

CHAPTER 12 MIGRATORY BIRDS

12.1.0 GENERAL

- 12.1.1 Each Maa-nulth First Nation has the right to harvest Migratory Birds for Domestic Purposes in the Migratory Bird Harvest Area in accordance with this Agreement.
- 12.1.2 Each Maa-nulth First Nation Right to Harvest Migratory Birds is limited by measures necessary for conservation, public health or public safety.
- 12.1.3 A Maa-nulth First Nation may not Dispose of its Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.1.4 A Maa-nulth First Nation Right to Harvest Migratory Birds may be exercised by every Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided under a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government.
- 12.1.5 British Columbia may authorize uses of or Dispose of provincial Crown land, and any authorized use or Disposition may affect the methods, times and locations of harvesting Migratory Birds under this Agreement, provided that British Columbia ensures that those authorized uses or Dispositions do not deny a Maa-nulth First Nation the reasonable opportunity to harvest Migratory Birds under its Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.1.6 For the purposes of 12.1.5, British Columbia and the applicable Maa-nulth First Nation will negotiate and attempt to reach agreement on a process to evaluate the impact of authorized uses or Dispositions of provincial Crown land on that Maa-nulth First Nation's reasonable opportunity to harvest Migratory Birds.
- 12.1.7 Each Maa-nulth First Nation will exercise its Maa-nulth First Nation Right to Harvest Migratory Birds in a manner that does not interfere with other authorized uses or Dispositions of Crown land existing on the Effective Date or authorized in accordance with 12.1.5.
- 12.1.8 A Maa-nulth First Nation or a Maa-nulth-aht may enter into an agreement with a federal department or agency to authorize the harvest of Migratory Birds by that Maa-nulth First Nation or that Maa-nulth-aht on land owned by that federal department or agency in accordance with Federal Law or Provincial Law.
- 12.1.9 Each Maa-nulth First Nation may exercise its Maa-nulth First Nation Right to Harvest Migratory Birds on fee simple lands within the Migratory Bird Harvest Area, other than Maa-nulth First Nation Lands, but that harvesting is subject to Federal Law or Provincial Law in respect of access to fee simple lands.

- 12.1.10 Subject to 12.1.11, no Maa-nulth-aht is required to have any federal or provincial licence or pay any fee or royalty to Canada or British Columbia relating to the exercise of a Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.1.11 Nothing in this Agreement affects Canada's ability to require any Maa-nulth-aht to obtain licences for the use and possession of firearms under Federal Law on the same basis as other aboriginal people of Canada.
- 12.1.12 Nothing in this Agreement alters Federal Law or Provincial Law in respect of property in Migratory Birds.
- 12.1.13 Nothing in this Agreement precludes a Maa-nulth-aht from harvesting Migratory Birds throughout Canada in accordance with:
- a. Federal Law or Provincial Law;
 - b. any agreements, that are in accordance with Federal Law or Provincial Law, between a Maa-nulth First Nation and other aboriginal people; or
 - c. any arrangements between other aboriginal people and Canada or British Columbia.
- 12.1.14 The Minister retains authority for managing and conserving Migratory Birds and Migratory Bird habitat.

12.2.0 TRADE AND BARTER

- 12.2.1 Each Maa-nulth First Nation has the right to Trade and Barter among themselves, or with other aboriginal people of Canada resident in British Columbia, any Migratory Birds harvested under its Maa-nulth First Nation Right to Harvest Migratory Birds.
- 12.2.2 A Maa-nulth First Nation right to Trade and Barter in accordance with 12.2.1 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided in a Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government made under 12.5.1d.
- 12.2.3 A Maa-nulth First Nation may not Dispose of its right to Trade and Barter described in 12.2.1.

12.3.0 SALE

- 12.3.1 Each Maa-nulth First Nation and its Maa-nulth-aht may only sell Migratory Birds harvested under the Maa-nulth First Nation Right to Harvest Migratory Birds of that Maa-nulth First Nation if:
- a. permitted under Federal Law or Provincial Law; and

- b. in accordance with Federal Law, Provincial Law and any Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government enacted under 12.5.3b.

12.3.2 Notwithstanding 12.3.1, each Maa-nulth First Nation and its Maa-nulth-aht may sell inedible byproducts, including down, of Migratory Birds harvested under the Maa-nulth First Nation Right to Harvest Migratory Birds of that Maa-nulth First Nation in accordance with any Maa-nulth First Nation Law of the applicable Maa-nulth First Nation Government enacted under 12.5.1e.

12.4.0 TRANSPORT AND EXPORT

12.4.1 Any transport or export of Migratory Birds and their inedible byproducts, including down, harvested under a Maa-nulth First Nation Right to Harvest Migratory Birds will be in accordance with Federal Law or Provincial Law.

12.5.0 LAW-MAKING

12.5.1 Each Maa-nulth First Nation Government may make laws in respect of the applicable Maa-nulth First Nation Right to Harvest Migratory Birds for:

- a. the distribution of harvested Migratory Birds among the Maa-nulth-aht of the applicable Maa-nulth First Nation;
- b. designating the Maa-nulth-aht of that Maa-nulth First Nation to harvest Migratory Birds;
- c. the methods, timing, and location of the harvest of Migratory Birds by the Maa-nulth-aht of that Maa-nulth First Nation;
- d. the Trade and Barter of Migratory Birds harvested by the Maa-nulth-aht of that Maa-nulth First Nation; and
- e. the sale of inedible byproducts, including down, of Migratory Birds harvested by the Maa-nulth-aht of that Maa-nulth First Nation.

