

SUBMISSION TO THE NWMB
FOR

Information:

Decision: X

Issue: Proposed Changes to the Migratory Birds Regulations

The language used in the *Migratory Birds Regulations* (MBR) relative to Aboriginal people is seriously outdated. It predates the *Constitution Act* of 1982, the revisions to the *Migratory Birds Convention* of 1995 (Parksville protocol) and could be more reflective of current case law.

Environment Canada's Canadian Wildlife Service (CWS) is the federal agency responsible for the management of migratory birds across Canada and the administration of the *Migratory Birds Convention*, through the *Migratory Birds Convention Act, 1994*. The actual implementation of the *Act* is through two sets of regulations, the *Migratory Birds Regulations* and the *Migratory Birds Sanctuary Regulations*.

CWS is currently revising the *Migratory Birds Regulations*. This revision will take about 2 years to complete and consists of updating parts of the regulations that refer to Aboriginal peoples and their harvesting rights and bringing them in line with the current legal environment.

These proposed changes and the actual final wording may vary as a result of these discussions or through the legislative drafting process.

Proposed Regulatory Amendments

Delete definition of Indian and Inuk. The proposition is to use references to *Aboriginal peoples of Canada* in the text of the regulations which will have the same meaning as that of the *Constitution Act, 1982* and thus do not need to be defined in the regulations.

Insert the following or similar language to acknowledge and describe harvesting rights as we understand them.

An Aboriginal person of Canada with treaty or aboriginal harvesting rights may domestically harvest migratory birds¹ for food, social or ceremonial purposes in the area where those rights are derived:

- *without a migratory game bird hunting permit,*
- *throughout the year, and*
- *with no bag or possession limit*

¹ Note that the *Migratory Birds Convention Act, 1994* defines migratory birds to include all parts of the bird including eggs.



subject to conservation, public health and public safety.

The following text could be added for greater clarity and to reinforce our understanding that aboriginal/treaty rights are tied to place; outside of their treaty or traditional area Aboriginal peoples are subject to the same requirements and constraints on harvesting as other Canadians.

Aboriginal peoples of Canada harvesting migratory birds outside of their treaty area or traditional territory are subject to laws of general application regarding hunting.

We are also suggesting a clarification on barter, exchange and sale of migratory birds with the addition of language such as.

The Aboriginal peoples of Canada may barter, exchange or trade, but not sell, migratory birds domestically harvested under aboriginal or treaty rights within or between Aboriginal communities.

The Aboriginal peoples of Canada may sell inedible parts of migratory birds domestically harvested under aboriginal or treaty rights.

The following sections and subsections are recommended to be deleted.

Clause 5(6a) currently exempts an Indian or Inuk from the requirement for a Migratory Game Bird Hunting Permit (MGBHP). The exemption for the MGBHP is provided for in the recommended above text about rights.

Clause 5(8) which refers to the aboriginal harvest of auks, auklets, guillemots, murre, puffins and scoters and their eggs for human food and clothing becomes redundant with the changes recommended above. Further our understanding is that aboriginal harvesting rights are not restricted as to species.

Clause 5(10) exempts an Indian or Inuk from requiring a MGBHP (clauses 5(1) & 5(3)). This clause is redundant in the current regulations as it is covered off by 5(6a). The exemption for the MGBHP is provided for by the recommended text above.

Clause 38 is a specific reference to the James Bay Agreement and the Northeastern Quebec Agreement. This section was put into the regulations shortly after these agreements, the first modern treaties, were signed. At present there are approximately 23 modern treaties in place and several First Nations with self government agreements. Since the *Migratory Birds Convention Act, 1994* now contains a non derogation clause and the regulations cannot normally over-ride constitutionally protected land claim agreements, there is no need for this provision in the regulations.



Next Steps

Environment Canada is asking for a letter to either the regional Canadian Wildlife Service (CWS) Director or the Director General of CWS (contact information below), preferably by December 31, 2013, indicating:

- your support or concerns with what is being proposed, and
- any suggestions for change

Contacts:

Regional Director for CWS

David Ingstrup
Environment Canada, Canadian Wildlife Service
4999 98 Ave NW
Edmonton, Alberta
T6B 2X3
Email : david.ingstrup@ec.gc.ca

Director General for CWS

Sue Milborn-Hopwood
Environment Canada, Canadian Wildlife Service
351 St. Joseph Blvd., 14th floor
Gatineau, Quebec
K1A 0H3
Email: sue.milborn-hopwood@ec.gc.ca

Prepared by:

Dan Teillet
Head, Bird Conservation
Canadian Wildlife Service, Gatineau, Quebec

8 November 2013





Environment
Canada

Canada

Proposed Changes to the *Migratory Birds Regulations* Regarding Aboriginal peoples and Rights

Nunavut Wildlife Management Board Meeting
Iqaluit, NU
Dan Teillet
Canadian Wildlife Service
9 December 2013

Outline

- Introduction to the Migratory Birds Regulations with highlights of the various proposed changes
- Today: Focus on updating references to Aboriginal peoples and their rights
- Introduce amendment proposals
- Next steps timeline

Amendments Relating to Aboriginal Rights

- MBRs sections related to Aboriginal people have not been changed in more than 30 years, some parts are much older
- Over this period, the legal landscape relative to Aboriginal rights has evolved substantially; consequently the MBR are at odds with:
 - Current jurisprudence
 - The *Constitution Act, 1982*
 - The *Migratory Birds Convention* as amended by the Parksville Protocol (1995) to explicitly accommodate Aboriginal peoples

Migratory Birds Convention – Parksville Protocol

- The Migratory Birds Convention (MBC) is a treaty between Canada and the U.S. originally signed in 1916.
- The MBC has only been amended once, that being in 1995 by the Parksville Protocol.
- This amendment was to explicitly accommodate Aboriginal and treaty rights.
- The Canadian position in these negotiations was developed after extensive consultation with Aboriginal peoples and a number of Aboriginal people were part of the negotiating team.
- While the enabling legislation, the *Migratory Birds Convention Act, 1994* was changed to accommodate the Protocol, the MBR were not.

