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JANET GREEN

The Federal Government and Migratory Birds: the Beginning of a Protective Policy

Protection of migratory birds was the most important and far-reaching step ever taken for wildlife protection on the North American continent. The International Migratory Bird Treaty signed by Great Britain and the United States in 1916, and formal ratification of that treaty by the Canadian Parliament in 1917, was a landmark in the evolution of the Canadian Government's role in wildlife protection. It established the federal government's constitutional responsibility over a wildlife resource that many assumed was under provincial jurisdiction and it resulted not only in a far greater clarification of the government's responsibilities for wildlife generally, but also in the emergence of a wildlife protective policy for Canada.

The Canadian Government had shown little concern for wildlife conservation during the nineteenth century. This lack of concern can be attributed to a number of factors — the presence of wilderness frontiers wherein it was believed wildlife species existed in superabundant, self-regulating and self-perpetuating numbers, the political ideology of National Policy with its emphasis on expansion and exploitation, and the terms of the British North America Act which placed public lands — and game administration — under provincial jurisdiction. It was these factors, coupled with a general lack of scientific knowledge about wildlife species that served to insulate the federal government from the need to think in terms of preservation. A number of national parks were established in the late nineteenth century, but far from serving as wildlife sanctuaries as parks do today, their primary purpose was to attract tourists and tourist dollars. They were to be commercial assets to the new Dominion, sources of revenue capable of continuing exploitation by the railways and the government in the interests of the Canadian people.

And yet, during the early years of the twentieth century, a slow change came about in government thinking. It gradually became apparent that some bird and mammal species, far from existing in a superabundant state, were declining rapidly. This awareness was born not at the Cabinet or ministerial level of government but at the level of the senior civil servants who were in charge of those departments most closely involved with wildlife matters. A handful of dedicated civil servants who were personally and professionally commited to the principle of wildlife protection, helped influence and direct government policy along the lines of wildlife conservation. And nowhere is their influence on

government more clearly revealed than in the behind-the-scenes story of the movement for migratory bird protection. Without their effort and concern, protection for a truly international resource on the North American continent might never have been achieved.

I

Interest in wild birds developed early in the nineteenth century, greatly stimulated by John James Audubon, the noted author, naturalist, artist and ornithologist. The emergence of bird watching and naturalist clubs was undoubtedly related, in part, to his works. The parent organization of the Thomas McIlwraith Field Naturalists' Club of London, Ontario, was one of the earliest in Canada, founded in 1863 and followed by the Ottawa Field Naturalists' Club in 1879. Both societies had small but expanding memberships and were devoted to bird sightings, insect studies, botany, and detailed examinations of their local natural history.

In the United States, the American Ornithologists' Union (AOU), founded in 1883, went far beyond being a mere centre for bird watching activities and natural history discussions. There was a growing concern in the United States over the apparent decline in bird life. Farmers noticed an absence of insectivorous birds and reported increasing insect damage to crops and orchards, while urban dwellers noted a significant decline in song bird populations. There was little understanding in the late 1800's about the importance of bird habitat. The draining of swamps and sloughs as settlement advanced destroyed vital nesting grounds for countless species of waterfowl and shorebirds, while the spread of settlement and growth of townsites resulted in a crucial loss of forests — the natural habitat of many song and insectivorous birds. After the Civil War, famine was widespread in most southern states and song birds, woodpeckers, and doves provided an all too easy food supply.[1] The passenger pigeon, once a symbol of wildlife superabundance, was quickly approaching extinction and following its disappearance hunters decimated shorebird populations. Eskimo curlews, Hudsonian godwits, and golden plover were taken for food and fishing bait — practices that pushed all three species to the edge of extinction by the end of the 1880's.[2]

The belief in the superabundance of bird life led to the general slaughter of other species as well. By 1900, the Labrador duck, the great auk and the passenger pigeon were extinct, while whooping cranes, wood ducks, egrets and trumpeter swans joined the growing list of endangered bird species. The absence of bag limits and uniform hunting seasons in the United States, coupled with intensive market hunting and regular spring shooting, took a heavy toll on bird numbers; but the dictates of fashion took the heaviest toll of all as milliners turned to the colourful plumage of terns, egrets, ibises, bobolinks, rails and herons for the adornment of ladies' hats. A Committee on Bird Protection, set up in 1884 by the AOU to combat the destruction of birds for the millinery trade, reported two years later that in Norfolk, Virginia, robins, meadowlarks,

blackbirds, thrushes, warblers, vireos and waxwings were being sold as food by street vendors, while five million birds a year were systematically slaughtered for the millinery trade. The Committee found that in one season alone, over 40,000 terns were killed in the Cape Cod region and a million bobolinks and rails were slaughtered near Philadelphia in a single month — all for the sake of providing feathers for womens' hats. Appalled by the increasing destruction of birds, and convinced that the American public was too apathetic or ignorant to take action, the AOU set itself the task of awakening public conscience to the need for securing better protective legislation.[3]

The problem was that in the 1800's North Americans generally knew little of bird habits, food requirements, dependence on habitat, or annual migrations. The Audubon Society, founded in 1886, joined with the AOU in a campaign against the use of wild bird plumage in the millinery industry. But their task was made doubly difficult by the prevailing belief in wildfowl superabundance. One woman told a writer for the *Audubon Magazine* that "there is a great deal of sentiment wasted on birds. There are so many of them they will never be missed, any more than mosquitos. I shall put birds on my bonnet".[4]

Concern for bird protection became more widespread towards the end of the century as pressure for game legislation steadily mounted. More was known now about the habits and annual migrations of birds. Experiments in bird banding that began in Europe were introduced to the United States in the late 1890's, revealing for the first time the range and routes of bird migrations across the North American continent.[5] Once the patterns of migration were understood, the consequences of spring shooting — permitted in most American states and many Canadian provinces — became evident; birds shot on their way north to nesting grounds in the spring resulted in fewer birds returning south in the fall.

Greater knowledge of bird migrations soon led to more effective and better based arguments for legislative protection. America's first federal statute — the Lacey Act — was passed by Congress in 1900. It was designed to abolish market hunting by banning interstate transportation of birds and wild game. But the Lacey Act soon proved inadequate to curb abuses. There was profit to be made in market hunting and too few officers to enforce the new regulations.[6] The federal legislation did not have the power to prohibit either spring shooting or local market hunting and pressure continued to mount for more effective legislation. Therefore, a second bill for migratory bird protection was introduced to Congress by George Shiras in 1904. Although this bill was referred to a Committee on Agriculture, and was praised by President Roosevelt, it failed to pass the House and no further legislative action was taken for migratory bird protection in the opening years of the twentieth century.

