

CANADIAN WILDLIFE SERVICE  
P. O. BOX 1590  
SACKVILLE, N. B.  
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1989

A  
Chronology  
of  
the  
MBCA  
1913-1989

Peter Tamas/DOE/CPG/FPRO/Nov. 6, 1989

## **Foreword:**

The following research notes are derived from extensive examination of files at the National Archives of Canada, a literature review and a study of Ministerial correspondence files. All notes are referenced by date and location. For recent correspondence the file numbers are current docket numbers (1983 to present). For Ministerial correspondence from the mid 1970's to the early 80's, the file numbers are now 'dead.' Footnote references found from 1913 to 1919 refer to end-notes found at the end of the document and all other references are to files in the Archives. Note: RG stands for Record Group. RG 108 refers to general DOE files, RG 109 refers to CWS files, and MBCA stands for the Migratory Birds Convention Act.

I would like to thank Kandis Lowen and the patient staff at the circulation desk of the National Archives of Canada, Mr. Whyte at the Yukon Archives, Peter Mazerolle in the operations room at PVM, Jimmy Rush at the National Archives in Washington, and Marie Jetten in the DOE library in Les Terraces de la Chaudiere.

Peter Tamas  
Environment Canada  
Monday, November 6, 1989

1912-1917

In personal correspondence files of the Rt. Hon. A. Meighen, P.C., M.P. (Finding aid 106, National Archives of Canada)

There is no record in the correspondence files of A. Meighen (PM) of letters from W.J. Roche (Minister of the Interior) regarding the MBCA.

1913

The United States enacted the Federal Migratory Bird

Law. [1] This law established at the federal level a system of protection for a large number of migratory species. It was suggested on the basis that materials which pass between states fall under federal jurisdiction; therefore, migratory birds are a federal responsibility.

**U.S. Federal Migratory  
Bird Law passed**

January 14, 1913

First official mention of the possibility of an international treaty for the protection of migratory birds was heard in the Senate of the United States. [2]

**First official mention of the  
possibility of an interna-  
tional treaty**

March 18, 1913

In RG 109, Vol. 115, Part 1

Memo from Dominion Parks to Mr. Herkin:

"With regard to the protection of migratory birds in which are those not commonly considered game birds, the time would appear propitious for the enactment of suitable legislation by which these birds would be effectively protected."

Early April 1913

In RG 109, Vol. 115, Part 1

First official (written) confirmation of the United States' Federal Migratory Bird Law is found in Canada. Letters were written to and by the Commissioner of Parks and indicated an interest in developing similar legislation for Canada.

July 7, 1913

The Senate of the United States adopted a resolution asking the President to propose to the governments of other countries the negotiation of a convention for the protection of migratory birds. [1]

January 3, 1914

The first draft of the Migratory Birds Convention was given to the State department as drawn up by Dr. T.S. Palmer. [2]

**Draft convention  
submitted to the US State  
Department**

January, 1914

C. Gordon Hewitt made a private trip to Washington in order to informally discuss the possibility of some sort of international agreement protecting migratory birds. [1][2]

January, 1914

The Canadian Commission on Conservation passed the resolution:

"...that the provincial governments of Canada be urged to solicit the good offices of the Dominion Government in obtaining the negotiation of a convention for a treaty between Great Britain and the United States, for the purpose of securing more effective protection for the birds which pass from one country to another." [ 1 ]

**First mention of  
Provincial involvement**

January 20, 1914

In RG 109, Vol. 115, WL.U.10, Part 1

News Clipping from Montreal Fleur (?)

"William S. Haskel, of New York, general counsel of the American Game Protective Association...is to seek the assistance of the Conservation Commission to bring about an international treaty that will protect migratory birds in Canada similar to the way they are protected in the United States."

January 23, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

Memorandum from the Commissioner of National Parks to Mr. Cory, (Deputy Minister of the Interior?)

"In the United States the principle has been recognized that migratory birds belong to the country at large...if action is to be taken for the protection of migratory bird life it should be taken only under federal authority...at present all it is proposed to do is to carefully investigate the subject...When such information is secured, it is thought that probably the best course to pursue would be to hold a conference here (Ottawa) to be attended by the chief game wardens of each province..."

February 16, 1914

Letter from the U.S. Secretary of State to the Ambassador of the British Embassy in Washington. He states: "It may be that His Majesty's Government would not be indisposed to extend this protection to the Dominion of Canada by a convention with the United States." He enclosed a copy of the draft convention for forwarding to Canada. (The letter and draft convention are appended as document 1)

February 24, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

Communications from the British embassy in Washington to Canada enclosed the draft MBCA. (Letters appended as document 2)

**Draft convention submitted to Canada**

February 1914

The draft convention was given to several provincial governments for their consideration "as the question was of provincial concern." [ 1 ]

**First mention of provincial consultation**

April 25, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

Letter from New Brunswick to the Under-Secretary of State stating basic support for the proposed Migratory Birds Convention. He further states that "the laws on this subject come within the jurisdiction of the different provinces." (Appended as document 8, page 8)

**First replies from the provinces**

April 27, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

Letter from the Premier of PEI to the Minister of the Interior: "I have submitted the matter to the Government and they strongly favor such a convention." (Appended as document 8, page 6)

May 2, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

The Lieutenant Governor of Saskatchewan wrote the Secretary of State stating his governments basic approval of the convention. (Appended as document 8, page 13)

May 14, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

The Lieutenant Governor of British Columbia wrote the Under-Secretary of State enclosing his governments position on the MBC. British Columbia was in favor of the principle of the convention, but had problems with specific components of the proposal. (Appended as document 8, pages 14-19)

May 19, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1, and on Spool C-4385, Page 102774

Memo from the Dominion Parks Branch to the Minister of the Interior:

"I beg to point out that while the protection of migratory birds is a measure strongly called for, action can not very well be taken in Canada on the proposed treaty before the Provincial authorities have been communicated with and their approval secured.

Some time ago I recommended that the Provinces be communicated with and I understand the department of External Affairs has taken action in that connection."

May 21, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

Letter from the Lieutenant Governor of Saskatchewan to the Governor General of Canada: "For all intents and purposes our province is already in line for the changes the proposed treaty would bring about."

May 27, 1914

In RG 109, Vol. 114, WL.U. 10, Part 1

Letter from Nova Scotia to the Federal Government: "Except in the case of the shore bird...there would seem to be no serious objection to the modification of our laws so as to make it conform with the regulations contained in the draft convention." (Appended as document 8, page 5)

July 28, 1914

In RG 109, Vol, 114, WL.U. 10, Part 1

Letter from the Lieutenant Governor of British Columbia to the Undersecretary of State:

"While my government is quite in accord with the principles of the movement as a whole, it feels that it can not become a party to the treaty as it stands at present...it would not be advisable to consent to any arrangement which would interfere with the Government's own local authority to grant open seasons for birds in this Province."

August 19, 1914

In RG 109, Vol, 114, WL.U. 10, Part 1

External Affairs wrote the DM of the Ministry of the Interior stating that all of the provinces had accepted the principle of the convention, and that objections were made to some details.

