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## **“Hunger Knows No Law”<sup>1</sup>: Seminal Native Protest and The Barrow Duck-In of 1961**

*Our life is one of continuous hunting for meat and should we be stopped or hindered from hunting in one of the seasons, we are in very tough shape for meat.*

*--Eben Hopson*

*We were not about to change our diet...We just have an ecological clock that says: “Hey, the ducks are here again. Let’s eat them.” Our clock is stronger than law, which is not our law. We were still going to eat—we were saying we’re still going to be Eskimos.*

*--Charlie Edwardsen, Jr.*

*They must have a change in the tarnished treaty...As it is now, the federal government won’t let the Natives take ducks and geese while the ducks and geese are in the Arctic, but after the birds go south, where they are killed by the thousands by white sportsmen, the government says to the hungry Native, “Now you can hunt.”*

*--The Rev. John Chambers, Barrow*

*They made criminals of us, you know, by changing rules and regulations which our people never knew existed. We were not criminals.*

*--Sadie Brower Neakok*

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<sup>1</sup> Sam Taalak, Barrow Whaler, May 1978. Beverly Hugo, an Inupiaq woman from Barrow, and Director of the Inupiaq Heritage Center there, heard my presentation at the September 2004 Alaska Historical Society Meeting in Anchorage. She participated in the Duck-In as a young girl. She reminded me to give credit to Sam Taalak for his phrase "Hunger Knows No Law."

## **Introduction:**

Although the Project Chariot controversy at Point Hope commanded the headlines in 1961, another issue of nearly equal contention--over Native hunting rights--would explode in Barrow in May 1961. This event, remembered as the Barrow "Duck-In," marked another seminal protest by Alaska Natives against federal control of their lands and lives—a protest that, together with Project Chariot and disputes over state land selections in the Minto Flats, would swell to a collective Native dissent that would trigger the Secretary of Interior's "land freeze" in Alaska and the eventual settlement of Native land claims in Alaska with the passage of the Alaska Native Claims Settlement Act in December 1971 (Arnold 1976, Naske and Slotnick 1987).

## **Context:**

The context for the 1961 protest in Barrow begins in December 1916 with the signing of the Migratory Bird Treaty Convention with Canada. A similar treaty was negotiated with Mexico in 1937, and collectively, these treaties protected the entire North American flyway for migratory birds. Neither treaty took notice of subsistence needs or practices and outlawed hunting from March 10 through September 1—the only season when ducks were available for Native harvest in Alaska (Day 1969). As Donald Craig Mitchell, states in *Take My Land Take My Life* "Although the conservation purpose of the treaty was laudable, in 1918 when it enacted the implementing statute, Congress ignored the fact that in Alaska ducks and geese are a mainstay of the Native diet" (Mitchell 2001).

The intent of the treaty was to prevent sportsmen in Canada and the contiguous United States from hunting ducks and geese during the nesting season. Primary drafters of the treaty were Dr. Edward W. Nelson, Chief of the Biological Survey and Dr. C. Gordon Hewitt of the Canadian Commission of Conservation. During treaty discussions, a protracted fight developed over allowing spring shooting. Nelson and Hewitt didn't want it, but fifty-two Midwest congressmen demanded that it continue. Under threat of losing funding for the budding Biological Survey, Nelson relented to Congressional pressure. But it mattered little, as the Audubon Society ultimately prevailed and spring hunting was outlawed. Actual Native subsistence needs were never considered in the treaty debate, but Section 10.5 of the Treaty Act did provide for the taking of non-game and traditionally insignificant species, specifically auks, auklets, guillemots, murre, and puffins (Argy, 1967). The treaty was purely a conservation vehicle to combat sport hunting, commercial egg gathering, and commercial game hunting abuses and was driven almost exclusively by East Coast conservation interests (Day 1969).

