migratory Bird Treaty Act to allow Alaskan Natives to make and sell traditional handicrafts such as masks, jewelry, clothing, and hunting equipment that are made from parts of migratory birds, particularly feathers. CBO estimates that implementing the bill would not have a significant effect on the federal budget.

Because enacting the legislation could reduce revenues and associated direct spending from civil and criminal penalties, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be negligible.

H.R. 3109 contains no intergovernment or private-sector mandates as defined in the Unfunded Mandates Reform act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Because enacting the legislation could reduce revenues and associated direct spending from civil and criminal penalties, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be negligible.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Migratory Bird Treaty Act to exempt certain Alaskan Native articles from prohibitions against sale of items containing nonedible migratory bird parts.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

MIGRATORY BIRD TREATY ACT

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 SEC. 2. (a) * * *

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(c) *EXEMPTION FOR AUTHENTIC ALASKAN NATIVE ARTICLES OF HANDICRAFT OR CLOTHING.*—

(1) *IN GENERAL.*—*Notwithstanding any other provisions of this Act, nothing in this Act prohibits possession, offering for sale, sale, offering to barter, barter, offering to purchase, purchase, delivery for shipment, shipment, causing to be shipped, delivered for transportation, transport or causing to be transported, carrying or causing to be carried, or receiving for shipment, transportation, or carriage, any authentic Alaskan Native article of handicraft or clothing on the basis that it contains a nonedible migratory bird part.*

(2) *LIMITATION.*—*This subsection shall not apply with respect to any handicraft or clothing containing any part of a migratory bird that was taken in a wasteful manner.*

(3) *DEFINITIONS.*—*In this subsection:*

(A) *ALASKAN NATIVE.*—*The term “Alaskan Native” means any Indian, Aleut, or Eskimo who resides in Alaska.*

(B) *AUTHENTIC ALASKAN NATIVE ARTICLE OF HANDICRAFT OR CLOTHING.*—*The term “authentic Alaskan Native article of handicraft or clothing”—*

(i) means any item that is—

(I) composed wholly or in some significant respect of natural materials; and

(II) produced, decorated, or fashioned by an Alaskan Native, in the exercise of traditional Alaskan Native handicrafts, without the use of any pantograph or other mass copying device; and

(ii) includes any weaving, carving, stitching, sewing, lacing, beading, drawing, or painting described in clause (i), or any combination thereof.

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