Underlying Principles

- Conservation is the number one priority
- Harvesting activities by Aboriginal peoples are the first priority for allocation after conservation
- Migratory birds are managed so that conservation priorities are met, which means that there are sufficient birds available for
 - Continued healthy populations of the species throughout its range
 - Aboriginal harvesting
 - Sport harvesting
 - Research and education, and
 - Eco-tourism.

The existing MBR and language relating to Aboriginal Peoples

- Summary of problems with current MBR
 - Definitions are poor for First Nations and Inuit and silent on Métis
 - There is no acknowledgement of domestic harvesting rights such as:
 - Year round harvesting
 - Collecting eggs and down
 - Bag or possession limits
 - There are inconsistencies such as
 - Rifles can only be used in northern Quebec, NWT and Nunavut
 - Only the JBNQA and Northeastern Quebec land claims are mentioned

The existing MBR and language relating to Aboriginal Peoples

- Refer to the fact sheet for more detail
- Look up the complete current regulations at http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1035/



Recommended Regulatory Changes Aboriginal Rights – Proposed Additions

1. To ensure that the Aboriginal people of Canada with treaty or aboriginal harvesting rights may domestically harvest migratory birds in the area where those rights are derived
 - without a migratory game bird permit,
 - throughout the year, and
 - with no bag or possession limit butsubject to measures necessary for conservation, public health and public safety.
2. That the Aboriginal peoples of Canada may barter, exchange or trade, but not sell, migratory birds domestically harvested under aboriginal or treaty rights within or between Aboriginal communities.
3. That Aboriginal peoples of Canada may sell inedible parts of migratory birds domestically harvested under aboriginal or treaty rights.

Recommended Regulatory Changes Aboriginal Rights – Proposed Deleted Clauses

Delete: current definitions of Indian and Inuk

Delete: clauses 5(6) & 5(10) which exempts an Indian or Inuk from requiring a MGBHP.

Delete: clause 5(8) refers to the aboriginal harvest of auks, auklets, guillemots, murrees, puffins and scoters and their eggs for human food and clothing.

Delete: clause 38 which essentially states that the MBR are subject to the JBNQA and the Northeastern Quebec Agreements.

Recommended Regulatory Changes - Use of Rifles

- Currently the MBR allow Aboriginal harvesters the use of rifles or shotguns with a single bullet to hunt migratory birds in NWT and northern Quebec. This is interpreted to include Nunavut as the regulation was in place prior to the creation of Nunavut.
- We are considering whether this should be expanded to other remote areas of the country such as Labrador, northern Ontario, northern Manitoba and Yukon

Changes Relative to the Management of Sport Hunting

Many issues related to sport hunting have accumulated over 30 years. The proposed amendments to improve management of hunting aim to:

- Include the necessary tools for conservation and sustainable hunting
- Avoid unnecessary barriers and irritants to hunters
- Make equal hunting opportunity available to all who wish to participate
- Encourage participation in hunting
- Maintain general public support for hunting
- Be clear about the intended effect of each regulation

Summary

We are recommending that it be clear in the MBR that

1. The Aboriginal peoples of Canada with harvesting rights may harvest migratory birds for domestic purposes in the area where those rights are derived without a permit, throughout the year and are not subject to bag or possession limits
2. Their rights are subject to measures necessary for conservation, public health and public safety.
3. They may exchange, trade or barter, but not sell migratory birds between and among Aboriginal peoples.
4. They may sell inedible parts
5. They may use rifles and single bullet shotguns in remote areas.

Timeline

- Aiming to complete pre-consultation by the end of 2013 or early 2014
- Publication in Canada Gazette 1 in 2014, which provides another opportunity for review
- Canada Gazette II (final regulations) in early 2015

What Do We Need From You?

- A letter to either the regional CWS Director or the DG of CWS, preferably by December 31, 2013, indicating:
 - Your support or concerns with what we are proposing and
 - Any suggestions for change

Contact

- If you have comments or suggestions we encourage you to contact:
- Your regional CWS director (David Ingstrup, Environment Canada, Canadian Wildlife Service, 4999 98 Ave NW, Edmonton, Alberta T6B 2X3, david.ingstrup@ec.gc.ca)
- The Director General CWS (Sue Milburn-Hopwood, Environment Canada, Canadian Wildlife Service, 351 St. Joseph Blvd., 14th floor, Gatineau, Quebec K1A 0H3, sue.milburn-hopwood@ec.gc.ca)
 - Comments or suggestions can also be sent to mbregs.reports-rapports.omregs@ec.gc.ca