12.5.2 Maa-nulth First Nation Law under 12.5.1 prevails to the extent of a Conflict with Federal Law or Provincial Law.

12.5.3 Each Maa-nulth First Nation Government may make laws in respect of the applicable Maa-nulth First Nation Right to Harvest Migratory Birds for:

- a. the management of Migratory Birds and Migratory Bird habitat on the Maa-nulth First Nation Lands of the applicable Maa-nulth First Nation;

- b. the sale of Migratory Birds harvested by the Maa-nulth-aht of that Maa-nulth First Nation, other than their inedible byproducts, if permitted under and in accordance with Federal Law or Provincial Law;
- c. the establishment and administration of licensing requirements for the harvest of Migratory Birds by the Maa-nulth-aht of that Maa-nulth First Nation; and
- d. documenting the Maa-nulth-aht of that Maa-nulth First Nation who have been designated as harvesters.

12.5.4 Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 12.5.3.

12.6.0 DOCUMENTATION

12.6.1 Each Maa-nulth First Nation Government will issue documentation to the Maa-nulth-aht of the applicable Maa-nulth First Nation who harvest Migratory Birds under the applicable Maa-nulth First Nation Right to Harvest Migratory Birds.

12.6.2 A Maa-nulth-aht who harvests Migratory Birds under a Maa-nulth First Nation Right to Harvest Migratory Birds is required to carry documentation issued by the applicable Maa-nulth First Nation Government and to produce that documentation on request by an authorized individual.

12.6.3 Documentation issued by a Maa-nulth First Nation Government in accordance with 12.6.1 will:

- a. be in the English language, which version is authoritative, and, at the discretion of that Maa-nulth First Nation Government, in the Nuu-chah-nulth language; and
- b. include the name and address of the Maa-nulth-aht.

12.7.0 MIGRATORY BIRD HARVEST AREA

12.7.1 If after the Effective Date Canada and British Columbia enter into a treaty within the meaning of section 35 of the *Constitution Act, 1982* with a Nuu-chah-nulth First Nation, other than a Maa-nulth First Nation, the Parties will review the boundaries of the Migratory Bird Harvest Area and consider amendments, if any, to this Agreement.

12.8.0 MANAGEMENT

- 12.8.1 Each Maa-nulth First Nation has the right to participate in any public advisory committee, including any Wildlife advisory committee as described in 11.10.1, that may be established by Canada or British Columbia that addresses matters regarding Migratory Birds that occur in or impact the Migratory Bird Harvest Area.

12.9.0 CONSERVATION MEASURES

- 12.9.1 Where, in the opinion of the Minister, conservation measures are needed within the Migratory Bird Harvest Area to protect a particular population of Migratory Bird, and those measures are likely to affect the Maa-nulth First Nation Right to Harvest Migratory Birds of a Maa-nulth First Nation, Canada will Consult with that Maa-nulth First Nation regarding such conservation measures.
- 12.9.2 If a Maa-nulth First Nation is of the opinion that conservation measures are needed within the Migratory Bird Harvest area to protect a particular population of Migratory Bird that is harvested by that Maa-nulth First Nation under its Maa-nulth First Nation Right to Harvest Migratory Birds, that Maa-nulth First Nation may present its views to Canada in respect of such conservation measures and Canada will give full and fair consideration to that Maa-nulth First Nation's views.
- 12.9.3 Each Maa-nulth First Nation Government will provide to the Minister upon request, for Migratory Bird conservation purposes, information concerning the activities of the Maa-nulth-aht of the applicable Maa-nulth First Nation related to the exercise of the applicable Maa-nulth First Nation Right to Harvest Migratory Birds.

12.10.0 DESIGNATED MIGRATORY BIRD POPULATIONS

- 12.10.1 Where the Minister, after Consulting with the Parties, determines that there is a conservation risk to a Migratory Bird population which requires the allocation of the harvest of that population, the Minister may designate that population as a Designated Migratory Bird Population.
- 12.10.2 Where, in the opinion of any Party, there is a conservation risk to a Migratory Bird population, that Party may make recommendations to the Minister for the designation of that population as a Designated Migratory Bird Population.
- 12.10.3 The Minister will, after Consulting with the Parties, determine the Total Allowable Migratory Bird Harvest of the Designated Migratory Bird Population.

- 12.10.4 In determining the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population, the Minister will take into account, among other things:
- a. the status of the Designated Migratory Bird Population;
 - b. continental and local conservation requirements; and
 - c. Canada's international commitments in respect of Migratory Birds.
- 12.10.5 The Minister will make an allocation of the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population for the Maa-nulth First Nations.
- 12.10.6 In making an allocation in accordance with 12.10.5, the Minister will take into account, among other things:
- a. the Total Allowable Migratory Bird Harvest for the Designated Migratory Bird Population;
 - b. the current and past domestic needs and harvesting practices of the Maa-nulth First Nations in respect of the Designated Migratory Bird Population;
 - c. the extent and nature of the Maa-nulth First Nations' Maa-nulth First Nation Right to Harvest Migratory Birds; and
 - d. the interests of non-Maa-nulth-aht in respect of the Designated Migratory Bird Population.
- 12.10.7 On the recommendation of a Party, the Minister may determine that there is no longer a conservation risk to a Designated Migratory Bird Population and remove the designation.