In the intervening forty-three years between treaty ratification and the events of May 1961, the Bureau of Biological Survey--successively called the Bureau of Sports Fisheries and Wildlife, and finally the U.S. Fish and Wildlife Service--the agency tasked with administering the statute--made little effort in

enforcing the law on Native hunters. But with the passage of Alaska Statehood in 1959 and the transfer of game management duties to the new state government, the dynamics of federal game law enforcement in Alaska were radically altered. With this reduction in federal management and enforcement duties, the staff of the Bureau of Sports Fisheries and Wildlife was reduced from twenty four to six. At statehood one provision of federal game management that was not repealed was the enforcement of the Migratory Bird Treaty Act. The stage was set for a reduced federal presence to focus its enforcement on one of the few game statutes that remained under its jurisdiction and one that had never been enforced in Alaska before. As Mitchell remarked, the Bureau of Sports Fisheries and Wildlife “decided to make some [work] by stopping Native hunters from violating a treaty that most had never heard off” (Mitchell 2001).

According to the Bureau of Sports Fisheries and Wildlife, enforcement was based more on an increasing knowledge of the importance of Alaska breeding grounds for waterfowl, changing subsistence patterns in places such as Bethel and Barrow, and altered legal requirements brought about by Statehood (Day 1969). In fact, there had been no quantitative waterfowl surveys done by the Bureau on the Delta or on the North Slope up to this time; past harvest estimates were based primarily on interviews with local traders, missionaries and school teachers, and systematic harvest surveying did not begin until the spring of 1964. Additionally, considerations of diminishing overwintering habitat in the lower 48 never seemed to enter the debate.

As well, there was a clash of Western and Indigenous world views. Many Bureau personnel believed that subsistence dependence on waterfowl was overstated by Native hunters. They based their notions largely on the idea that with an expanding aboriginal population eating store-bought food, and adopting the use of guns, outboard motors, aircraft, and snowmachines, that the pursuit of game was no longer traditional. One Bureau official noted: “While the cry of ‘starvation’ is most often heard as the only reason for killing waterfowl in the spring, little has been said for the sporting aspects of the hunt. At the premium price paid for shotgun shells in tundra and coast village stores, there is little doubt that more food could be obtained from store shelves at the same cost” (Argy 1967). This acculturative notion implies that aboriginal culture is static and cannot adapt to new circumstances without abandoning traditional practices (Tremblay, 1985; Nadasdy 1999). Clearly, bureaucratic concern for local traditional subsistence concerns and practices was had not yet arrived.

Even more interesting is that these sweeping observations of local Yup’ik culture were being made most often by enforcement officials and game biologist. One FWS official quoted in a 1967 report on the waterfowl conflict observed: “The Eskimo of today is basically a very happy, honest person with a warm, closely knit family life” (Argy 1967).

According to Charlie Edwardsen, Jr. of Barrow, the trigger for Alaska enforcement came from Mexico protesting that American poachers from California and Arizona were violating the Treaty’s terms. Other Inupiat believed it was Texas ranchers who were the culprits. The Native belief was that it was politically easier to make a show by enforcing the Treaty in Alaska than in the

more politically powerful states of California, Arizona, and Texas (Gallagher 2001). Making enforcement even more puzzling to local hunters was the fact that Bureau personnel had publicly stated over the years that the taking of ducks and geese by Alaska Eskimos had little effect on their total populations (Snapp 1961b, Day 1969).

According to Bureau biologist, A.M. Day (1969), enforcement guidelines were developed in 1960 to examine changing dependence on waterfowl and to gradually increase waterfowl protection required under the Treaty. During the same year, the Bureau held informational meetings in fifty-seven Native communities throughout the state where the treaty regulations was explained and "the people cautioned that the Bureau of Sport Fisheries and Wildlife would proceed to enforce them." The Bureau believed that Native hunters would obey the law once they had become educated about it (Day 1969).

At a meeting in Juneau in the spring of 1961, John D. Findlay, Chief of Management and Enforcement in Washington, DC told Alaska Game Management Agents that he wanted the Migratory Bird Act of 1918 enforced in rural Alaska. According to retired Management Agent, Jim King, who was in attendance: "One by one, around the room, the Agents told Findlay that people in their district were not ready for this and that there would be trouble." Findlay let everyone present have their say and then told them once again to get out and enforce the law (King 2004).