The question of migratory bird protection was of great importance to Canada but few government members or private citizens seemed concerned with the issue. Western Canada has frequently been described as the "duck factory" of North America for nearly 80 percent of all North American ducks nest among

the sloughs and potholes of the prairies, the chief breeding grounds for what is, indeed, an international resource. Abuses against songbirds and waterfowl were not so great in Canada as in the United States, because the hunting population was smaller and there were less opportunities for market hunters. After 1896, however, intensive western settlement brought great pressures on waterfowl numbers as swamps and prairie sloughs were drained to make way for agriculture. Loss of habitat was undoubtedly the single largest factor in the decline of North American waterfowl populations, a fact that was little understood in the nineteenth and early twentieth centuries.

There were other problems as well. Spring shooting of some species of waterfowl was prohibited in Ontario as early as 1873[7] and most provinces eventually abolished the practice, but there were frequent abuses and restrictions were not effectively enforced by provincial game guardians. The spring shooting issue was hotly debated by the North American Game and Fish Protective Association at its first annual meeting in 1902. The Association, composed of Americans and Canadians, was large and influential. The Honourable S.N. Parent, Quebec Premier and Minister of Lands, Mines and Fisheries, was the association's first president, and officers with the Grand Trunk and Canadian Pacific Railways sat on the association's executive boards. During the 1902 meeting, Edwin Tinsley, Ontario's Chief Game Warden, declared that he knew of no action so urgently needed as the uniform and general prohibition of spring shooting:

> It has long been a mystery to me that you, our American friends, follow business principles in your Trades and Professions and then act so inconsistently in the matter of spring shooting. There is not one redeeming feature or valid excuse for otherwise intelligent people acting so foolishly as to shoot birds when full of eggs en route to nesting grounds.[8]

Following a prolonged discussion on the subject of spring shooting, the game association passed a resolution strongly urging the legislatures of New York State and the Province of Ontario to enact measures prohibiting spring shooting of all wildfowl species.

But in contrast to the protectionist movement well underway in the United States during the early 1900's, few Canadian organizations were concerned with migratory bird protection. The subject was a relatively new one, and while a few individuals understood and spoke out clearly, their voices seldom had much impact. The North American Game Association might well debate the issue and propose protective measures, but most Canadian field naturalist clubs confined their studies to more local and regional concerns.

Meanwhile, the campaign for bird protection continued unabated in the United States. Another federal migratory bird bill — the Weeks-Maclean Bill — was attached as a rider to the Agricultural Appropriations Bill and introduced to Congress in 1913. It passed both Congress and the Senate and became law on March 4th. The law, however, did little more than place migratory birds under

custody of the United States federal government and authorize the Department of Agriculture to provide for protective regulations. The Department was given no powers of arrest or seizure and only a very small sum of money was provided for enforcement of the new law. Moreover, many doubted the federal government had either the authority or the constitutional power to pass such legislation. President Taft declared that the bill was unconstitutional in its legal form and that if it were presented to him he would be compelled to veto it. However, Taft did not veto the bill in 1913. Woodrow Wilson, the President-elect, was waiting to enter the White House and Taft later claimed he "didn't have time" to read the bill fully before he left office.[9]

The law was far from secure and it encountered enemies both in and out of the House. Representative Frank Mondell of Wyoming was bitterly opposed to the law, dramatically declaring against it in 1913 and later introducing a motion for its repeal;

> If this Bill should become law no man who voted for it would even be justified in raising his voice against any extention, no matter how extreme, of the police authority and control of the federal government . . . Pass this Bill and every barrier standing against the assertion of Federal police force in every line and with regard to every act and activity of the American people is broken down, and we no longer have a government of self-governing States but are well on the way to an empire governed from this Capital.[10]

A District Court Judge sitting in Arkansas dismissed a case against a hunter, Harvey Shauver, in 1914 for illegal possession of ducks shot out of season on the grounds that the federal migratory bird law was unconstitutional. The case was appealed to the United States Supreme Court but a decision was never handed down.

Although the federal bird law encountered many enemies, it could also count on a growing number of friends who were determined to safeguard its object and principle. In 1911, the American Game Protection and Propagation Society was formed with the sole object of securing migratory bird protection.[11] Its president — John Burnham — led an active campaign in the United States and later in Canada to further the aims of the society. It was Burnham who thought of attaching the 1913 Bill to the Agricultural Appropriations Bill, and after its passage the society filed countless legal briefs in support of the law's constitutionality.

But by far the most significant event of 1913 was a resolution introduced into the Senate by Elihu Root suggesting that a treaty be concluded with Great Britain (representing Canada) for migratory bird protection. The resolution failed to pass but just a few months later, Senator Maclean brought up a similar resolution calling for an international convention with Great Britain. This resolution passed Congress on July 7, 1913.[12] There were good reasons for the Americans to conceive of an international treaty for bird protection. It is difficult to say what decision the Supreme Court would have handed down regard-

ing the 1913 Bird Law but evidence indicated that the Court might well have declared the law unconstitutional. The supporters of bird protection, however, believed that an international treaty would supersede the federal law and render all opposition and arguments to federal protection of migratory birds purely academic. It was at this juncture, that American advocates of bird protection began to turn their attention to Ottawa.

The Dominion Government seldom discussed wildlife conservation policies with the provincial governments, and only occasionally advised or interfered in provincial game administration matters. The question of migratory birds, however, presented an entirely new problem. Birds that summered in the high Canadian arctic and travelled the length of the continent to winter in the southern American states and Mexico were neither a national nor a provincial resource. Because the British North America Act made no mention of migratory birds, the question of protection was going to crystallize the problems of jurisdiction.