**Provinces accept principle of the Convention**

September 5, 1914

In RG 109, Vol, 114, WL.U. 10, Part 1

The Lieutenant Governor of Ontario wrote to the Secretary of State stating his government's approval of the proposed MBCA. (Appended as document 8, page 11)

September 9, 1914

In RG 109, Vol, 114, WL.U. 10, Part 1

The Lieutenant Governor of Manitoba wrote the Secretary of State stating his government's approval of the proposed MBC. (Appended as document 8, page 12)

May 31, 1915

In RG 109, Vol, 114, WL.U. 10, Part 1

The Migratory Birds Convention was discussed in Privy Council:

"The Minister submits that as the matters dealt with in the proposed convention are more immediately of provincial concern, we caused the views of the several provinces to be invited thereon. Replies have been received from all the provinces showing that they unanimously approve the principle of the proposed convention, the majority of them, indeed, having already enacted legislation for the purpose aimed at. British Columbia, however, is unwilling to accept the proposed close season for ducks, geese and other game birds...(and those regulations that) would restrict the killing of cranes, curlews and wood ducks...Nova Scotia desires the open season for plover and other 'shore birds' should be extended so as to include the latter half of August...It is not believed that the objections raised by British Columbia and Nova Scotia should present an insuperable difficulty...The Canadian Government is favorably disposed towards the conclusion of the proposed treaty." [1] (Appended as document 8, page 3)

**Statement from the Privy Council**

Early January 1916

Gordon Hewitt was appointed by the federal government to resolve the difficulties British Columbia and Nova Scotia had with the proposed convention, and then to negotiate with the United States the final wording of the convention. Nova Scotia wanted the open season for shore birds pushed back to include the latter half of August. This demand was easily met as several New England states had obtained the same exemption. British Columbia was opposed to ceding any jurisdiction over birds to the Dominion Government. They demanded and received major concessions, for example the ability to continue a spring hunt of geese, and an exemption from the complete ban on wood duck hunting.[3] At the negotiations with the United States: "All of the objections raised were completely met, with the exception of the one which would have affected the vital principle of the proposed treaty, namely, the elimination of spring shooting." [1] This statement is in regards to a modification proposed by the Americans that would allow spring hunting until March. Senators from states along the mid-western flyway had pressured Dr. E.W. Nelson, head of the Biological Survey, to include this clause. It was later removed at Canada's and the Eastern States' insistence.[3]

**Resolution of British  
Columbia's and Nova  
Scotia's objections**

January 1916

On Spool C-4231 Pages 16520-16529 Nat. Arch. of Can.

The Nisgha Indians were in Ottawa negotiating their claim with the Federal Government. No mention of the MBCA in federal documentation of those negotiations was found.

February 17, 1916

In RG 109, Vol, 114, WL.U. 10, Part 1

The United States government wrote to Canada requesting that they hurry up. The constitutionality of their Federal Migratory Bird Law was being challenged in the Supreme Court, and the Justices were then considering their decision.

March ??, 1916

In RG 109, Vol. 115, File WL.U. 10, Part 4

Memorandum of Suggested Changes in the Convention Between the United States and Great Britain for the Protection of Migratory Birds in the United States and Canada as drawn up by the United States Department of Agriculture. Natives are mentioned for the first time in the development of the MB:

"...the proviso is added 'except that Eskimos and Indians may take at any season auks, auklets, guillemots, murrees, and puffins and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale'. This proviso affects primarily the Territories of Alaska and the coastal provinces and Territories of Canada, where the natives have been accustomed since time immemorial to utilize certain sea birds for food and clothing. The clause is inserted...merely to prevent any hardship on the natives in these remote parts of the continent." (see document 3, page 5 for the Memo)

**First proposal to include  
native rights**

March 14, 1916

In RG 109, Vol, 114, WL.U. 10, Part 1

Privy Council minutes: "United States authorities believe that a compromise as regards these points of detail can easily be arrived at."

March 16, 1916

In RG 109, Vol, 114, WL.U. 10, Part 1

The revised draft convention was sent by the State Department to the British Embassy "with certain alterations proposed by it (Department of Agriculture) and by the Canadian authorities, and a copy of the memorandum drawn up by the Department of Agriculture respecting these alterations." (see Document 3, Page 2 for the letter)

March 23, 1916

In RG 109, Vol, 114, WL.U. 10, Part 1

The British Embassy in Washington sent to Canada the letter above, the Memorandum of Alterations, and the Revised Draft Convention. In it Dr. Hewitt is quoted as saying that the only significant change is the extension of the spring season to March 10. (total documentation sent to Canada in Document 3)

**Revised draft sent to Canada and then the Provinces for approval**

Dr. Hewitt again went to the provinces to obtain their approval of the convention and received their concurrence. ([2])

June 28, 1916

On spool C-4385, Page 102789 Nat. Arch. of Can.

Report of the Privy Council:

"...that as a result of informal negotiations between Dr. C. Gordon Hewitt, the Dominion Entomologist, and Dr. H.W. Henshaw, Chief of the biological Survey of the United States Department of Agriculture, the United States authorities are prepared to accept these amendments.

The amendments referred to and now proposed by Your Royal Highness' advisors are:-

1. That in Article II, section 1 of the Revised draft, in line 7, after the words "and August 15," there shall be inserted the words "and that Indians may take at any time Scooters for food but not for sale."

**Canadian initiative in favor of Natives**

June 29, 1916

In RG 109, Vol 114, WL.U. 10, Part 1

An Order in Council was passed stating that "Canada is prepared to agree to the conclusion of the convention," conditional on the adoption of certain other amendments agreed to in informal negotiations. [1] (Appended as document 8, page 7)



July 27, 1916

In RG 109, Vol, 114, WL.U. 10, Part 1 and on Spool C-4385, Page 102796

Cecil Spring Rice (British Embassy in Washington) telexed the Governor General of Canada:

"U.S. accepts accepts amendments with certain typographical and minor changes which are entirely unobjectionable and suggest treaty be prepared for signature...Recommend strongly I may be authorized to concur in this convention at once on behalf of Canadian Government in order to save delay."

**Request to sign MBC on behalf of Canada**

August 4, 1916

On Spool C-4385, Page 102801 Nat. Arch. of Can.

Telegram from Governor General of Canada to the British Embassy in Washington: "Migratory Birds Treaty in form now agreed upon...is acceptable to Canadian Government and request that instruction be given to Sir Cecil Spring Rice to sign it."

August 15, 1916

In RG 109, Vol, 114, WL.U. 10, Part 1

Telegram Sir Cecil Spring Rice to the Governor General of Canada: "I have arranged to sign the Migratory Birds Convention on August 16 at 3 o'clock."

August 16, 1916

The treaty was signed in Washington by Sir Cecil Spring Rice and Sir Robert Lansing.

**Treaty signed in Washington for Canada**

August 29, 1916

The treaty was ratified by the US Senate. [1]

September 2, 1916

The President signed the convention. [2]

October 20, 1917

The Convention was ratified by Great Britain.

May 1, 1917

The Minister of Colonization for Quebec spoke strongly in favor of the MBC while giving a talk at the National Conference for the American Game Protective Association in New York. (Appended as document 8, page 10)

July 21, 1917

Migratory Birds Bill received its second reading in the House of Commons. Several interesting comments were made by Mr. Roche, Minister of the Interior in the ensuing debate. They are as follows:

"The draft of the treaty was submitted to all provincial legislatures, and approved. The treaty, after it was signed, and the bill, were also submitted to the provincial legislatures.

(From a letter received from Mr. Luggie, DM of Lands and Mines which quoted correspondence with the province of New Brunswick) "...I note that the constitutionality of the act of March 4th 1913, (Federal Migratory Bird Law) passed by the US Congress, was doubtful; whether this question has been settled in the courts I so not know. A similar difficulty will be found in legislating in Canada. The laws upon this subject come within the jurisdiction of the different provinces.

...when regulations are formulated, they will be formulated in consultation with the members of provincial executives.

(the provinces)...have already consented to the game laws under this treaty being taken over and exercised by the Dominion Government... (the provinces) ...consented through the proper executive representing the province.

**Provinces agreed to game laws...being taken over and exercised by the Dominion**

(It was) ...proposed to administer regulations under the act with the assistance of the provincial governments." [1]

August 29, 1917

The Migratory Birds Convention Act was passed in Canada. [ 1 ]

April 23, 1918

Migratory Bird Regulations were passed in Canada.

May 18, 1918

Mr. Meighen (then Minister of the Interior) rose in the House to comment on the Migratory Birds Convention:

"The subject matter having been dealt with by international treaty, the Dominion acquires jurisdiction; but the Dominion thought --and the migratory birds legislation is based entirely upon this hypothesis--that provincial legislation would be enacted to bring the laws in each province into conformity with the several provisions of the treaty and to provide for their enforcement.

