

**Reviewed by LTC, May 13, 2010**

## **CHAPTER MB:      MIGRATORY BIRDS HARVESTING**

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### **DEFINITIONS**

In this chapter, “Migratory Bird” means a migratory bird referred to in the Migratory Birds Convention, and includes the eggs, embryos and parts of the bird.<sup>1</sup>

#### **MB.1.0      GENERAL**

**MB.1.1**      Dehcho Citizens have the right<sup>2</sup> to harvest Migratory Birds<sup>3</sup> throughout the area shown in Appendix A at all times of the year, in accordance with the Dehcho Agreement.<sup>4</sup>

**MB.1.2**      The right provided for in MB.1.1 may be limited or restricted:

- a)      by provisions of the Dehcho Agreement; or
- b)      for purposes ~~demonstrably~~ necessary<sup>5</sup> for:
  - i)      Conservation;
  - ii)     public health; or
  - iii)    public safety.

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<sup>1</sup> Canada will propose language to refer to the Migratory Birds Convention.

<sup>2</sup> Canada prefers this sentence with “The Dehcho Agreement will recognize that...”, or “Subject to the provisions of the Dehcho Agreement, Dehcho Citizens have the right...”.

<sup>3</sup> DFN are consulting with membership with respect to the scope of harvesting which this chapter should cover.

<sup>4</sup> Highlighted phrase proposed by Canada.

<sup>5</sup> Canada prefers “related to” rather than “necessary”. LTC to examine this after receiving direction from main table.

- MB.1.3** Canada ~~has will have~~ the authority to manage and conserve Migratory Birds and Migratory Bird Habitat and will exercise that authority in a manner that is consistent with the Dehcho Agreement.<sup>6</sup>
- MB.1.4** Canada<sup>7</sup> will Consult the Dehcho Government prior to imposing a limitation or restriction necessary for Conservation, public health or public safety.
- MB.1.5** In the event of an Emergency, Canada may impose an interim limitation or restriction necessary for Conservation, public health or public safety without prior Consultation, but will Consult<sup>8</sup> the Dehcho Government as soon as possible thereafter, demonstrating<sup>9</sup> the necessity of the action taken and the terms and conditions to be attached to any limitation or restriction imposed.<sup>10</sup>
- MB.1.6** Nothing in the ~~Dehcho Final~~ Agreement will be construed to:
- a) ~~recognize a right to harvest Migratory Birds for commercial purposes or sale;~~
  - b) confer rights of ownership in Migratory Birds; or
  - c) guarantee the supply of Migratory Birds.
- MB.1.7** Dehcho Citizens will not be subject to any tax<sup>11</sup>, fee or requirement for a license for Migratory Bird Harvesting pursuant to MB.1.1.
- MB.1.8** Prior to Final Agreement, the Parties will address the issue of documentation or identification for Dehcho Citizens exercising their right to harvest Migratory Birds set out in the Final Agreement.<sup>12</sup>

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<sup>6</sup> Canada examining: “and will exercise that authority in a manner that is consistent with the Dehcho Agreement.”

<sup>7</sup> Canada proposes: “~~Subject to 1.5, ...~~”~~To the extent reasonable, Canada will Consult with...~~, or “~~In non-Emergencies, Canada will Consult...~~”

<sup>8</sup> Canada prefers not to use “consult” when describing discussions after the fact.

<sup>9</sup> Canada prefers “regarding” rather than “demonstrating”. LTC to explore compromise wording after further discussion and direction by main table.

<sup>10</sup> Canada proposes: 1.5 In the event of an emergency, Canada may impose an interim limitation or restriction under 1.1. As soon as possible thereafter, Canada will notify the Dehcho government and provide reasons for the decision. Government will Consult the Dehcho Government with respect to any on-going terms and conditions which may result from the event.

<sup>11</sup> Is “tax” necessary here?

<sup>12</sup> Compare to W.1.8.

**MB.1.9** ~~Subject to Legislation respecting humane hunting,~~ Dehcho Citizens have the right to use any ~~M~~method<sup>13</sup>, and to possess and use any equipment, for the purpose of Migratory Bird Harvesting pursuant to MB.1.1.

**MB.1.10** Dehcho Citizens have the right to possess and transport anywhere in Canada<sup>14</sup> the Edible and Non-Edible Parts of Migratory Birds harvested pursuant to MB.1.1, subject to any ~~I~~identification ~~R~~requirements agreed to by the Parties.<sup>15</sup> When exercising this right, Dehcho Citizens will not be required to obtain a licence from Canada<sup>16</sup>, nor be subject to any fee.

## **MB.2.0 GIFTING AND TRADING**

**MB.2.1** ~~The Dehcho Agreement will recognize that~~ Dehcho Citizens have the right to Gift:

- a) the Non-Edible Parts of Migratory Birds harvested pursuant to MB.1.1 to any individual for Subsistence or for their Personal Use; and
- b) the Edible Parts of Migratory Birds harvested pursuant to MB.1.1 to any individual for Subsistence or for their Personal Use.

**MB.2.2** Dehcho Citizens have the right to Trade:

- a) the Non-Edible Parts of Migratory Birds harvested pursuant to MB.1.1 with any individual for Subsistence or for ~~their~~ Personal Use; and
- b) the Edible Parts of Migratory Birds harvested pursuant to MB.1.1 with:
  - i) other Dehcho Citizens; and
  - ii) members of another Aboriginal group with whom the Dehcho Dene have traditionally traded

for Subsistence or for ~~their~~ Personal Use.