Findlay, from Tennessee, had no first hand knowledge of Alaska enforcement protocol and never lived in the state. King relates that after Arctic Range refuge manager Clarence Rhode crashed in the Brooks Range in 1958, his leadership and team spirit disappeared with him. Without Rhode's leadership and sensitive management, the agents had no choice but to follow Findlay's orders and enforce the law (King 2004).

During the spring of 1960, Bureau enforcement officers tried to get hunter compliance with the spring and summer hunting provisions in Bethel and other Yup'ik villages on the Yukon-Kuskokwim River Delta. Enforcement Agent Neil Argy reported "In most meetings, starvation was predicted by the people, and it was obvious that the Natives felt strongly about their alleged right to take waterfowl during the spring. During these meetings, the 'hunters' refused to talk English and an interpreter was necessary...It is difficult to explain to an Eskimo who speaks little English the niceties of international protocol or why there are irate wheat farmers in Alberta" (Argy 1967).

Bureau education efforts produce little benefit; in fact, that same spring agents were fired upon by seven Bethel hunters. King relates that it was actually a group of delinquent boys--all who eventually were fined--except one who was sentenced to a stint in reform school for being abusive to Yup'ik Magistrate Nora Guinn in her Bethel courtroom. King affirms that "Eskimos that I knew went out of their way to make sure I didn't equate them with these events" (King 2004).

Another incident in the region involved agents Ray Tremblay and Neil Argy who were investigating potential violations in the village of Kasigluk. Village men tried to seize the officers but the two men escaped to their nearby plane. Villagers asserted that they meant no harm to the two game wardens but merely

intended to "lock them up in a fish cache for two or three days—to acquaint them with dried fish and other village food" (Snapp 1961c). Jim King relates that "No one was hurt or even bruised" (King 2004).

Although Bureau personnel were shocked by such treatment in the Y-K Delta, Native hunters were even more shocked and confused after the Bureau's village informational meetings where they were told that hunting their only source of fresh meat after a long winter had suddenly become illegal (Mitchell 2001).

In the spring of 1961, enforcement officials focused their efforts on Barrow (Day 1969, Mitchell 2001, Gay 2003a). According to Guy Okakok of Barrow:

We got shocked when we heard that there is a law on ducking. Season was in September. How could anyone hunt ducks then after this month? We sure lots of us starve. If only anyone be found killing ducks outside of season this spring May, then he wouldn't be alone. All of us will want to [be] turned in because we also can shoot ducks. (Mitchell 2001)

Nineteen sixty-one had been a poor whaling season in Barrow. Only two whales had been taken, Sam Taalak, president of the Village Council, observed: "Whales already gone, walrus and caribou not here yet, seal hunting severely hampered by rotting ice." The two whales taken when divided among all Barrow residents amounted to "less than four meals for each family" The spring hunt for waterfowl took on an even greater importance that year (Snapp 1961a).

Sadie Neakok was the Barrow magistrate at the time, and in her extensive interviews with Margaret Blackman in the late 1980s, she had much to say about the "Duck-In." She resented the fact that enforcement of the migratory treaty "made criminals of all our people breaking the law... Eben Hopson was our senator and I was magistrate when the state made compulsory that anyone who hunted waterfowl out of season would have to be put in jail... And so, Eben and I knew every man, woman, and child who was able to hold a shotgun was guilty of hunting ducks that spring" (Blackman 1989).

### **May 1961:**

After federal game wardens arrested Barrow resident, Tom Pikok near the Meade River, sixty miles south of the village on May 20, 1961 for shooting three geese out of season, events quickly escalated in Barrow. On Saturday, May 31, when wardens Harry Pinkham and John Klingbeil arrived in Barrow, they were met by John Nusunginya, an Inupiat and member of the state legislature (and also Charlie Edwardsen, Jr.'s uncle). As he and Pinkham strolled down the street discussing the Treaty, a flock of ducks flew over and Nusunginya raised the shot gun he was carrying and, according to Charlie Edwardsen, Jr., "pumped a couple of them down" (Gallagher 2001). The surprised Pinkham arrested him for possession of an eider duck and confiscated his gun (Arnold 1976, Morgan 1988, End of the Trail 1988, O'Neill, 1994, Chance 1990, Naske and Slotnick 1987, Johnson 1971, Mitchell 2001, Gay 2003a).