...we have not been able to secure from the Maritime Provinces the legislation desired. New Brunswick, instead of bringing its legislation up to the requirements of the Migratory Birds Convention Act, has repealed its legislation altogether and throws the

whole onus on the Dominion, very much to the disappointment of those who have at heart the enforcement of our migratory bird laws...it becomes necessary for the Dominion...to amend its Act as to enable it to enforce the law in those provinces." (Appended as document 4)

**Provincial legislation consistent with the MBC was to be voluntarily enacted, and the Maritime provinces have failed in this regard**

July 3, 1918

The MBCA became law in the United States. [2]

November 4, 1918

In RG 109, Vol, 114, WL.U. 10, Part 2

Letter from the Commissioner of Parks to C.J. Kerr:

"Each province agreed with the principles of the treaty and the understanding was that, where necessary, its game legislation would be changed to conform with the Dominion Act and Regulations...and it would therefore only become necessary to enforce the Dominion Act when a province failed to change its laws to thus conform with the agreement...or when the provincial legislature did not go as far as the Dominion Act for the protection of Migratory Birds."

**Should only be necessary  
to enforce the Dominion  
Act when the provinces  
fail to change their laws**

January 07, 1919

RG 109, Vol 375, File WL.U. 181

The Federal Migratory Birds Law of the United States was declared constitutional.

March 6, 1919

In RG 109, Vol, 114, WL.U. 10, Part 3

Memo to the DM of the Department of the Interior stating that the Prairie provinces were conforming with the act, that British Columbia, Ontario and Quebec were very close to conforming, and that the Atlantic provinces were not conforming at all. The Atlantic provinces stated that enforcement was a federal responsibility.

March 17, 1919

In RG 109, Vol, 114, WL.U. 10, Part 2

The DM of the Interior wrote to the Deputy Post Master General stating that: "It has been found necessary for this department to enforce the Migratory Birds Convention Act...in the maritime provinces."

May 2, 1919

In RG 109, Vol, 114, WL.U. 10, Part 2

Bill F, which allowed the federal government to enforce the MBCA in the Maritime provinces was passed.

June 27, 1919

Yukon Archives: YRG 1, Series 3, Volume 2, File 12-3A

Letter from the Governor of Alaska to the Commissioner of the Yukon:

"I have been corresponding recently with protective associations, requesting that the migratory bird treaty be modified so as to not unduly prejudicial to the hunters of the Yukon Territory and Alaska. This, I believe, is entirely in accordance with your own views. I find, however, that the societies in the East have no knowledge of the North and cannot see why we deserve very much consideration." (appended as Document 5)

**Complaints from Yukon  
and Alaska re. the MBCA**

July 24, 1919

Yukon Archives: YRG 1, Series 3, Volume 2, File 12-3A

Letter from the Commissioner of the Yukon Territory to the Commissioner of Dominion Parks stating that:

"As I advised you last winter, the prohibiting of fall shooting until September 1st is generally regarded in this Territory as being a most unfair provision. You will note in the amendment to the Yukon Game Ordinance the shooting of ducks, geese and snipe is permitted after the 15th of August and it is hoped that the Migratory Birds Convention Act will be amended to conform with this Provision." (appended as Document 6)

April 19, 1920

In RG 109, Vol, 114, WL.U. 10, Part 3

Supreme Court of the United States passed its decision in the case of Missouri v. Holland, US Game Warden. This case was a test of constitutionality of the Migratory Birds Convention Act. The ruling stated that:

"...wild birds are not the possession of anyone..." and more importantly that

"...Here (the protection of migratory birds) a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject matter is only transitory within the State and has no permanent habitat therein. But for the

treaty and the statute there soon might be no birds for any powers to deal with.

We see nothing in the Constitution that compels the Government to sit by while a

food supply is cut off and the protectors of our forests and our crops are

destroyed. It is not sufficient to rely upon the States. The reliance is vain, and

were it otherwise, the question is whether the United States is forbidden to act.

We are of opinion that the treaty and statute must be upheld. (text of decision

appended as document 7)

**MBC found constitutional  
in the US, and Migratory  
Birds declared to be under  
Federal jurisdiction**

1921-1930

In RG 109 Vol 484 File 735, Part 1

All of the correspondence in this file discussing the applicability of the MBC to Natives states that Natives are subject.

1921

In RG 109, Vol, 115, WL.U. 10, Part 5

Explanatory memorandum for the MBCA released. This memorandum contains a brief historical summary of the Convention from 1913 to 1916, a copy of the Order in Councils passed on May 31, 1915 and June 29, 1916, letters from following provinces regarding the Convention: Nova Scotia (May 27, 1914); PEI, (April 30, 1914); New Brunswick (April 25 and May 30, 1914); Ontario (Sept 5, 1914); Manitoba (September 9, 1914); Saskatchewan (May 2, 1914); and British Columbia (May 12 & 14, 1914), material indicating Quebec's position on the MBC, and finally a discussion of the legal status of the MBCA. (All of the above documentation is appended as document 8)

October 31, 1921

In RG 109, Vol. 115, WL.U. 10, Part 4

The Commissioner of Forests and Game, Nova Scotia wrote to the Commissioner of National Parks:

"It would seem to me that such changes in the law should not be made without first consulting the authorities of the Province concerned. It is true that in a case of a Treaty the Dominion Government is given jurisdiction under the BNA act, but this is for the purpose of ensuring enforcement of the Treaty. It does not alter the fact that the ownership of game is vested in the Province."

**Ownership of game is vested in the province**

November 17, 1921

In RG 109, Vol. 115, Part 5 and in RG 109 Vol 1, Lewis, Harrison F. Lively. A history of CWS.

Letter from A.S. Williams, departmental solicitor with Indian Affairs, to J.B. Harkin

Commissioner Canadian National Parks:

"With reference to the question as to whether the Indians of Canada are amenable to the provisions of the Migratory Birds Convention Act, as referred to in your letter of the 6th of September last, I have to say that I am of the opinion that they are." (appended as document 9)

**Natives are believed to be amenable to the provisions of the MBCA**

November 22, 1921

In RG 109, Vol. 115, WL.U. 10, Part 4

Letter from the DM Justice to the DM Ministry of the Interior: "I think the provinces have the exclusive right to regulate the taking of game except on Dominion lands, unless the legislation be in its nature criminal."

November 30, 1921

In RG 109, Vol. 115, WL.U. 10, Part 4

Letter to the President of the American Game Protective Association from the Commissioner of National Parks: "...the treaty as it stands appears to work hardship upon the peoples of the more northern latitudes both in the United States and in Canada but Nelson's attitude at present is not favorable to precipitating the Act into Congress again."

**Hardship caused by the MBCA mentioned**

December 1, 1921

In RG 109, Vol. 115, WL.U. 10, Part 4

Memo to the Commissioner of National Parks from within his department quoting a ruling from the DM of Justice which stated that:

"It will be necessary to restrict our (federal) legislation in regard to the protection of Migratory Birds to the matters covered by the Treaty. The question of limiting the shooting, bag limits and prohibiting the sale of birds, while they would seem

**Must restrict federal legislation to things mentioned in the MBC**

to be ancillary measures necessary to the purpose and spirit of the treaty, would appear to be matters coming under the authority of provincial legislatures." (Appended as document 10)

May 26, 1922

In RG 109, Vol 115, WL.U. 10, Part 4

A memorandum prepared for Mr. Cory, Deputy Minister of the Interior quotes an earlier memo discussing House of Commons debates on the problems of MBCA enforcement in the Maritimes. (both memo's Appended as document 11)

July 10, 1922

In RG 109, WL.U. 10, Vol 115 Part 4

Letter from the Department of Indian Affairs to the Commissioner of National Parks quoting a legal opinion by a departmental solicitor:

"Replying to your letter of the 30th May, 1921, inquiring to whether the Migratory Bird Regulations apply to Indians on Reserves, I beg to state that the answer would be in the affirmative. It is to be observed however, that exceptions are made with regards to Indians in Article 2 paragraphs 1 and 3, of the Convention."

**Regulations said to apply to Natives on reserves**

November 4, 1922

Letter from the Commissioner National Parks to the Minister of Colonization, Mines and Fisheries (Quebec): "Insofar as the Migratory Bird Treaty Act is concerned the aim of this service at all times has been to enlist the active sympathy and cooperation of all the provinces."