The Commission of Conservation had been established by the federal government in 1909 to inventory Canada's natural resources and to make recommendations for their more efficient utilization and conservation. During the Commission's 1913 meeting, J. Walter Jones, appointed to report on fur farming in Canada, demonstrated that the changing conditions of modern life, the newer methods of hunting, and the increased value of fur pelts had drawn attention to new and difficult problems which the framers of the British North America Act had not forseen when they placed natural resources under provincial jurisdiction. "For example", Jones said, "what legislative body should have charge of migratory birds?" It was Jones' conviction that migratory birds would ultimately have to come under Canadian and American federal government jurisdiction;

> Of what use would provincial authority be when one hundred and fifty-four species of insect-eating game birds are being legally slaughtered, and when most of these nest in Canadian territory and winter in the United States, Mexico, and other parts of America?[13]

Insectivorous birds were vitally important to Canadian agriculture and Jones quoted Professor Forbush, State Ornithologist of Massachussetts, who estimated American annual agricultural losses through insect damage at $800,000,000. Using this figure, Jones guessed that Canada's crop losses would amount to one tenth of American losses — $80,000,000 — and concluded that the decline of insectivorous bird populations was responsible for that loss. Given the tremendous importance of agriculture and the economic value of bird life, Jones contended that only federal jurisdiction could secure uniform game laws and intelligent, scientific protection on the continent. "Migratory birds", he said, "should come under the Federal authority for the same reasons that foreign commerce is administered by the Federal Government".[14]

Members of the Parks Branch in the Department of the Interior had followed the activities of the Conservation Commission very closely. One of those most interested was James Harkin, the Dominion Parks Commissioner. Although Harkin knew little of national park administration at the time he was appointed Commissioner in 1911, he had a clear and unfailing vision of what wilderness, parks and wildlife signified for the Canadian people in terms of both aesthetic and economic importance. He shared the philosophies of John Muir, the American wilderness preservationist, believing that all Canadians needed fresh air, sunshine, and outdoor recreation to strengthen the body and rejuvenate the spirit. When appointed Dominion Parks Commissioner, Harkin became custodian of what he believed was Canada's natural heritage, given to her in trust for future generations. As Commissioner, he was in an excellent position to help influence government thinking in these early years along the lines of preservation. Harkin's colleague, Maxwell Graham, shared a similar commitment towards preserving Canada's wildlife and natural beauty. Hired by the Parks Branch in 1912, he lost little time in appointing himself chief of the branch's three-man Animal Division and set about organizing the protection of pronhorn antelope and wood buffalo, two species seriously endangered in western and northern Canada.

Both Harkin and Graham were well aware of the United States federal bird law and of all the facts that Jones had presented to the Conservation Commission. Two months after the Commission meeting, Graham sent Harkin a memo quoting all the facts Jones gave at the meeting and enclosing a copy of the American federal migratory bird bill for the Commissioner. Graham suggested that a similar bill be drafted by the Parks Branch and introduced to the House of Commons. He admitted the whole subject required "extensive study" but was quick to point out to the Commissioner that it "already justified this Branch in bringing before the Dominion Government the expediency of its administering the protection of migratory birds, and thus cooperating with the United States Government which passed the Weeks-Maclean Bill."[15]

Two days later, Graham checked out his facts more thoroughly with James Macoun, a naturalist-botanist with the Geological Survey, asking him to substantiate the facts he had sent off so hurriedly to Harkin. "If you concur", he wrote, "the work of supplying the necessary arguments (for protection) will be much simplified."[16] Macoun was not able to confirm Grahams' figures but believed that many of the arguments used in the United States would be equally valid for Canada. He did not have specific provincial regulations at hand regarding insectivorous birds, but told Graham that "from my own experience throughout Canada, practically no attempt is made to enforce (provincial) regulations." Hoping to assist Graham further, however, Macoun passed the request for information along to Percy Taverner, staff ornithologist with the National Museum of Canada and consultant to the Geological Survey.[17] The latter was one of the pioneers in North American bird banding and had long recognized that migrating birds could be protected only through some sort of international agreement. Spring shooting was not allowed on the Ontario side of

the border, he informed Graham, but was "much indulged in" across the line in Michigan. Regarding Graham's estimate for Canadian agricultural losses, Taverner judged ten percent would not be "far out of the way". But he advised Graham to check more thoroughly with the United States Biological Survey, a government body that had collected biological data over the previous fifteen years.[18]

While Graham was busily seeking authoritative support to back up his estimates, the Parks Commissioner conducted some research on his own. Late in March, Harkin wrote to the Secretary for the American Game Protection and Propagation Association, advising him that passage of the Weeks-Maclean Bill had been watched with considerable interest by members of the Parks Branch. Now the bill had passed, Harkin stated "it is felt that some action should be taken in order that this country may co-operate with your government in protecting these migratory species which divide their life between our two countries." Harkin knew that John Burnham, the Society's President, had filed numerous arguments and briefs on behalf of the constitutionality of the American law and asked the Secretary to send copies of the briefs together with the "cogent reasons" the Society had collected for supporting the bill.[19]

Shortly after Harkin contacted the American Game Association, a dispatch arrived in Ottawa from the British Ambassador in Washington, stating that the United States Government was interested in the possibility of an international convention to protect migratory birds. Harkin seized the opportunity and immediately sent off a memo to the Deputy Minister of the Interior, William Cory. There was no room to doubt the desirability of such an agreement, he wrote, from both the aesthetic and commercial viewpoints. He told Cory that the American law was under severe attack on grounds that it was outside the jurisdiction of Congress, but that an international treaty would make the United States federal law "automatically valid and immune from attack in the Courts".[20] Harkin realized the implications of federal action in the matter and warned the Deputy Minister that it was imperative that the provincial governments be contacted and their approval secured before any action was taken between the two governments. He suggested copies of the British Ambassador's communique be circulated to the various provincial governments and then — when their approval was given — a conference could be held and the matter fully discussed between Dominion and provincial representatives.

Events speeded up by the end of 1913. The North American Game Association held its annual meeting in Ottawa in early December and H.R. Charlton, a member of the association and also Advertising Manager for the Grand Trunk and Grand Trunk Pacific Railways, moved an important resolution:

> Resolved, that the executive committee communicate with the provincial governments of Canada to urge them of the importance of soliciting the good offices of the Dominion Government in obtaining the negotiation of a convention or treaty between Great Britain and the United States looking to the

> more efficient protection of migratory birds, now threatened with extinction.[21]

Although moved by Charlton, the resolution had been drafted by Edward Chambers, secretary to the game association, but also a member of the Fisheries Branch in the Quebec Government. Chambers, a strong believer in federal intervention on the question of bird protection, was aware that the provinces retained jurisdiction over their natural resources. He was highly sensitive to the "delicacy" with which the subject would have to be handled and thought it best to phrase the resolution in such a manner as to persuade the provincial governments, instead of the Dominion, to take the first initiative. Because Chambers was a member of the Quebec Government, he declined to put forward the resolution himself.[22]

Graham was pleased with the work of the association and told Harkin that "other influential bodies and individuals" were trying to bring the matter before both governments. By this time, a list of regulations under the Weeks-Maclean Bill had been drawn up by the United States Department of Agriculture and Graham noted that all the birds listed in the regulations nested in Canada — a fact "which makes our country even more vitally concerned in their preservation".[23] Graham suggested to Harkin that the matter of protection be submitted to the Minister of the Interior and that the Parks Branch be authorized to draw up suitable regulations for Canada. So anxious was Graham to secure migratory bird protection for the Parks Branch that he seemed to overlook the fact that, under the BNA Act, provincial governments were responsible for natural resource administration.[24] Migratory birds were designated neither a provincial nor a national resource in 1913, yet "provincial consultation" was not an item that appeared high on Graham's list of priorities.