Barrow people were busy the rest of Saturday and Sunday considering their response. According to Sadie Neakok, it was she and Eben Hopson who got the idea to hold "a general meeting with all the people of Barrow. The only way we could solve the problem was for every man, woman, and child that had shot a duck, or gotten a waterfowl, to go and stand in the front of the game warden when he made an arrest" (Blackman 1989). Their basic idea was to overwhelm "the government's administrative capacities with the possibility of jailing the whole village" (Reader's 2003).

Pinkham was staying at the Top of the World Hotel and on Monday night a delegation came by to invite him to a town meeting.

Sadie Neakok's account of Barrow's encounter with Pinkham is a gem:

That's how it came about. When the game warden made the arrest, they all went over there. And I'm sitting home (I'm not supposed to know about this). I'm drinking tea at my table and looking out the window to see when the game warden would be coming in after I had called Eben [Hopson]. Sure enough, here comes the game warden. Just about knocked my door down when he was knocking. I'm trying to stay calm.

I say, "Come in. Tell me all about it. What's going on?"

"What's the meaning of that crowd in front of my office down there?"

"Well, come in and tell me all about it--as if I didn't know. I asked him first, What do you see in front of your office?"

"Every man, woman, and child standing in front of my door with a duck in his hand."

"Oh, you mean you don't know, as an officer, what to do about a person in possession of a waterfowl?"

"Oh, yes, I do. But I can't handle that much paperwork."

(Blackman 1989)

That cold May evening, inside the local theater--opened especially for the meeting--Pinkham found a line of hunters, each with a duck in his hand. They each had a signed statement that they had taken the ducks out of season, and all 138 hunters demanded to be arrested. In truth, many of the ducks were from the previous season and had been hastily taken from ice cellars and distributed to the protesters); others had been recently shot by Oliver Leavitt and his whaling crew and passed out to the protesters. According to Leavitt, "some took two, one for the arrest and one for dinner" (Blackman 1989; Wohlforth 2004).

In any case, under the treaty, the ducks had been taken illegally. Pinkham also witnessed as 300 Barrow residents signed a petition for him to deliver to President Kennedy demanding that he grant them the right to hunt waterfowl for food at any time of the year. Eben Hopson stated later in a letter to the *Anchorage Times* that "Had it not been for the fact that 30 to 40% of the men were out at whaling camps there would have been 200 or more men signing the same statement" (Hopson 1961).

According to Sadie Neakok, "before the evening was over, Eben [Hopson] had sent a wire to Governor William Egan, asking him to be prepared to send a welfare person out to Barrow, because we would not be able to handle children whose parents were being picked up and taken to jail for violation of this waterfowl law" (Blackman 1989). Agents Pinkham and Klingbeil were caught in the village's trap, recognizing the impossibility of jailing everyone in town. All the two agents could do was cite the signers for the game violations and load the 600 pounds of eider evidence into gunny sacks. Sadie Neakok relates that Pinkham filled about nine sacks with eiders and was in a quandary about what to do with it all. He approached her and asked her if she wouldn't mind holding the evidence for him. She replied: "No, I don't want any part of it. You can take care of it." So he had to fly twice to Fairbanks to take his evidence in. Our people never got taken out. The two trips he made with those ducks were enough." (*Fairbanks Daily News-Miner* 1961a, *Fairbanks Daily News-Miner* 1961b, Arnold 1976, Morgan 1988, O'Neill 1994, Chance 1990, Blackman 1989, Naske and Slotnick 1987, Gallagher 2001, Mitchell 2001, Reader's 2003).

Barrow residents had successfully faced down the federal government, and the "feds" were forced to change their enforcement of regulations. Charlie Edwardson, Jr., recounted:

So Secretary Udall had made an order to arrest the natives, but they could not do it. We were so well organized that if they had arrested every man in Barrow, the womenfolk were going be next. And then the children. At the time there was not a jail big enough in the state of Alaska. They would have had to have a C124 coming in and out for days to move Barrow out to jails in the States!  
(Gallagher 2001)

Although jail time seemed to be an imminent threat to the protesters, Jim King relates that it was common knowledge that the Bureau of Sport Fisheries and Wildlife never put people in jail for wildlife violations that were normally prosecuted as misdemeanors. King observes: "Game law violators, at least in Alaska, are not criminals" (King 2004).