March 10, 1923

In Yukon Archives, File Game Regulations and Permits, 1923, YR01, Series 3, Volume 2, File 9. (Folder: Yukon Game Branch 21-4C and (160-4))

Letter from the Chief of the United States' Biological Survey, to the Canadian Commissioner of National Parks. The letter was in response to one from Mr. Harkin requesting modifications to the MBCA that would allow spring shooting in the North. The responding text was:

"We would dislike very much to see any attempt made at this time to amend the Treaty...In some sections of the United States there still is considerable sentiment favoring larger open seasons...we fear that influences constantly at work to secure more liberal privileges would be a source of great annoyance if the Treaty was thrown open to amendment at this time...It is to be hoped that the sentiment in Canada is such that any desired amendments to the Treaty can well wait on a year or two longer." (Appended as document 12)

**The US rejects a Canadian initiative to modify the MBCA**

July 1923

"Why Canada and the United States Combined to Stop Spring Shooting" in California Fish and Game. Vol XX No 3 July 1923 Pages 101-102

June 23, 1925

RG 109, Vol 375, File WL.U. 181

The Commissioner of National Parks Branch states in a letter to M.N. Campbell that the "...original policy of securing provincial cooperation has not changed." (Appended as document 13)

November 1926

RG 109, Vol 375, File WL.U. 181

An extract from the Diary of H.H. Pidock states that the only way to enforce the MBCA is to take enforcement away from the provinces and give it to the federal government. (Appended as document 14)

December 14, 1929

In RG 109 Vol 484 File 735, Part 1

Article 12 of a Memorandum of Understanding between Canada and the province of Alberta states that "...Indians shall have the right...of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied crown land..."

**In Alberta Indians can to hunt on empty crown land in any season**

August 23, 1930

In RG 109, Vol 484, File 735, Part 1

A long memo from the Assistant Solicitor of the Ministry of the Interior to the Commissioner of Canadian National Parks. This memo contains an extensive discussion of the applicability of the MBCA to Natives under Treaty. It states that

"It is a well recognized law that where, with respect to any matter, there is under the British North America Act, jurisdiction, both in the Province and in the Dominion to legislate with respect thereto Provincial legislation, in the absence of the Dominion, prevails but that when by legislation the Dominion occupies the field the provision of the Provincial legislation must give way.

That being so, it seems to me that the provisions of the Migratory Birds Convention Act would prevail and that the Indians are amenable to its provisions, enjoying such specific privileges as are granted to them by the said Act and regulations made in pursuance of the said Act." (Appended as document 15)

**Where both the Dominion and the Province have jurisdiction, the Dominion's authority supercedes that of the province**

January 13, 1932

In RG 109, Vol 484, File 735, Part 1

A letter from the DM of Justice to the DM of the Interior states unequivocally that the MBCA overrides Indian treaties. (Appended as document 16)

**The MBCA said to override all Indian treaties**

October 14, 1932

In RG109 Vol 1. Lewis, Harrison F. Lively A history of the CWS. (p. 165)  
Order in Council PC. 2283 transferred to the RCMP general responsibility for enforcing the  
MBCA.

December 17, 1932

In RG109 Vol 1. Lewis, Harrison F. Lively A history of the CWS. (p. 165)  
Order in Council P.C. 2744 transferred five assistant Migratory Bird wardens in the Maritimes  
to the RCMP.

1932-1933

In RG109 Vol 1. Lewis, Harrison F. Lively A history of the CWS.  
There are mentions of persecutions of Natives under the MBCA. In all the cases seen the Natives  
were given suspended sentences. There are a few records of complaints by those so prosecuted.

October 30, 1947

In RG109 Vol 1. Lewis, Harrison F. Lively A history of the CWS.  
The Dominion Wildlife Service came into existence (OIC P.C. 37/4433)

April 1, 1949

In RG109 Vol 1. Lewis, Harrison F. Lively A history of the CWS.  
Provisions of the MBCA were extended to Newfoundland when it entered the dominion.

1950

In RG 109 Vol 484 File 735, Part 1  
A memo circulating in CWS at that time suggested that the correct approach to dealing with  
Natives was education, and that Natives should be able to kill migratory birds for subsistence  
purposes.

January 1950

In RG109 Vol 1. Lewis, Harrison F. Lively A history of the CWS.  
The Department of Mines and Resources became the Department of Resources and Development.

April 6, 1950

In RG109 Vol 1. Lewis, Harrison F. Lively A history of the CWS.  
A letter written to Director A.H. Gibson by Harrison F. Lewis suggested that the wildlife division  
be called the Canadian Wildlife Service.

March 30, 1954

In RG 109 Vol 484 File 735, Part 1  
A letter to the Chief of CWS from a mammalogist in the department states that Natives, left to  
their own devices, will not wisely use their wildlife. He further states that they require the  
control of an informed Government. (Appended as document 17)



January, 1957

In R0 109 Vol 484 File 735, Part 1

Several letters mention problems with selectively enforcing the MBCA in the Churchill area.

**Problems in Manitoba with selective enforcement of the MBCA**

October 18, 1957

In R0 109 Vol 484 File 735, Part 1

A letter mentions a resolution of the Indian Association of Alberta which requested the suspension of the MBCA on their reserves.

**First record of Natives demanding suspension of MBCA on reserves**

October 21, 1957

In R0 109, Vol. 735, Part 1

Letter from the Director of the Northern Administration and Lands Branch of the Department of Northern Affairs and National Resources to Mr. J.R. Coleman. In this letter the Director states that leniency is the only option available unless changes are made in the MBCA, and that leniency is a weak policy from the standpoint of enforcement. (Appended as document 18)

October 23, 1957

In R0 109 Vol 484 File 735, Part 1

The Director of Northern Affairs and Natural Resources (R.A.J. Phillips) wrote to J.R.B. Coleman stating that hunters, be they white or native, should have the right to kill on a subsistence basis in the North West Territories.

**Anyone living a subsistence lifestyle should be permitted to hunt migratory birds**

1958

In R0 109 Vol 1. Lewis, Harrison F. Lively A history of the CWS. (p.362)

An amendment of the MBCA allowed all rural residents of Newfoundland to take murre and eggs for subsistence purposes from September 1st to March 31.

June 11, 1958

In R0 109 Vol 484 File 735, Part 1

Letter from E.R. Olson to E.A. Cote (Northern Affairs) mentions the possibility of using Natives in wildlife management and states that the provinces should lead the initiative.

June 19, 1959

In R0 109 Vol 484 File 735, Part 1

A letter to the Minister of Citizenship and Immigration suggests that government must have the jurisdiction to limit native hunting in order to preserve the species. (Appended as document 19)

September 2, 1959

In R0 109 Vol 484 File 735, Part 1

In a letter to the Director of the National Parks Branch, a director in the Department of Citizenship and Immigration states that "...the Migratory Birds Convention Act and regulations do not apply to Indians in Manitoba hunting game birds for food on their reserves..."

October 15, 1959

In RG 109 Vol 484 File 735, Part 1

The Minister of Citizenship and Immigration wrote to the Hon. Alvin Hamilton regarding proposed amendments to the National Resources Transfer Act. The letter states that there was "...no need to revoke, in toto, the privileges now enjoyed by Indians..."

11 March 1960

In RG 109 Vol 484 File 735, Part 1

G.F. Boyer, a wildlife biologist wrote to the Chief of the CWS stating that the goose hunting camp proposed by the Attawiskat Indians was acceptable.

October 18, 1962

In RG 109 Vol 484 File 735, Part 1

Blackfoot proposed to the Federal Government to establish out of season hunting camps on their reserves for non-status Indians. (Appended as document 20)

1964

In RG 109 Vol 484 File 735, Part 1

The Supreme Court of Canada upheld the conviction of a person party to Treaty 11 for the killing of one duck. (Queen v. Sikya)

October 19, 1964

The Director of Fish and Wildlife (Manitoba) wrote the chief of the CWS stating that the Blackfoot proposed to establish out of season guided hunts on their reserve.