The Parks Commissioner, however, was far more aware of the necessity for close Dominion/provincial co-operation and consultation. As a result of Graham's memo, he wrote directly to Edward Chambers in Quebec, seeking his advice on the proposal for a federal/provincial conference to discuss the migratory bird legislation. Outlining topics for debate as suggested by Graham, Harkin told Chambers that any proposed legislation arising from the conference would not be intended to affect or interfere with local provincial laws already in force. He insisted that the main purpose of the conference was consultation and reminded Chambers that, "as secretary of the North American Game and Fish Protective Association, it is felt that you can materially help this branch in its efforts to bring about concerted inter-provincial action so that necessary legislation, uniformly protecting all migratory and insectivorous birds everywhere in this Dominion, may be secured."[25]

After some consideration, Chambers replied, promising to do what he could to aid the Parks Branch. While the idea of a conference was sound, Chambers warned Harkin of the "jealous care" with which the provinces held on to their constitutional rights. "This rather causes me to fear for the success of any move-

ment seeming to curtail provincial rights and apparently emanating from Ottawa", he concluded.[26] Harkin believed the chief purpose of the proposed conference was to further interprovincial co-operation and arouse public opinion in support of the international action. He was as aware as Chambers of provincial "jealousies", and later decided that should a conference be held in the near future one of the prairie provinces would make a more appropriate setting for migratory bird discussions than Ottawa. "It is not even suggested", he told Chambers, "that Dominion Government members should necessarily attend such a conference, unless their presence is deemed necessary for purposes of furnishing information. This Branch is only anxious to do whatever possible to bring about a healthy public opinion on the question of migratory bird protection."[27]

The subject continued to draw attention in the months that followed. William Haskell, legal counsel for the American Game Association, came to Ottawa in January and addressed the Conservation Commission's Fifth Annual Meeting. He outlined the history of legislative attempts for bird protection in the United States that had culminated in the 1913 Bird Law, and emphasized the growing importance of international protection. Canadians would benefit as much from bird protection as the Americans, he argued, and told Commission members that the fate of the American law was still undecided. But should a treaty be concluded, he was quick to point out, "the question of whether or not the federal government has any power to make such a law will be forever settled, because a treaty is the supreme law of the land and no State or Federal Court can attack it." He concluded his remarks by asking Commission members to use their influence in helping Canada to join with the United States in securing the international agreement.[28]

One month after Haskell's Ottawa address, the United States Government submitted a draft treaty for the protection of migratory birds, drawn up by members of the United States Biological Survey, to the Canadian Government. Graham studied the draft carefully and was generally pleased with the proposal, noting that its provisions covered all the general requirements but told Harkin that the Americans would consider any amendments, alterations or additions that Canada proposed. "A treaty is much more effective than a statute", he wrote, "it is a guarantee of the law."[29] Plans for a federal/provincial conference were postponed indefinitely and the draft, approved by the Parks Branch and the Departments of Agriculture and Interior, was sent off to the provincial governments on March 20. Graham and Harkin settled down to await the provincial responses.

Over the next two months, provincial replies gradually filtered into Ottawa. Nearly all the provincial governments approved the draft and the principle of bird protection. Most claimed that few new restrictions were needed under the treaty for provincial regulations were already in harmony with the proposed legislation. The Lieutenant-Governor of Quebec, François Langelier, told the Secretary of State that his province's sportsmen unanimously voted their ap-

proval of a convention at the annual meeting of the North American Game Association in 1913 and stated that the treaty would be of great value to Quebec, particularly as it prohibited the illegal shipment of game. "This provision will put an end to the ruthless destruction of our grouse and partridge", he pointed out. Spring shooting was already abolished by the Quebec Government, but the Lieutenant Governor warned that notwithstanding the desirability of game protection, "the restrictions that may or may not be placed upon the killing or sale of game in the Province of Quebec are its own prerogative and cannot be delegated to others."[30] The New Brunswick Government was a little more hesitant in its support. Provincial laws were in conformity with the treaty but Lieutenant-Governor Josiah Wood knew that the constitutionality of the U.S. Bird Law was still to be tested in the American Supreme Court. He advised the Canadian Secretary of State that "a similar difficulty will be found in legislating for Canada" as "the laws upon this subject come within the jurisdiction of the different provinces."[31]

British Columbia and Nova Scotia were the only two provinces to express opposition to the terms of the proposed treaty. Under the draft regulations, the international open hunting season for both Canada and the United States was set between September 1st and February 1st (the latter date chosen to abolish spring shooting on the continent, for the open season would end a good month before most bird species began their northward migrations). Within the general open period specified in the treaty, each state and province could select its own local hunting season, but not to exceed three and one half months in duration. Nova Scotia was quick to point out, however, that by September 1st, most shorebirds had left the province on their southward migration and the provincial government requested that the general open season under the treaty begin earlier to include the latter half of August. Other changes would be necessary to bring Nova Scotia's legislation into accord with the treaty provisions — the province had no closed season at all for geese, eider ducks, gulls, loons or bitterns, but the provincial government conceded that there was no serious objection to modifying provincial laws to conform with the new regulations.[32]

British Columbia proved far more unyielding in its demands than Nova Scotia. The Lieutenant-Governor of the province wrote that while his government was in accord with the basic principles of the convention, "it feels that it cannot become a party to the treaty as it stands at present". Declining to state the province's specific objections to the draft proposal, the Lieutenant-Governor referred only to the "different conditions" existing in British Columbia and stated that "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 the province."[33] It was later learned that British Columbia was unwilling to accept the specified closed season on ducks, geese and other game birds or the restrictions against killing cranes, swans, curlews and wood ducks (Wood ducks, seriously endangered, would be given a five-year closed season under the proposed treaty while swans, cranes and curlews were to have full protection for ten years). Sportsmen in British Columbia were accustomed to spring shooting

and a five and one half month open hunting season — privileges the provincial government was unwilling to surrender lightly to federal authorities.[34]

Harkin saw no reason to be disheartened by the responses. All but two provincial governments accepted the principle of the treaty and the Commissioner felt certain that British Columbia and Nova Scotia could be dealt with on an individual basis. The Comissioner was anxious to begin negotiations as soon as possible, but the outbreak of World War One intervened and it was not until the spring of 1915 that an order-in-council, agreeing to the priciple of international protection for migratory birds was passed. The privy councillors recognized the objections of Nova Scotia and British Columbia but stated that those objections should not present "insuperable difficulties".[35] His Majesty the King was therefore requested to inform the British Ambassador in Washington that Canada "was favourably disposed towards conclusion of the proposed Treaty."