Oddly, John Findlay and Sport Fisheries and Wildlife management officials never said anything to the press, and agents were officially instructed not to talk to reporters and to refer all questions to Ray Woolford in Juneau, the Bureau's senior administrator for Alaska at the time. As King recounts: "The administrators who put the whole thing in motion stayed silent" (King 2004).

The controversy simmered for weeks after the Duck-In. Ray Tremblay, now head of the Bureau of Sport Fisheries and Wildlife in Alaska, was the first to break bureaucratic silence. He affirmed Bureau actions stating: "We have our orders, and we will enforce the treaty and will arrest anyone we find taking ducks between now and September 1" (Gallagher 2001). But Alaska's state and federal politicians quickly rushed to the aid of Barrow Inupiat. Governor William Egan stated to the press that he believed federal agents should have tried harder to educate people in Barrow and "then, perhaps, this sort of thing could have

been avoided" (*Fairbanks Daily News-Miner* 1961c). Senator Ernest Gruening said that he would "stand beside" any arrested Eskimo "in court and add...words to his defense." The national organization of the Presbyterian Church, at the urging no doubt of local Barrow Presbyterian minister Rev. John Chambers, passed a resolution in favor of the Barrow people, as did the Alaska State Legislature (Gallagher 2001).

Barrow's resistance to Bureau enforcement and the Bureau's inflexible attitude quickly generated wide publicity. Stories appeared in the *Washington Post* and the *New York Times* supporting Alaska Natives. The President and the Secretary of the Interior received hundreds of letters condemning the enforcement actions. Ernest Gruening had advanced the concept of "Federal Mismanagement" in his efforts for Statehood, and it was quickly apparent that anti-federal sentiments—especially over the administering of fish and game laws—had surface again (Day 1969). U.S Attorney Warren Colner declined to prosecute the 140 Eskimos involved in the Barrow incident but made it clear that he would enforce prosecution in any further violations. Alaska's congressional delegation, Senators Ernest Gruening and Bob Bartlett and Representative Ralph Rivers convened a special meeting with Secretary Stewart Udall. Udall had maintained in an announcement on June 10 that the law was still the law, and he had no choice but to enforce it. Barrow women reacted strongly, vowing to hunt ducks themselves if their men were taken from the village to appear in court. Senator Gruening was not satisfied with Udall's position either and observed:

The members of the Alaska delegation...expressed the opinion that there was substantial doubt in their minds [on] just what 'the law' in this case was. They voiced the view that it was difficult to reconcile the action taken by the Fish and Wildlife agents in Alaska in May 1961 with the fact that since 1916 no Secretary of the Interior...had made any attempt to enforce what was now, for the first time, presumed to be 'the law'...The delegation, therefore, expressed its dissent to Secretary Udall...

(*Fairbanks Daily News-Miner* 1961d, 1961e, Snapp 1961c, Day 1969, Blackman 1989)

In Canada, things were escalating as well. A subsistence hunter in Yellowknife had been arrested for taking a duck outside the legal season defined by the Treaty. The incident was pressed in the Territorial Court of the Northwest Territories, and judge J.H. Sissions ruled that "the Migratory Bird Convention...of 1916 had no application to natives hunting for food and does not curtail their hunting rights." In his decision, the judge recounted a traditional local story about a government warden telling a Yellowknife chief that spring bird hunting was contrary to the 1916 Convention. The chief asked the government man if the Indians had signed it, and when the warden replied "no," the chief announced: "Then, we shoot ducks" (Snapp 1963).

Still unwavering, Bureau of Sport Fisheries and Wildlife head, Tremblay shot back that the Canadian court decision was simply "one man's opinion" (Gallagher 2001). Governor Egan was shocked and called Tremblay's reaction "...a flagrant example of enforcement officers attempting to be judge and jury..." The *Fairbanks Daily News-Miner* came to Tremblay's defense declaring: "It seems the governor is trying to blame the agent for doing his duty, while overlooking the obvious fault that lies with the treaty itself...the entire problem is not a matter of the governor's nor indeed Tremblay's views. It is a sad situation of law, and if the law is wrong, it should be changed" (Tremblay 2004).