November 27, 1964

In RG 109 Vol 484 File 735, Part 1

A letter from the Director of the Northern Administration Branch of the Department of Northern Affairs and National Resources points out the difference in wording between the various Indian treaties, and the Natural Resources Transfer act pertaining to Native hunting rights. This letter had enclosed a copy of the draft memorandum to Cabinet to modify the MBCA. (Letter and memo appended as document 21)

December 18, 1964

In RG 109 Vol 484 File 735, Part 1

The Minister, in a letter to his deputy states that they will "continue to compromise while moving toward a situation where this is no longer any need for special rights." (Appended as document 22)

**Compromise until special rights for Natives are no longer needed**

May 27, 1965

In RG 109 Vol 484 File 735, Part 2-3

A RCMP Superintendent mentions in a letter to the Commissioner of National Parks that he will be enforcing the MBCA on reserves with respect to Indians.

1965

In R0 109 Vol 484 File 735, Part 1

A memo from G.E. Bell to the Chief of CWS mentions that formal commitments related to hunting, fishing and trapping rights were made in Indian Treaties.

December 29, 1965

In R0 109 Vol 484 File 735, Part 2-3

The Chief of the CWS mentioned in a memo that formal commitments related to hunting, fishing and trapping were made in Indian treaties.

Spring, 1968

In R0 109 Vol 484 File 735, Part 4

This volume contains correspondence related to the liberalization of Native hunting regulations for the Spring of 1968. The Natives refused as their only acceptable position was full hunting rights.

December, 1968

In R0 190, Vol. 476 and In R0 109, Vol. 483, WL.U. 735, Part 5

Memo to Cabinet for changing the MBCA regulations. The object was "... to restore, as a privilege to Indians and Eskimos and to persons of Indian and Eskimo origin dependent on game for food, certain opportunities to hunt migratory game birds consistent with good management of the wildlife resource."

**DIAND submitted a  
Cabinet Memo to alter  
MBCA regulations in favor  
of Natives**

The actual amending text read:

1. The Migratory Bird Regulations are amended by adding immediately after section 46 thereof, the following section;

46A. Notwithstanding anything in these Regulations, the Minister may issue a special free permit to any Indian or Eskimo or to any person who in the opinion of the Minister is of Indian or Eskimo origin and is following an Indian or Eskimo way of life, authorizing that Indian, Eskimo, or person, as the case may be, to take migratory birds for human consumption, subject to such terms and conditions as the Minister may from time to time prescribe." (Memo Appended as document 23 pages 3-8)

December 17, 1968

In R0 109, Vol 483, WL.U. 735, Part 5

A covering letter for a copy of the Cabinet memo mentions discussions related to the proposed alterations. Apparently some concern was ...expressed by provincial game directors. In each case, the concern has been for more information as to what the governments intentions may be." The letter also mentions that the Ontario Minister of Land spoke to the Federal Minister in Woodstock. The provincial minister "apparently conveyed to the Minister his concern with respect to conservation." The minister told him that he "would consult with the provinces, conservation and sportsmen's associations and the Indians themselves." (The letter and the Cabinet Memo are appended as document 23)

**Minister promises to con-  
sult with Natives**

January 2, 1969

In R0 109, Vol. 483, WL.U. 735 Part 5

A news release by the Manitoba Indian Brotherhood stated that Natives would not be wasteful of game, and demanded that the MBCA be changed. "In this just society the federal government is obliged to change the Act to restore rights which already belong to the Indian people. When treaties were signed, the Indian people did not sign away their hunting rights. The just society would dictate that these ancient rights be restored."

January 8, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

Alberta wrote to Chretien:

"In summary, our position is that we must recognize the rights of Indians and respect those rights, but we must also be careful not to extend privileges which could damage the waterfowl resource. In conclusion, I do not believe that we should oppose legislation which gives Indians opportunity to hunt migratory waterfowl necessary for food for themselves and their families. I do believe however that any legislation which goes beyond the above would be detrimental both to the Indian society and to the white society, plus the possibility that some waterfowl populations could be harmed."

January 13, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

The National Wildlife Federation wrote the Prime Minister. "The granting of special waterfowl permits to any segment of society, no matter how persuasive their claim for such a privilege may be, would be in conflict with the scientific management provided by International treaty..."

**National Wildlife Federation opposed to granting of special hunting rights to Natives**

January 13-15, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

Chretien sent a stock letter to all of the provinces and territories except Manitoba. The letter concluded with: "we will keep you informed of further developments and look forward to discussing implementation of our policy with you." (The exact text is appended as document 24)

**Provinces to be involved only for implementation of changes**

January 24, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

The Minister wrote to the Manitoba Indian Brotherhood stating that:

"It is possible no solution will satisfy all those interested. Please be assured that there will be further discussions with Indian and Eskimo representatives, provincial and territorial governments, and private conservation organizations in regard to implementation of this policy."

February 5, 1969

In RG 109, Vol 485, WL.U. 735, Part 5

Memo from the Director of Conservation to the Senior ADM of Conservation stating that:

"The St. Regis Band Council, under the authority of the Indian Act has passed a Council motion to exercise control over access to reserve lands for the hunting of Migratory Birds. The Walpole Island Band has undertaken similar action the purpose of which is to derive revenue from non-Indian hunters..."

February 12, 1969

In RG 109, Vol 485, WL.U. 735, Part 5

In a Memo to Chretien, his deputy states that the

"...Department of Justice believes there may be an infringement of the Bill of Rights because of the special privileges proposed. The Department of External Affairs appears to be concerned that the proposed amendment to the Migratory Bird Regulation will be a breach of the MBCA signed with the United States and may; therefore, create an international problem."

February 27, 1969

In RG 109, Vol 485, WL.U. 735, Part 5

Treasury Board wrote to the DM of DIAND:

"It appears the memorandum is deficient in some important respects. For example, it acknowledges a break in the MBC with the United States, but does not provide an opinion of the departments of Justice or External Affairs with regards to possible implications arising from unilateral action to alter the status quo." (Appended as document 25)

**Treasury board criticises  
DIAND's Cabinet memo**

March 07, 1969

In RG 109, Vol 485, WL.U. 735, Part 5

The Minister of Natural Resources for Saskatchewan wrote to Chretien:

"You are also aware of the large number of native people in this province and of our attempts to integrate them into our society. Extending a special set of privileges to Treaty Indians regarding the utilization of waterfowl would, we feel, have a disastrous effect on the future of this resource...It is our hope for the benefit of the resource, the respect of our neighbors. (Appended as document 26)

March 11, 1969

In RG 109, Vol. 476, File WL.U. 10-1(14) and In RG 109, Vol 485, WL.U. 735, Part 5

Chretien wrote to Harry Enns (Minister responsible for wildlife in Manitoba) stating: "I think that you will agree that those changes are ultimately the sole concern of the Government of Canada." (Appended as document 27)

**Changes to the MBCA are  
said to be solely a federal  
concern**

March 18, 1969

A memo to Dr. J. S. Turner from a departmental director expressed concern over the process by which the modifications were developed and mentioned that:

"There has, of course, been a series of consultations with the Indians through meetings with the Indian Advisory Council...(and that) ...migratory birds were a clear cut federal responsibility. Such being the case the Minister obviously was quite within his rights in formulating and seeking Cabinet approval for policy in this area without lengthy consultation with the provinces." (Appended as document 28)

**Natives were consulted,  
and Migratory Birds are a  
Federal responsibility**

March 31, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

Memo from the DM DIAND to Treasury Board in response to their critique of the MBCA alteration cabinet paper. The letter responds to all of the concerns forwarded by the Treasury board. (Appended as document 29)

May 02, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

Statement for the Minister prepared by the Directory of CWS. "The management of Migratory Bird Populations involves more than federal jurisdiction and thus it is necessary to talk to provincial governments."