Unknown to either Graham or Harkin, another Canadian senior civil servant was preparing to work actively for migratory bird protection. Gordon Hewitt was born in England in 1885 and received his B.Sc. (1902), M.Sc. (1903) and Ph.D. (1909) in zoology from Manchester University. He was lecturing on Economic Zoology at the university in 1909 when he was offered the position of Dominion Entomologist with the Canadian Department of Agriculture. Hewitt was a young man when he came to Canada and it is difficult to trace the origins of his ideas, for the values that he placed on wildlife were not molded by the North American experience but shaped by the British and European environments. As Dominion Entomologist, Hewitt was concerned with the economic value of birds and their importance to agriculture; but as a keen student of nature he was aware also of the aesthetic and sentimental value of bird life. In mid-February 1913, one full month before members of the Parks Branch first took notice of the migratory bird question, Hewitt wrote to Henry Henshaw, Chief of the United States Biological Survey. He did not write in his official capacity but simply as a private citizen who had taken much interest in the subject of bird protection and wanted to know more about the bill for federal protection in the United States. Hewitt believed that migratory bird protection was an important matter and suggested that "we should co-operate if the means can be found."[36] In reply, he was told that the bill as presently before the Senate and had a good chance of passing. Henshaw sent Hewitt copies of the Senate hearings, a report of the Investigating Committee, and a speech by Senator Maclean, co-author of the Bird Bill.[37]

The following spring Hewitt made a private trip to Washington where he met informally with members of the Biological Survey and discussed with them the possibility of some kind of international agreement to protect migratory birds. This was the beginning of Hewitt's close relationship with members of the American Government that was to prove of great value in the months ahead. Hewitt was made aware of the broadly based movement for bird protection underway in the United States and, bolstered in his own convictions by the Washington talks, he returned to Ottawa convinced that greater information and

publicizing of the issue was needed if Canadian support for an international treaty was ever to be won.[38]

International co-operation moved closer to reality during the next few months. In early January of 1916, Hewitt was directed by the Minister of Agriculture to pursue negotiations on behalf of the Canadian Government with the Americans. As the decline in birdlife was related directly to agricultural losses to the Dominion, it was only natural that this branch of government should have played a prominent role in migratory bird protection. But Hewitt was also instructed by his Minister to work out possible compromises with the Americans to cover the objections of British Columbia and Nova Scotia.

In Washington, compromise and concession formed the fabric and substance of Hewitt's talks as both sides sought solutions to meet Nova Scotian and British Columbian demands.[39] The Americans readily agreed to permit the Maritime Provinces to take shore birds during the latter half of August instead of after September 1st as outlined in the draft proposal. Several Atlantic seaboard states had raised similar objections as Nova Scotia under the 1913 federal bill and were specially exempted from the law's provisions in that one instance. There was no reason why the Canadian maritime provinces should not receive similar concessions under the Treaty.

The concessions made for British Columbia were far more substantial. The provincial government protested a provision designating February 2st as the end of the open season under the Treaty. The province's open season did not end until March 31, a date that permitted spring shooting, and the government was adamant in maintaining this right for provincial sportsmen. It was up to Hewitt and the Americans to find a compromise. The result was a special article written into the treaty permitting wildfowl to be killed — under permit — if they were "injurious to agriculture". Hewitt admitted that crops in British Columbia were largely unaffected by birds but that geese "could be considered" injurious during the early spring months.[40] Clearly, the inclusion of the article was intended to appease the provincial government by permitting west coast sportsmen to indulge in their springtime rituals.

Another clause which British Columbia objected to called for a five-year closed season on wood duck — a popular game bird on the west coast — and it was up to the Washington negotiators to find another solution. This was reached by a clause decreeing that states and provinces could protect wood ducks either by establishing the five-year closed season or by other accepted conservation measures such as creating sanctuaries or erecting wood duck nesting boxes. This new clause was designed to permit B.C. sportsmen to continue wood duck hunting so long as the provincial government instituted other methods of preservation for the endangered species.

There was still another objection to be dealt with — British Columbia's opposition to the ten-year closed season for swans, cranes and curlews. There is no

record of the Washington talks and no knowledge of the method by which Hewitt and members of the Biological Survey arrived at their compromise, but, under yet another special clause written into the treaty, British Columbia was fully exempted from the ten-year restriction. The province thus became the only single province or state named in the treaty and granted such a sweeping exemption under its provisions. No doubt the Americans were displeased, and for bird lovers and preservationists in both countries, the concessions made to British Columbia must have been bitter pills to swallow. But the support of the province was essential for the success of the treaty, and on April 11, 1916, Hewitt informed the Parks Commissioner that agreement had been reached and all the provincial objections overcome — all, that is, except one. British Columbia still argued for a five and one half month open season but the Americans were in no mood to grant any more concessions to the Canadians.[41]

While Hewitt was in Washington, Maxwell Graham was keeping a careful eye on developments in the capital. Shortly after Hewitt returned, Graham sent a long, plaintive memo to Harkin citing the extensive and painstaking work done by members of the Parks Branch since 1913 on behalf of migratory bird protection. He reviewed the contents of all the memoranda he had sent the Commissioner and reminded Harkin that he — Graham — had originally recommended the Parks Branch take responsibility for migratory birds. Graham was upset that Hewitt was not directing the course of events. "Even if this Branch is not to have the gratification of bringing this very important question to a successful conclusion", Graham wrote, "it is at least a matter of record that its efforts in behalf of much needed legislation have not been fruitless."[42] It was up to Hewitt to unruffle the feathers of his concerned colleague before interdepartmental jealousy upset the course of the negotiations. He regretted the false impression Graham had drawn and told the Commissioner he deeply appreciated the "large amount of valuable work your Branch had accomplished" since passage of the 1913 Bird Law in the United States. He denied that the whole question of migratory bird protection had been turned over to him. In future, he told the Commissioner, he would like to see migratory bird administration handled by a small interdepartmental body of qualified men, not more than four or five at the most and drawn from each of the government departments most concerned in the matter — Agriculture, Interior, Mines (Geological Survey), and the Conservation Commission. In the meantime, however, Hewitt hoped that Graham would continue his "enthusiastic work" and concluded that "only through co-operation can we secure best results."[43]