Egan, sympathetic to the ruling and believing that U.S. law should heed the Canadian decision, proposed that federal enforcement officials use it as guide and leave Native hunters alone to abide in "subsistence, peace and contentment" (Gallagher 2001).

Eventually, faced with objections from Alaska Natives, the local and national press, Alaska's governor, and state and national legislators, and to prevent another village incident, Fish and Wildlife Commissioner Clarence Pautzke informed his enforcement personnel at the Bureau of Sport Fisheries and Wildlife in March of 1962 that from then on they would communicate the dates of their patrols to local communities. Local hunters would know before hand when enforcement officers would be in their villages and operations would be limited to three days in any one area (Argy 1967). From 1962 up until the present day, advance notification of patrol schedules to local villages has become a standard enforcement protocol. Advance notice of an agent's arrival is given and no duck shooting is done while he is in town. As Charlie Edwardsen, Jr. put it: "Officially, the agent has not seen any malicious act against the treaty. This is how the treaty is enforced. So people are still hunting and the government knows it, but doesn't try to stop them" (Day 1969, Johnson 1971, Chance 1990, Gallagher 2001). Summing up the Duck-In's legacy, Edwardsen mused:

...the really beautiful thing about the 'duck-in' was that it was spontaneous...and, you know, by attempting to enforce the treaty obligation, the federal government marshaled the Eskimos, not just from Barrow, but from all over...The people acted, and what was amazing was not only the Northern Eskimos acted but the Athabaskan Indians and Yup'ik Eskimos and the Aleuts; they all acted spontaneously...And I saw that the people, all of the people, acting together could win. And I was proud. (Gallagher 2001)

Interviewed later, Edwardsen concluded "That was the first time ... I had seen the dignity of a people rise together and a community so strong" (Mitchell 2001).

### **The Duck-In Legacy:**

The resonance of events like the Duck-In and Project Chariot produced a growing sense that Alaska Native grassroots protest could change the way the

Federal government did business. The confidence gained from these confrontations was then focused on the settlement of Native land claims. More directly, the Duck-In led to a conference in Barrow on November 15, 1961, that brought together northern and northwestern Inupiat village leaders. The Inupiat called on the support of the Association on American Indian Affairs (AAIA) to help with funding and organizing the conference. The AAIA was a private charitable organization based in New York City, advocating for Native rights and had been helping the people of Point Hope with their protest against the AEC and Project Chariot (Arnold, 1976, Neakok 1977, Blackman 1989, Mitchell 2001).

They called the gathering "Inupiat Paitot" (the People's Heritage), and developed a manifesto of concerns, with subsistence rights and land claims settlement at the top of the list:

We the Inupiat have come together for the first time ever in all the years of our history. We had to come together in meeting from our far villages from Lower Kuskokwim to Point Barrow. We had to come from so far together for his reason. We always thought our Inupiat Paitot was safe to be passed down to our generations as our fathers passed down to us. Our Inupiat Paitot is our land around the whole Arctic world where we Inupiat live, our right to hunt our food any place and time of year as it has always been, our right to be great hunters and brave independent people, like our grandfathers, our right to the minerals that belong to us in the land we claim. Today our Inupiat Paitot is called by white men aboriginal rights.

(Naske and Slotnick 1987, O'Neill, 1994)

This meeting was seminal in that it was the first time villages had gotten together to discuss common problems. In addition, the gathering got the attention of high officials in the Department of the Interior and led to the development of the Arctic Slope Native Association (ASNA) in 1966, the first regional Native organization formed since the Alaska Native Brotherhood had been formed fifty years earlier. ASNA proved to be pivotal in the eventual land claims settlement, and in the eventual formation of the North Slope Borough in the 1970s (Arnold 1976, Neakok 1977, Blackman 1989, O'Neill 1994, Mitchell 2001).