**C.W.S. says that  
management is more than  
a federal concern**

August 15, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

Letter from Trudeau to Chretien discussing his proposed changes to the MBCA in favor of Natives:

"The proposed amendments...would authorize Indian and ...Eskimos...living under isolated conditions, to hunt any type of fowl game for their own subsistence. Mr. Turner has advanced the fact that such provisions would be irreconcilable with the policy of equality of rights which this government is planning to apply.....Mr. Turner proposes to enlarge the interpretation of the Act, so as to allow the issuance of permits to any person...I should remark further that, in practice, these permits should only be delivered to Indians and Eskimos." (Appended as document 30)

September 11, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

Memo from Chretien to Trudeau in which he responds to the above memo. He addresses all of Trudeau's concerns, and states that he he will bring to cabinet some addition alterations. (Appended as document 31)

October 30, 1969

In R0 109, Vol 485, WL.U. 735, Part 5

Private member's bill C-124 received its first reading (Appended as document 32)

October 31, 1969

In RG 109 Vol 485, File 735 Part 1

A memorandum to Cabinet was submitted by the Minister of Native and Northern Development. (Appended as document 33)

1972

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2  
CWS transferred from DIAND to Environment Canada.

January 21, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Memo to File from Mary Egerton, Executive assistant to the ADM of Environmental Management. The memo advises of the possibility of changes in the MBCA.

Feb 07, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Letter from the US Department of the Interior to the ADM of Environmental Management contained a copy of the US/USSR treaty.

**CWS re-affirms that the  
MBCA applies to Natives**

May 24, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Letter from the Director General of CWS to the Director of criminal persecutions, legal services stating that "...it is important to make clear yet again that the provisions of the MBCA do apply to Indians and other Indigenous peoples, despite their widespread and strong beliefs to the contrary." (Appended as document 34)

May 26, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Magistrate's court in Saskatchewan (Judge T.G. Schollie) ruled some regulations under the MBCA were ultra vires. He cited specifically the regulations that the bird's wing must remain on the bird. and that convicted violators are not to be given a permit the following year.

June 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Labrador Inuit Association gave the Minister a copy of a report compiled by them, entitled "Social Economic and legal Problems of Hunting in Northern Labrador" (154 pages.) In that report they stated that they wanted

- a) spring and summer hunting
- b) unrestricted use of firearms
- c) hunting at any age subject to parental discretion
- d) hunting without MBCA permits
- e) use of powered vehicles for hunting
- f) unlimited daily and seasonal bag limits
- g) exchange of birds for money and goods

**Labrador Inuit demand  
hunting rights**

October 5, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

A meeting was held between the Migratory Birds Branch and the Confederation of Indians of Quebec to discuss the MBCA. The Confederation had set up its own regulations that were basically consistent with the provision of the MBCA except in that they extended the hunting season into the spring, and allowed for a family quota. Significant because it is natives working more or less within the constructs of the act. (Covering memo and proposal appended as document 35)

October 20, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Draft Guidelines on the Migratory Birds Policy handed down.

November 10, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Letter from Len Marchand, Minister of the Environment to the Union of Ontario Indians: "The Government of Canada considers that the provisions of the Migratory Birds Convention Act...take precedence over any Indian Treaty and that those provisions will continue to apply...advisory committees with native participation will be established to advise the federal and provincial governments on legislative and administrative control of our fishing and bird resources."

**Canada considers that  
the MBCA takes presi-  
dence over Treaties**

December 1, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

A Memo from the senior ADM in Environmental Services to the Minister of State for the Environment gave a summary of materials to change the Migratory Birds Convention Act.

December 13, 1977

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Memo from the DM to the Minister of State for the Environment stating: "It appears that the hunting of migratory birds for food in spring by those in need can only be authorized by a Cabinet decision to introduce appropriate amending legislation."

January 6, 1978

In RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1

Memo from the Deputy Minister of Environment to the Minister discussing CWS's position on the proposal by the Labrador Inuit. (Appended as document 36)



January 20, 1978

RG 108, ACC 83-84/021, Box 1, File 1021-24/M4, Vol. 1-2

Memo from Geoffrey Birtz, legal services to the DM of DOE:

"As we are dealing with an Empire Treaty, it appears absolutely impossible to substantially modify the terms thereof, although for enforcement and administration purposes, in virtue of section 132 of the BNA act, it is the sole prerogative of the federal government to act...Any agreement or convention between the parties would constitute a new treaty in which case the Provinces would have to be involved."

March 31, 1978

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol. 3

Letter from Justice to the DM of DOE states that:

"It is doubtful that 'parliament' would possess the necessary jurisdiction to enact laws for the protection of migratory birds as such, this being a matter more probably falling within the competence of provincial legislatures...At the same time I believe it possible to preserve Parliament's jurisdiction to legislate with respect to the subject matter of the convention if the proposed amendment is confined to granting to Indians and Eskimos the right to hunt migratory game and non-game birds for subsistence purposes at any season of the year. While this proposition is not entirely free from doubt, it is my opinion that Parliament could, through the exercise of its jurisdiction over Indians under 91(24) of the BNA Act enact the legislation necessary...I do not believe the legislation would be found contrary to the provisions of the Canadian Bill of Rights."

<p><b>The Indian Act and the MBCA</b></p>
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June 9, 1978

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

A letter from the US Department of the Interior to the US Bureau of Oceans, International, Environmental and Scientific Affairs mentions that the US is bound by the most restrictive terms of the various migratory bird management treaties it has entered. This letter calls for a modification of the MBCA.

July 17, 1978

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

A memo from the ADM of the Environmental Management Service to the Deputy Minister discusses a meeting to be held with US officials to modify article II of the MBCA. It contains an extensive discussion of the US position. (Appended as document 37)

July 27, 1978

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

Letter from Environment Canada to the Department of Justice regarding a July 21 meeting between CWS and US Fish and Wildlife regarding modifications to article II of the MBCA. The resulting wording is as follows:

"Notwithstanding any other provision of this Convention, the High Contracting Powers may authorize by statute, regulation or decree, seasons for the taking of migratory birds and the collection of their eggs by indigenous inhabitants of the State of Alaska and Indians and Inuit of Canada for their own nutritional and other essential needs as determined by the competent authority of each contracting party. These seasons shall be set so as to provide for the preservation and maintenance of stocks of migratory birds."

**First draft of the amending protocol**

November 20, 1978

In R0 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3  
The third draft of the amending protocol was presented. (Appended as document 38)

November 28, 1978

Letter from the Associate Deputy Minister, Justice to an ADM of Environment Canada (Environmental Management Services) stating that the amendment "would not place in jeopardy Parliament's jurisdiction to legislate with respect to the subject matter of the Convention."

January 30, 1979

The final version of the amending protocol was signed.

**Amending protocol signed**

February 1, 1979

In R0 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

A telex from the Minister of Natural Resources for Ontario to the Minister of the Environment for Canada states: "It seems to me that by developing the protocol without participation of the provinces you have effectively barred us from making any impact on the important area encompassed by the protocol."

March 16, 1979

In R0 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

The Pas Indian Band wrote the Minister congratulating him on his signing of the protocol, and stating that they would, as usual, hold a spring hunt.

March 23, 1979

In R0 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

A telex from the Sandy Bay council to the Minister of the Environment mentions that they have, in keeping with the protocol, told their band members that hunting migratory birds is acceptable. The telex further asked what briefing the RCMP had received on this matter. The response to this telex was sent immediately telling them that the protocol had changed nothing, and that their hunt was not acceptable.

March 26, 1979

In R0 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

The Native Council of Canada wrote to the Minister expressing concern over the omission of non-status Indians

March 28, 1979

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

The Manitoba Indian Brotherhood telexed the Minister of the Environment stating their intention to allow their band members to hunt migratory birds.

March 30, 1979

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

The NWT wrote the ADM of Environmental Management stating their basic agreement with the protocol, but remarked the lack of a provision for non-native subsistence hunters.

April 4, 1979

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

A letter from Saskatchewan to the Minister stated basic concurrence with the terms of the protocol. Their only concern was to minimize the potential for conflict between sportsmen and native hunters.

April 5, 1979

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

In response to the above the Minister notified the various bands involved that the protocol had changed nothing, and that it must be ratified by both parties before coming into effect.

April 6, 1979

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

Newfoundland wrote to the ADM of Environmental Management mentioning their agreement with the protocol, but stating concern over the omission of non-native subsistence hunters.

April 17, 1979

In RG 108, ACC 85-86/337, Box 2, File 1021-24/M4, Vol.3

A memo from the assistant director of CWS to his ADM stated that they want to consider non-native subsistence hunters. He suggested that they sign another amending protocol to that effect.