**MB.2.3** The Dehcho First Nations or the Dehcho Government may formalize relationships for the harvesting of Migratory Birds with other Aboriginal groups through the negotiation of overlap or shared use agreements. With the agreement of Canada and the DFN, overlap agreement provisions

<sup>13</sup> ~~Canada wants “Method” defined to exclude certain methods.~~

<sup>14</sup> May need to be subject to provincial laws restricting transport. LTC to further explain this issue.

<sup>15</sup> ~~Canada prefers to delete “agreed to by the Parties” and replace it with “set out in Legislation”.~~

<sup>16</sup> DFN say “from Canada” should be deleted.

pertaining to Migratory Bird harvesting ~~completed prior to the Dehcho Agreement~~ may be incorporated into the Dehcho Agreement.

### **MB.3.0 ACCESS**

**MB.3.1** <sup>17</sup>Dehcho Citizens have a right of access to all land and Water within the area shown in Appendix A for the purpose of Migratory Bird Harvesting under MB.1.1.

**MB.3.2** Dehcho Citizens may establish and use Camps on Crown Land within the area shown in Appendix A, subject to limitations on access set out in MB.3.3, provided such Camps are reasonably incidental to Migratory Bird Harvesting under MB.1.1.

**MB.3.3** This right of access does not apply:<sup>18</sup>

- a) on lands held in fee simple<sup>19</sup> or lands subject to a surface lease:
  - i) within Community boundaries;
  - ii) outside Community boundaries where the land is less than ten (10) hectares<sup>20</sup> in area and is fenced<sup>21</sup>; or
  - iii) where Migratory Bird Harvesting would be wholly<sup>22</sup> incompatible with the use of the land.

**MB.3.4** Where Dehcho Citizens have the right to access lands held in fee simple or lands subject to a surface lease for the purpose of Migratory Birds Harvesting under the Dehcho Agreement they will not:

<sup>17</sup> Canada prefers to begin this sentence with: “Subject to MB3.3 and any subsidiary agreements addressing access for harvesting contemplated by the Dehcho Agreement, ...”~~The Dehcho Agreement will recognize that...~~”

<sup>18</sup> Canada proposes: “MB 3.3 This right of access does not apply: (a) on Indian reserve lands; (b) on lands held in fee simple, lands subject to an agreement for sale or lands subject to a surface lease: (i) within Community boundaries; (ii) outside Community boundaries where the land is less than ten (10) hectares in area and is fenced or otherwise identifiable; (iii) where the Harvesting of Migratory Birds would be visibly incompatible with the use of the land; or (c) where lands are dedicated to military or national security purposes pursuant to legislation, or to areas temporarily being used for military exercises for the period of such temporary use, after notice of such dedication or use has been provided to the Dehcho Government.

<sup>19</sup> This is not intended to include Dehcho Ndehe, which may be fee simple lands.

<sup>20</sup> 10 hectares is a very large area.

<sup>21</sup> Canada wants “...fenced or otherwise identifiable;”

<sup>22</sup> Canada may prefer “visibly” rather than “wholly”. Other option: use neither wholly nor visibly; just “incompatible”.

- a) unreasonably interfere with an occupier's use and peaceable enjoyment of the land; or
- b) establish a Camp, Cabin or any structure, or cut or use any wood other than dead wood, without Consulting<sup>23</sup> with the owner, lessee or Government, as the case may be.

**MB.3.5** A Dehcho Citizen or the Dehcho Government may enter into an agreement with an owner, lessee or Government, as the case may be, regarding the right to access lands described in MB.3.3 for the purpose of Migratory Birds harvesting under MB.1.1.

#### **MB.4.0 CONSULTATION**

**MB.4.1** Canada will Consult the Dehcho Government prior to introducing new Legislation, or amending existing Legislation, that could adversely affect the exercise of the right to harvest Migratory Birds set out in this Agreement.

**MB.4.2** Canada will Consult the Dehcho Government prior to:

- a) amending the terms of an existing commercial authorization to harvest Migratory Birds;
- b) authorizing a new commercial activity to harvest Migratory Birds; or
- c) permitting any commercial activity for the propagation or husbandry of a species of Migratory Birds

that could adversely affect the exercise of the right to harvest Migratory Birds as set out in the Dehcho Agreement.<sup>24</sup>

#### **MB.5.0 MIGRATORY BIRDS MANAGEMENT**

**MB.5.1** Prior to concluding the Dehcho Agreement, the Parties will address:

- a) the manner in which Migratory Birds will be managed<sup>25</sup>; and
- b) the participation of the Dehcho Government in the management of Migratory Birds<sup>26</sup>

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<sup>23</sup> Other land claim agreements require Consent of owners.

<sup>24</sup> Other land claim agreements only require governments to consult with respect to proposed activities within Settlement Area.

<sup>25</sup> Canada wants "...managed within the Dehcho Settlement Area;"

<sup>26</sup> Canada proposes:

if the harvesting rights recognized in this chapter could be affected.<sup>27</sup>

**MB.6.0 EMERGENCIES**

**MB.6.1** Nothing in the Final Agreement will prevent any individual from killing Migratory Birds for survival in an Emergency.

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“MB 5.1

a) the manner in which Migratory Birds will be managed within the Dehcho Settlement Area; and  
b) the participation of the Dehcho First Nations Government in the management of Migratory Birds within the Dehcho Settlement Area.”

<sup>27</sup> Other land claim agreements only purport to include First Nations in management regimes wholly within respective Settlement Areas.