Another important outcome of the conference was the call to publish a "bulletin or newsletter" to cover Native issues that delegates believed were not getting adequate coverage in the mainstream Alaska press. The delegates assigned Tom Snapp, a *Fairbanks Daily News-Miner* reporter covering the Barrow conference and Point Hope artist and activist Howard Rock to make this happen. Their efforts produced the biweekly *Tundra Times*. The first issue rolled off the presses in October 1, 1962, with Rock as editor and Snapp as assistant editor. This newspaper proved to be a galvanizing and powerful voice in the eventual settlement of Alaska Native land claims (O'Neill 1994).

## **A Long Resolution of the Law:**

Following the migratory treaty with Canada in 1916, subsequent treaties were inked with Mexico in 1936, Japan in 1972, and the Soviet Union in 1976, each with language providing for a Native subsistence spring waterfowl hunt. But because the original treaty with Canada was the most restrictive, these later provisions could not be implemented until the 1916 Treaty had been amended (Huntington 1992).

Waterfowl conflicts in the Y-K Delta flared again in 1975, this time due to enforcement attempts by the State of Alaska. Citations were issued and one subsistence hunter was prosecuted for hunting migratory birds. Confrontations between local Native organizations and State Fish and Wildlife Protection agents force the State to back down and defer again to the practice of Federal non-enforcement (Huntington, 1992).

The Hooper Bay Agreement in 1984 and the Yukon-Kuskokwim Delta Goose Management Plan in 1985 created a framework for local Native involvement in determining the subsistence hunt based on target populations of geese: if the goose population was above the target population, a hunt could occur; if below, the hunt could be curtailed. The State of California was also a signatory on the Plan, and with their participation came provisions for protecting and acquiring wintering habitat (Huntington 1992). A concerted effort was made in the Plan for local education, information dissemination, and in employing locals in subsistence survey efforts.

In 1995, thirty four years after the Barrow Duck-In, U.S. and Canadian representatives finally amended the 1916 treaty; these amendments were ratified in 1997 by the U.S. Senate. In 1999 the U.S. and Canada formalized the terms of the agreement. The new treaty finally authorized the taking of migratory birds and the collection of their eggs "consistent with the[ir] customary and traditional uses...for their own nutritional and other essential needs" (Case and Voluck 2002).

Commenting on the new amendments, Mike Rearden, manager of the Yukon Delta National Wildlife Refuge, commented: "There's always this background of resentment that the government doesn't recognize the subsistence use that's a tradition here. It's going to make everybody's life easier to remove that tension" (Case and Voluck 2002, Gay 2003a).

The new protocol called for the formation of a migratory bird management body that was established, after a lengthy public process, in 2002 as the Alaska Migratory Bird Co-Management Council. The Native Migratory Bird Working Group, the Alaska Department of Fish & Game, and the Fish and Wildlife Service established the Council as a single statewide management body with representatives from the Fish and Wildlife Service, the Alaska Department of Fish and Game, ten of Alaska's nonprofit tribal organizations, and the North Slope Borough. In an almost seven year process, the council solicited regional expertise to develop new regulations, which finally appeared for comment in February 2003. They provided for a spring hunt that "will be open to permanent

village residents, regardless of race, who live within subsistence areas with a history of migratory bird harvest" (Woods 2001, Gay 2003a).

When the new proposed regulations appeared for comment in 2003, Myron Naneng of Bethel, president of the Association of Village Council Presidents and a member of a number of migratory bird work groups, observed "...at least hunters won't have to look over their shoulder like they always have" (Gay 2003a).

### **The Traditional Bird Hunt Today:**

Most believed with the new treaty amendments and the cooperative development of new regulations that the 87-year journey to legitimize the Native spring hunt of migratory birds had come to a constrictive end. Then, with little warning, Alaska Department of Fish and Game officials surprised many hunters and the Co-Management Council by announcing In April 2003 that the new federal regulations violated the state constitution and its mandate for equal access to wildlife for all Alaskans. This meant that only on federal land would the spring hunt now be legal. As sixty percent of the Yukon-Kuskowkim Delta and much of the North Slope is state owned, Native bird hunters would still be pursuing an illegal hunt while on state land (Gay 2003b).