July 30, 1979

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4

John Fraser (Minister) wrote to the Native Council of Canada recognizing the need to allow non-status Indians the right to subsistence hunting as needed, and stating that the provinces had to be involved in any discussions. (Appended as document 39)

**Minister recognizes need  
of non-status hunters**

August 7, 1979

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4

The Minister of Environment wrote to the Minister of Tourism and Renewable resources for Saskatchewan stating that he recognized that there were flaws in the MBCA, but that they would have to be very careful to ensure that only those who really needed the benefits of the amendment would receive them.

August 30, 1979

Newfoundland wrote the Minister of the Environment stating that they had "serious reservations about changes in the Migratory Birds Act and the regulations to permit hunting by indigenous peoples." The major concern expressed was the exclusion of all non-status people.

September 19, 1979

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4  
Letter from Nova Scotia Minister of Lands and Forests to the federal Minister of the Environment stating that while he was "not in a position to decide on the needs of northern residents, it (did) appear reasonable that consideration should be given those groups other than status Indians and Inuit who probably depend on migratory birds as a source of food."

November 27, 1979

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4  
Statement by the Minister of the Environment: "I can assure you that it is the intention of my department to confer with the native peoples of Canada and private organization before implementation of new regulations under the Migratory Birds Convention Act."

**DOE promises to consult  
with Natives**

October 11, 1979

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4  
The Canadian Wildlife Federation wrote the Minister of the Environment stating they agreed that natives in rural areas need changes to the MBCA. They said that "we are worried about extension of same to more developed areas." They had no difficulty with extending the changes to cover non-natives so long as they were living a subsistence lifestyle.

December 12, 1979

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4  
Jake Epp, Minister of DIAND wrote the Minister of the Environment requesting a meeting on the MBCA of the two ministries and the CWF. He also mentioned recent action by the CWF in the United States. He states that the CWF is aligning itself with the U.S. National Wildlife Federation to defeat the protocol. (Appended as document 40)

December 14, 1979

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4  
The Minister of the Environment wrote to the head of the CWF stating that he would like to arrange a meeting between them. (no record found of meeting)

February 6, 1980

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4  
The Minister of the Environment responded the letter sent by Jake Epp (above) thanking him for his letter. He stated that he would be delighted to have officials of their departments meet, that he wanted cabinet approval for the changes in the MBCA passed rapidly, and that he did not intend to give natives open permission to hunt migratory birds. (Appended as document 41)

January 28, 1980

In RG 108, ACC 85-86/623, Box 2, File 1021024/M4, Vol. 4

The ADM of Justice wrote to the Director of Legal Services (DOE) commenting on whether or not the proposed changes in the MBCA contravened the 1930 Natural Resources Transfer Act. (Appended as document 42)

May 30, 1983

In File 1030-25/C4, Volume 1, Dead Files, DOE

A DIAND briefing note on the MBCA Protocol implications proposes a meeting between FPRO, DOE, DIAND and Justice to iron out the difficulties. It also points out the discrimination possible between northern and southern Indians.

January 8, 1985

In File 1030-25/C4, Volume 1, Dead Files, DOE

W&NR DG wrote to DM of DOE with a summary of Alberta's MBCA position and strategies. Native rights were not mentioned in the document.

January 30, 1985: Docket 5987

The Alberta DM of the Environment wrote to the DM of DOE regarding Alberta's position on migratory birds enforcement. He stated Alberta's acceptance of a federal role.

May 7, 1985: Docket 11024

DIAND Minister wrote to Environment Canada Minister asking for ministerial consultations of the proposed 1979 protocol to amend the MBCA. He points out the difficulties for southern Indians that would be caused by a 'north of 60' provision.

**DIAND asked for a meeting with DOE on the MBCA changes**

June 13, 1985:

The Minister of the Environment replies to Docket 11024, stating Canada and the US would issue a "discussion paper" on the Protocol, which following Cabinet approval would be opened for public consultation. He does not agree to the requested meeting.

**DOE refuses DIAND's requested meeting**

February 3, 1986: Docket 4104

The Inuvialuit Game Council wrote to the Minister of the Environment regarding Canada's obligation to modify the MBCA under section 14(37) of their final agreement, and requesting information on the progress of attempts to modify the accord.

February 18, 1986: Docket 4414 (C&P)

DIAND Minister wrote to the Minister of the Environment regarding the Protocol consultations, and refers to his May 7th letter to the previous minister. He stated that he still believed ministerial consultation on the 1979 protocol was needed. He concluded with:

"In the meantime, in deference to the spirit of the law relating to Native consultation in this matter I recommend that discussions with either the Americans or the provinces, no matter how informal, be put into abeyance."

May 26, 1986: Docket 7014

New Brunswick wrote to the Minister of the Environment stating that they felt the Migratory Bird Treaty should not be applicable to their province. They also stated that they were strongly in favor of subsistence use of migratory birds allowed on a geographic, and not a 'racial' basis.

April 30, 1986

A CWS briefing note on the MBCA proposed that the CWS continue to support the 1979 protocol, and see it enacted in the Treaty.

June 2, 1986: Docket 7582

The Minister of Parks and Renewable Resources for Saskatchewan wrote to the Minister of the Environment stating his support for a geographic designation of hunting rights as opposed to racial discrimination.

June 3, 1986

The Government of the NWT sent a telex to External Affairs urging a geographic (all northerners) approach to spring hunting as, they argue, was then the case in Alaska. They felt that there should be no discrimination along racial lines.

June 4, 1986: Docket 7367

The Minister of Natural Resources for the Yukon telexed the Minister of Indian and Northern Affairs pointing out that the MBCA applies to Native and Non-natives, and that a policy of non-enforcement is not legal. He felt that the then-current policy of leniency would soon become completely untenable, as had become the case in Alaska. He further suggested that Canada adopt the policy taken by the Alaskans, whereby all residents in the north would be permitted a spring hunt.

June 9, 1986

Post (Washington) telex to External Affairs said that the US understanding is that CWS would respond to US proposals on amendments which would reflect a recent Alaska court ruling permitting a spring hunt.

June 16, 1986: Docket 7916

The Minister of Culture, Recreation and Youth for the province of Newfoundland and Labrador wrote to the Minister of the Environment suggesting that amendments to the MBCA should be on a regional and not a 'racial' basis. Further he stated that only Northern Labrador should be included in the area where hunting would be permitted.

September 12, 1986

James Mabbutt, Constitutional and International Law, sent a memo to Louise Lamarre Proulx of the Ministry of the Environment which discussed the viability of various proposals to change the MBCA. He stated that:

"Any amendment to the Migratory Birds Convention would in (his) view, with the possible exception of very minor changes, be incapable of implementation by

Parliament under the treaty power (S. 132 of the Constitution Act, 1867.) Amendments relating to federal matters (Indians, the territories, federal lands) could be implemented by Parliament under its substantive jurisdiction under S.91. Other amendments could only be implemented, and this would apply in most cases, by provincial legislatures. Thus, the result would be, that Parliament could not legislate to implement newly assumed international obligations.

**Any major change to the MBCA would eliminate federal jurisdiction and/ or would not be implementable by Parliament**

In addition, were the Convention to be substantially changed there would be a serious risk that, not only would Parliament be incapable of implementing the changes, but also that the courts would hold that the Empire Treaty had effectively ceased to exist by reason of the amendments, thereby eliminating the principal source of federal jurisdiction."

October 29, 1986: Briefing Note:

Protocol to Amend the Migratory Birds Convention. The basic provision of this note is that subsistence hunting of migratory birds should be allowed to "residents of the territories and beneficiaries of comprehensive land claims." That position, while avoiding the 'racial' arguments, was an acceptable compromise in the face of the Federal Government's lack of jurisdiction over the non-native harvesting in the provinces.

November 4, 1986

The Inuvialuit Game Council wrote to the Minister of the Environment asking about progress on the MBCA saying that they had written before, and had recently heard that the CWS was "...trying to frustrate attempts to amend the Convention..."

November 12, 1986: File Number 277331

Memorandum to Martin Low, Senior General Council, Human Rights Law Section from Irit Weiser, Legal Advisor, Human Rights Law Section raises several important points.