Having soothed Graham's sensibilities as best he could, Hewitt returned to Washington for final negotiations on the revised treaty draft. But it was soon apparent that the situation on the American side had changed drastically in his absence. He was informed by Edward Nelson, acting Chief of the Biological Survey, that the general open season under the treaty was to be extended from February 1st to March 10th.[44] Hewitt was appalled. The very principle of spring shooting that Canada opposed was to be clearly embodied in the international agreement. He was told by Nelson that heavy lobbying by Congressmen from

states along the Mississippi Valley (a major migratory flyway) had forced the American Government to change the treaty terms in their favour.[45] Nelson was as concerned as Hewitt over the change. The American had long been opposed to shooting birds in the mating season and to have to yield on this point was, reportedly, "wormwood to his soul".[46] But fifty-two Congressmen persuaded him to permit spring shooting and he was afraid that, if refused, they would use their considerable influence in Congress to block the Appropriations Bill for the Biological Survey. He told Hewitt that attempts to curtail the activities of the branch had been tried in the past and he had little doubt that the current threat was real and intended.

Hewitt was bitter over the proposed alteration to the treaty and he told Harkin that the reason for the change was purely political, a fact that was freely admitted to him in Washington. Canada's attitude towards spring shooting was clear — it was to be eliminated completely by establishing February 1st as the end of the continental open season. Hewitt reminded Harkin that with the exception of British Columbia all the provinces had abolished spring shooting and Canadian protective associations were opposed to the principle. But there was no room to negotiate on the American demand and no chance of compromise. It was up to Hewitt to surrender gracefully. In this final summation to Harkin, he stated that the American Government should be told Canada opposed the spring shooting principle and would only agree to the treaty change if every effort was made to bring the mid-western states gradually into line through regulation of the American federal migratory bird laws. "If the United States Government will give us assurance", he concluded, "arrangements could be made for signing the Treaty."[47]

Hewitt might well have imagined his job was finished when the revised treaty was drafted and submitted once again to the Canadian Government. He was wrong. British Columbia was still "resolutely opposed" to the short three and one half month open season and Hewitt was hastily dispatched to Victoria in one last attempt to reach a compromise with the provincial government — hopefully, one that would not require any more concessions.

Once in Victoria, Hewitt found himself faced with yet more demands by the provincial government. Besides two minor changes, the government now demanded a five month open season for ducks and more than a six month season for geese.[48] Hewitt desperately cabled Henshaw in Washington, telling him that the Dominion Government had to have the "unqualified support" of British Columbia but that all arguments with the government were unavailing. Hewitt asked the American if yet another exception could be made under the agreement for British Columbia. But Henshaw replied that should such a concession be granted, ratification of the treaty would be blocked in Washington. He could only suggest varying the three and one half month open season for separate districts within the province as a possible solution in order that sportsmen could travel around from district to district and enjoy a longer open season overall.[49]

Discouraged, and facing apparent failure, Hewitt returned to Ottawa. He was greeted by John Burnham of the American Game Protective Association who called his office just moments after Hewitt arrived. Burnham was at the forefront of the campaign to secure international protection and had followed developments as they transpired both in Washington and Ottawa very carefully. Certainly he was not prepared to see the treaty fall by the wayside because of any one province or state. According to Burnham's recollections, Hewitt told him he was en route to see Martin Burrell, the Minister of Agriculture, to report that his west coast mission was an utter failure and that British Columbia was opposed to any further restrictions under the International Treaty. Burnham apparently instructed Hewitt not to tell the Minister that the mission had failed but rather that "while British Columbia has not acceded, the action of one province should not be allowed to thwart the desires of two great nations."[50]

Hewitt went off to see the Minister and during their discussions Burrell expressed an interest to talk directly with Burnham. The American was summoned to the Parliament buildings where he talked at length with the Minister, telling him of the strong sentiment in both countries for the international agreement. When Burrell questioned whether there was much support for the treaty in Canada, Burnham cited prominent members of the Canadian Pacific and Grand Trunk Railways who were in favour of the agreement (and who were also members of the North American Game Protective Association). The Minister then asked Burnham, "But what has Canada to gain when you already, under your federal migratory bird bill, are protecting birds on your side of the line?" Burnham told Burrell the story and uncertain fate of the American bird law. There was a distinct possibility the law would "be lost" through Supreme Court action, or be repealed by Congress. Should this be the case, countless birds breeding in Canada would be annihilated south of the border "to the detriment of Canada". The American emphasized to Burrell that only an international treaty, concluded at once, would ensure continuation of North American wild bird life. At this point, Burrell thanked Burnham and the conversation ended.[51]

There were no further concessions granted to British Columbia and the treaty was concluded shortly thereafter. This leaves the impression that someone in government persuaded the government of British Columbia to abandon its demands and abide by the internationally agreed upon three and one half month open season. Perhaps it was Martin Burrell. He was, after all, British Columbia's representative in the Borden Cabinet, and in a strong position to exert influence on the provincial legislature. According to an American author who wrote about the incident in 1934, Burrell told Burnham he would "give the matter very close attention and probably recommend that the Dominion Government take action without the approval of British Columbia." This author also remembers Burnham saying on his return to the United States that "I had received no definite promise but had every reason to believe that Sir (sic) Martin would take favourable action."[52]

After years of talk and planning and months of negotiation, the order-in-council containing Canada's full consent to the conclusion of the revised treaty was proclaimed.[53] On August 16, 1916, the Treaty for International Protection of Migratory Birds was signed in Washington by the British Ambassador Sir Cecil Rice Spring, on behalf of Canada, and by Robert Lansing, the United States Secretary of State. "We can now congratulate each other", Hewitt cabled Nelson the next day, "on the successful conclusion of the international migratory bird treaty." [54]