State game wardens said they wouldn't arrest hunters except for blatant violations, an approach eerily reminiscent of the old federal process. Federal managers, albeit slowly, had in the present co-management process done their part to ease the divisions between federal enforcement regulations and traditional subsistence practices. On the other hand, the State of Alaska had, with its recent announcement, only complicated management regulations and once again exacerbated the division that had developed between state government and subsistence users over its non-compliance with ANILCA by not establishing a rural subsistence preference (Gay 2003b).

Ralph Andersen, vice-chairman of the Alaska Migratory Bird Co-Management Council, observed "I'm just disappointed that after all the work a whole bunch of us put into moving this matter forward; it seems like we've run into a philosophical conflict." Myron Naneng didn't remember the State even bringing up these objections during Co-Management Council sessions, and other members of the council concurred. Tom Rothe, waterfowl coordinator for the Alaska Department of Fish and Game, asserted "We remain strongly supportive of legalizing subsistence. But at the end game, we're not in the position that we can adopt these regulations." State enforcement agents were directed to prevent the harvest from growing and focus on protecting endangered and threatened bird species (Gay 2003b).

Vice-chairman, Ralph Andersen, also a subsistence hunter, echoed the protests of many Native waterfowl hunters past and present, when he asserted "If they want to nail me, they can nail me, but I'm going to go out hunting birds" (Gay 2003b).

In July 2003, the Final Rule for the 2003 Annual Harvest Regulations was published in the Federal Register, officially opening—on federal lands, at least--

the first legal harvest season since the treaty's ratification 85 years ago. Seemingly, the long-standing clash between Alaska Native harvest practices and federal and state management paradigms had been ended (AMBCC 2004).

But this new and hard won *modus vivendi* would not last. Although the new Annual Harvest Regulations legalized the spring hunt for the first time since 1916, they contained the unprecedented requirements that every hunter over the age of 16 purchase a federal duck stamp and a state hunting license (Dillon 2004).

On May 9, 2004, village leaders in Southwest Alaska threatened civil disobedience to protest these additional federal restrictions attached to the Federal Annual Harvest Regulations. Leaders from most of the 56 Yup'ik villages in The Yukon-Kuskokwim Delta told the Association of Village Council President's board of directors that the duck stamp and hunting license requirements amounted to over-regulation of the traditional harvest (Dillon 2004).

The Council passed a resolution authorizing it to lobby Congress to amend the duck stamp provision and to allow for a traditional harvest without licenses. Myron Naneng, President of the AVCP, reflected: "We ought to celebrate the legalization of the migratory bird treaty, but by placing restrictions on us, it dampens the celebration." Harold Napoleon, from Hooper Bay, declared: "The villages are not going to abide by this law that requires us to buy a duck stamp, and if any of our people are arrested for this, we need to defend them" (Dillon 2004).

Doug Alcorn, assistant regional director for migratory birds at the U.S. Fish and Wildlife Service, in a remark reminiscent of the management attitudes which precipitated the Barrow Duck-In 42 years before, affirmed: "We would be breaking a federal law if we didn't require duck stamps" (Dillon 2004).

Kenton Moos, wildlife enforcement officer at the Yukon Delta National Wildlife Refuge, voiced a practical impediment to compliance and a crowning irony when he noted: "You can purchase the federal duck stamps at post offices, but they're not currently available in Bethel" (Dillon 2004). Even with years of discussion, re-ratified treaties, and attempts at co-management, the Migratory Bird Treaty Act had somehow come full-circle, having seemingly reverted to the civil unrest and disobedience suggestive of that first used years before in Barrow.

Joseph Spader, in his 2000 dissertation "Co-management in a Landscape of Resistance," writes: "The most significant factor in this climate of recurrent conflict relates to institutional barriers to power-sharing...Co-management works in part by transforming user groups into management partners. When users attain a seat at the decision-making table, even if only an informal seat, the regime gains the knowledge, active participation and cooperation of users and takes on a new legitimacy in their eyes." In these many years, resource managers have failed to find a way to replace, as Spader states, "the conventional model of wildlife management with an effective co-management regime" (Spader 2000).

This 89-year-long conflict--between the cultures of traditional subsistence practice and game management bureaucracy--is far from over.

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