1. The United States would likely not negotiate a new treaty with Canada if the Federal Government did not have full authority to implement it.
2. The distinction between provincial and territorial residents posed a serious risk of offending Section 15 of the charter.
3. The Federal government had no authority to extend the benefit of the protocol to non-natives in the northern regions of the provinces.

February 3, 1987

In DOE Dead Files 1030-24/04

Tony Keith, CWS, reported on a meeting with US representatives (Bill Horne, Bob Gilmore) in which the US asked about Canadian progress on the Protocol. CWS assured them of progress.

February 25, 1987

In DOE Dead Files 1030-25/C4

Alaska released a draft of regulations for hunting migratory birds in the spring and summer. The regulations allowed for subsistence hunting by rural inhabitants.

March 13, 1987: (based on docket 12781)

The Minister replied to Yukon Renewable Resources (Porter) letter of December 15, 1986 which asked about US intentions regarding Alaskan spring hunting. The Minister said he would ask the US, and wrote the US Interior (Hodel) the same day.

March 13, 1987: Docket 15023

The NWT renewable resources minister wrote to the Minister of the Environment asking about progress on allowing a spring hunt.

June 25, 1987:

In a memorandum to file the director of Northern Affairs in External Relations discusses a meeting held in Tuktoyaktok. He stated that the NWT would like increased bag limits, and the ability to have non-residents hunt migratory birds. The NWT viewed this as an opportunity for economic development.

March 13, 1987: Based on Docket 16096

The Minister of the Environment replied to Hodel, US Interior Dept (April 14), who in turn replied to a March 13 Minister letter asking for US intentions on the Protocol. The Minister suggested "bilateral discussions in the near future..." on the protocol.

August 12, 1987: Docket 19399 (C&P)

Minister of Justice Hnatyshyn wrote to the Minister of the Environment about a June letter he received from Chief Bear (Treaty and Aboriginal Rights Research Center of Winnipeg) regarding the May, 1987 decision in R. versus Flett. He stated that the Crown would appeal, but that DOE should reply to the letter.

September 22, 1987: Docket 20482

Keith Penner (MP) wrote to the Minister regarding prosecution of his constituents by the RCMP under the MBCA, and asks questions regarding the failure of the 1979 amending protocol to the MBCA.

September 28, 1987: Docket 20542

Mushkegowuk Council (northern Ontario) wrote to the Attorney General of Canada protesting the unannounced departure from the leniency policy regarding enforcement of the MBCA by the RCMP. They stated that this was the result of a "foul up" in the RCMP's Toronto office, and because of this mistake, nine of their people were to be served notice of charges under the Act. They closed by demanding a return to the leniency policy, and a removal of the standing charges.



October 13, 1987: Docket 02876

The Chief of the Nishnawbe-Aski Nation sent a telex to the Solicitor General of Canada stating that the rigid enforcement policy is not based on any principle of conservation, that the policy is insensitive to the hunting rights given under Treaty 5 and 9, and that the policy was sure to disturb self-government negotiations.

November 5, 1987: Docket 21739

The Indian Commission of Ontario copied the Minister with a proposed agenda item on MBCA enforcement policy and review of the case by the Attorney general.

November 26, 1987: Dockets 22105, 22106, 22227

The Attorney General replied to Keith Penner MP (Docket 20482 (C&P)), Mushkegowuk Council (Docket 20542 (C&P)) and the Chief of the Nishnawbe-Aski Nation (Docket 22105 C&P)) in which he stated his decision to exercise his discretion as the Attorney General and stay the charges against the 9 natives charged under the MBCA.

February 4, 1988: Docket 24707

The Assembly of First Nations wrote to the Minister of the Environment stating that they must be included in any discussions between Canada and the United States intended to modify the MBCA. This claim was made under Section 91(24) of the Constitution Act, 1867, and Section 35 of the Constitution Act, 1982. On that basis they demanded copies of all documents pertaining to the then current negotiations with the US, and they demanded a meeting with the Minister and his representatives.

**The AFN demands inclusion in the MBCA modification process**

March 22, 1988: Docket 26708 (C&P)

Minister of Justice Hnatyshyn replied to DIAND (Valcourt) letter of December 23, which agreed with Justice decision to stay charges in the James Bay MBCA incident. The Justice minister said that there should be a MBCA enforcement policy written into the RCMP operations manual, but that CWS had the lead.

April 19, 1988: Docket 27815 (C&P)

Solicitor General Kelleher sent the Minister of the Environment his reply to a February 4 letter from the AFN, which protested RCMP enforcement of the MBCA in September, 1987 in the James Bay area. Kelleher refers to a March 2, 1988 meeting in Toronto, at which DOE "put forward a number of enforcement priorities for the spring hunt."

April 27, 1988: Docket 28209

L.C. Flett of the Wildlife Advisory Council, Ft. Chipewyan, wrote to the Minister asking for special regulations to allow a spring hunt in that area.

April 26, 1988: Docket 28215

The Pas Indian Band wrote to the Prime Minister citing two grievances related to the MBCA. The first was that it contravened section 34 of the Constitution, and the second was that the US government was allowing subsistence hunting of migratory birds by Alaska residents.

May 10, 1988: Docket 28568

PEI wrote to the Minister in opposition to the elimination of the RCMP MBCA coordinator positions.

May 13, 1988: Docket 28768

Norway House wrote to the Prime Minister stating that the MBCA restricts their cultural heritage and that it contravenes Treaty 5.

May 20, 1988: Docket 33226 (C&P)

The Cross Lake Indian Band wrote to the Minister of Natural Resources expressing concern over an apparent inconsistency in law enforcement practices in their area. Their first grievance was that the RCMP would enforce the MBCA where the provincial conservation officers would not. Their second problem was that the RCMP would not enter the reserve to enforce laws against bootlegging liquor, but they would enter the reserve to enforce the Migratory Bird Convention Act.

June 20, 1988: Docket 30411 (C&P)

In a letter to the RCMP, Ducks Unlimited expressed concern that the elimination of MBCA coordinator positions would hamper the RCMP's ability to enforce the act.

July 5, 1988: Docket 30748 (C&P)

McKnight, DIAND, wrote to the Pas Indian Band responding to their letter to the PMO about consultation on the MBCA.

August 12, 1988: Docket 32097

George Erasmus of the Assembly of First Nations wrote to the Minister of the Environment stating that the First Nations have treaty rights to hunt migratory birds, and that members of the First Nations have a special role to play in their use and management.

October 31, 1988: based on Docket 36457

The Minister of the Environment in a letter to George Erasmus promises that as soon as a legal basis for discussions has been reached, he will consult officially with the AFN and other concerned groups. Until that time, he stated that the CWS was to keep AFN informed.

**The Minister promises to consult the AFN re. changes in the MBCA**

November 21, 1988: Docket 36157

George Erasmus of the Assembly of First Nations wrote to the Minister of the Environment. Mr. Erasmus asked for \$96 600 to "enable the Assembly to participate in the process on a fair footing."

March 1, 1989: Docket 38735

Dene Nations wrote to the Minister of the Environment stating their support for the efforts of the Assembly of First Nations' in regards to the MBCA.

April 26 1989: Docket 42727

In this letter from the Solicitor General of Canada to the Minister of State for Agriculture he states that the Courts have consistently held that the MBCA applies to Canada's Natives notwithstanding the terms and conditions outlined in the various Treaties.

September 1, 1989

Queen v. Flett decision rendered by the Manitoba Court of Appeal. The Justice dismissed the Crown's appeal of the innocent verdict. "The Convention Act is not, in my view, a regulation contemplated by Treaty No. 5. It goes far beyond what was contemplated when the Treaty was explained and executed...Prior to the Constitution Act, 1982, those prohibitions were recognized as being within the power of the Government of Canada to impose even though in contravention of its contractual obligations under Treaty No.5...She also determined that the Convention Act did not extinguish the hunting rights described in the Alberta Band Treaty before her... "Thus I am of the opinion the rights under Treaty No. 6 as they existed at the time of the signing of the Treaty have been 'recognized and affirmed' by virtue of s. 35(11) of the Constitution Act, 1982."(Text of decision appended as document 43)