All that remained after the treaty had been signed was formal ratification by both the American and Canadian Governments. This was to be effected by passage of an Enabling Act in the American Congress and a Migratory Birds Convention Act in the Canadian Parliament. Bill No. 92 respecting the convention between Great Britain and the United States was introduced to Parliament by the Minister of the Interior in June, 1917. It was designed to sanction and formally execute the provisions and articles of the treaty. Under the Act, the Governor General-in-Council was given authority to make all regulations "deemed expedient" to protect migratory birds that inhabited Canada during the whole or any part of the year. The Minister of the Interior was authorized to appoint game officers to carry out the regulations under the Act that had been drawn up by Gordon Hewitt. These regulations defined the different migratory bird species; set forth various open and closed hunting seasons in each province; designated certain species to be permanently protected and those to be protected for a specified number of years; regulated the issuing of special permits to kill migratory game birds; and prohibited the interprovincial and international shipment of migratory game birds during the closed season.[55]

The bill met with little opposition during the course of its passage through the House and Senate. Members were concerned only that it might have an adverse effect on provincial legislation but Dr. W.J. Roche, Minister of the Interior, informed them that the provincial governments fully agreed to the principle and that few changes in provincial regulations would be required under the Act's regulations. Roche conceded that special permits would be given to kill some migratory birds causing crop damage but there was no opposition to this policy expressed in the House.[56] There was one query regarding the limits of the general open hunting season under the treaty but obviously few members were aware of the significance of the March 10 date as it related to spring shooting, and none had been party to the Washington concessions.

Once Members of Parliament were assured that the provincial governments were in full agreement, the bill passed the House and Senate and received Royal assent on August 29. Edward Nelson at the United States Biological Survey was pleased to learn of Canada's success in passing the necessary legislation and wrote to Hewitt of the "cordial spirit of co-operation" that existed between the Canadian authorities and the Americans in regard to the handling of the bird question. "We shall undoubtedly do great things in the way of conserving the wildlife through this Treaty", he concluded.[57] The American bill, however, was

delayed throughout 1917 and 1918 as more pressing problems connected to America's entry into World War I came before Congress. "It is not so simple a matter to put an Administrative measure through as it appears to be with you", Nelson admitted to Hewitt.[58] The American bill finally passed Congress and the Senate, and on July 3, 1918, President Woodrow Wilson signed the Migratory Bird Treaty Act into law.[59] With it protection for migratory birds on the North American continent was formally achieved.

Both the American and Canadian Migratory Bird Acts established federal control over a natural resource that hitherto had been considered under state and provincial jurisdictions. The United States Federal Bird Law of 1913 went before the Supreme Court in a test case of its constitutionality but a decision was never handed down. Just as its supporters had hoped, the International Treaty of 1916 superseded the federal law. In 1919, a District Court Judge upheld the constitutionality of the American Enabling Act in a historic case, the State of Missouri vs Ray P. Holland, a federal game warden attempting to enforce the migratory bird regulations. The case was appealed by the state to the United States Supreme Court one year later but Chief Justice Holmes ruled that both the Treaty and the Enabling Act were valid exercises of federal authority under the Constitution. He further ruled that migratory birds belonged not to any one state, but to the nation as a whole and that they could be protected by the federal government through national action in concert with that of another power;

> 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.[60]

A similar test case was argued in Canada before the Supreme Court of Prince Edward Island in 1920. Russell C. Clarke shot fourteen Canada geese in violation of Convention Act regulations. The case was dismissed by a P.E.I. Magistrates' Court but the Department of the Interior appealed it to the P.E.I. Supreme Court. During the trial the defence claimed that the Migratory Birds Convention Act was ultra vires the federal government, for birds within the province of P.E.I. were the property of that province. But it was the judgement of the Court that the system of protection designed to save birds from "indiscriminate slaughter" was not within the power of provincial legislatures. The presiding judge quoted Judge Holmes' decision and ruled that the Canadian Parliament also had the right to protect migratory birds on behalf of the Canadian people.[61] Both the International Treaty and the Convention Act were found to be intra vires the Dominion Parliament.

Recognition of the Dominion Government's responsibilities for migratory bird protection produced immediate results. Hewitt had first suggested to

Harkin the idea of creating an interdepartmental body of officials concerned with bird protection to administer the international agreement. Such a body was created in late December, 1916, but far from administering only migratory bird regulations, the Advisory Board on Wild Life Protection was given responsibility for framing policies to cover all aspects of wildlife protection in Canada. A Dominion Ornithologist was recruited to the civil service to administer the Migratory Bird Regulations under the Parks Branch, and a new North West Game Act was passed in 1917 to reflect the changed wildlife conditions in the Canadian north. In many ways, the act of protecting migratory birds became a catalyst for government action in the protection of wildlife. New areas of responsibility were opened up and clearly defined and new administrative machinery and policies were designed to handle what was for the Canadian government, a totally new role in wildlife conservation.

For all of the civil servants who had worked in the movement for migratory bird protection, the passage of the Convention Act was a momentous occasion. Hewitt, particularly, had worked long and hard towards the goal. The full burden of negotiations, the working out of compromises, the agreement on concessions, and the drafting of the Convention Act had all been his responsibility. Migratory bird protection underscored Harkin's commitment to wildlife protection as a definite government policy. "I am convinced", he wrote to Nelson soon after the American Enabling Bill had passed, "that the Treaty will prove itself the most important step taken for the protection of birds on this continent."[62]

The Migratory Bird Treaty was much more than an important step. As a continental protection policy designed for continental travellers, its significance and value are as important today as they were in 1916 — perhaps even more so, for North America is the only continent in the world whose bird populations are covered by an international agreement of such magnitude. Today, we recognize that the treaty itself is not perfect. The Yukon Territory is at a distinct disadvantage under its terms for by the time the hunting season opens there on September 1st, most waterfowl species have already left on their southward migrations. And hawks, eagles, and owls — species that we now know have an important place in the environment — were never included under the treaty's protective provisions. But in spite of these and other slight imperfections, the international agreement stands as a landmark in Canadian wildlife conservation history and as a tribute to the men who dedicated themselves to securing its passage.

NOTES

[1]P. Mathiessen, *Wildlife in America* (New York, 1959).

[2]W. Hornaday, *Our Vanishing Wildlife* (New York Zoological Society, New York, 1913), Ch. XI, XII.

[3]American Ornithologists Union (A.O.U.), Bulletin No. 1, Committee on Protection of Birds, "The Destruction of our Native Birds," Special Publication, Supplement to *Science*, Feb. 26, 1887, p. 7.

[4]*Ibid.*, p. 3.

[5]J.C. Phillips, *Migratory Bird Protection in North America.* (Special Publication, American Committee for International Wildlife Protection, 1934).

[6]A.M. Day, *North American Waterfowl.* (Harrisburg, Penn., 2nd edition, 1959).

[7]Dr. C.H.D. Clarke, *Ontario Fish and Wildlife Headlines* (Special Publication, Ministry of Natural Resources, Ontario).

[8]North American Game and Fish Protective Association, *Annual Report*, 1902.

[9]H.F. Lewis, *History of the Canadian Wildlife Service* (unpublished private manuscript).

[10]Phillips, p. 13; Pearson, Adventures in Bird Protection (Special Publication, 1937), Ch. XVI, p. 277.

[11]W.S. Haskell, *The American Game Protective Association: A History* (Society's Special Publication, New York, 1937).

[12]Day, op. cit.

[13]Canadian Commission of Conservation, *Report*, 1913, pp. 42-48, "Fur Farming in Canada".

[14]*Ibid.*, p. 25.

[15]Records of the Canadian Wildlife Service (C.W.S.), Migratory Bird Files, Graham to Harkin, 18 March 1913.

[16]*Ibid.*, Graham to Macoun, 20 March 1913.

[17]*Ibid.*, Reply, 22 March 1913.

[18]*Ibid.*, Taverner to Graham, 22 March 1913.

[19]United States, National Archives and Records Service (N.A.R.S.), Records of the United States Biological Survey, Harkin to Secretary, American Game Protective Association, 25 March, 1913.

[20]C.W.S., Harkin to Cory, Deputy Minister of the Interior, 2 April 1913.

[21]North American Game and Fish Protective Association, *Transactions*, (Ottawa, 1913).

[22]C.W.S., Chambers to Harkin, Jan. 26, 1914.

[23]*Ibid.*, Graham to Harkin, Dec. 19, 1913.

[24]*Ibid.*

[25]*Ibid.*, Harkin to Chambers, Jan. 19, 1914.

[26]*Ibid.*, Reply, Jan. 26, 1914.

[27]*Ibid.*, Harkin to Chambers, Jan. 26, 1914.

[28]Commission of Conservation, *Report*, Fifth Annual Meeting, 1915 which includes Haskell's "Protection of Migratory Birds", pp. 66-68.

[29]C.W.S., Graham to Harkin, March 27, 1914.

[30]*Ibid.*, Langelier to Sec. of State, July 13, 1914.

[31]*Ibid.*, Wood, to T. Mulvey, Under-Secretary for State, April 25, 1914.

[32]*Ibid.*, J.A. Knight, Chief Game Commissioner, Nova Scotia, to Provincial Secretary, May 27, 1914.

[33]*Ibid.*, T. Patterson, to Under-Secretary of State, July 28, 1914.

[34]*Ibid.*, Harkin-Hewitt Correspondence, 1916.

[35]Public Archives of Canada (P.A.C.), Records of the Privy Council (RG2), Order-in-Council, P.C. No. 1247, 15 May, 1915.

[36]U.S. Biological Service, Hewitt to Henshaw, 17 Feb. 1913.

[37]*Ibid.*, Reply, T.S. Palmer on behalf of Henshaw, 18 Feb. 1913.

[38]Canada, Dept. of Agriculture, *Annual Report*, 1915, Report of the Dominion Entomologist.

[39]C.W.S., Harkin-Hewitt Correspondence March through April, 1915.

[40]*Ibid.*, Hewitt to Harkin, April 11, 1916.

[41]*Ibid.* No copy of the original draft treaty survives. What it contained can be understood by comparing the Hewitt-Harkin correspondence with the revised draft and the final treaty (Revised draft with the CWS, Ottawa).

[42]*Ibid.*, Graham to Harkin, January 20, 1916.

[43]*Ibid.*, Hewitt to Harkin, January 28, 1916.

[44]*Ibid.*, Hewitt to Harkin, April 11, 1916.

[45]Reported in Pearson, *Adventures in Bird Protection,* p. 285.

[46]*Ibid.*

[47]C.W.S., Hewitt to Harkin, April 11, 1916.

[48]In the clause permitting birds to be shot "when injurious to agricultural interests", the B.C. Government wanted the phrase "or other interests" to be added following the word agriculture. This change was made. Also, permission was given to B.C. Indians to kill scoters for food in Article 11, Section I.

[49]U.S. Biological Survey, Hornaday to Hewitt, 2 September 1916.

[50]J. Burnham, "A Great Victory for American Sport," *Rod and Gun in Canada*, 1918, pp. 300-301.

[51]Burnham's account was published in 1918, but, while corroborated by at least two American writers in later years, the account is found nowhere among Canadian manuscript collections or government documents. Nor did Hewitt make any reference to this reported exchange between the Canadian Minister and the President of the game association in his book, *The Conservation of Wild Life in Canada,* published in 1921 after his death. See also *ibid.*; J.C. Phillips, "Migratory Bird Protection", op.cit.; and W.T. Hornaday, *Thirty Years War for Wildlife* (1930).

[52]Phillips, op.cit., p. 19.

[53]P.A.C., RG2, P.C. 1587, 29 June, 1916.

[54]U.S. Biological Survey, Hewitt to Nelson, 17 August, 1916.

[55]Bill 92 respecting Migratory Birds Convention.

[56]Canada, House of Commons, *Debates*, p. 3697, 21 June, 1917.

[57]U.S. Biological Survey, Nelson to Hewitt, 26 June, 1917.

[58]*Ibid.*, 7 Sept. 1917.

[59]United States, Statutes at Large, 1918, Vol. 40, pt. 1, pp. 755-757.

[60]It is interesting to note that although the United States Supreme Court never did declare on the constitutionality of the 1913 Federal Bird Law, two judges in the State of Missouri vs Ray Holland case implied that the federal legislation was, indeed, unconstitutional. Judge Van Valkenburg stated in 1919 that each state controlled its own wildlife resources and, in the absence of a treaty, there was no delegation of that state authority to the federal government. In principle, therefore, the 1913 federal act — because it was not carried out in pursuance of a treaty — would have exceeded the legitimate power of Congress. See Van Valkenburg, District Court, Missouri, July 2, 1919; and Holmes, United States Supreme Court, April 19, 1920.

[61]U.S. Biological Survey, Harkin to Nelson, 7 Dec., 1920; and the King vs. Russell C. Clarke, 1920.

[62]U.S. Biological Survey, Harkin to Nelson, 12 July 1918.