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The Protection of Migratory Birds in Canada

An Account of the International Treaty of
1916 between Great Britain and the
United States for the Protection
of Migratory Birds in the
United States and
Canada.

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THE PROTECTION OF MIGRATORY BIRDS IN CANADA

AN ACCOUNT OF THE INTERNATIONAL TREATY OF 1916 BETWEEN GREAT BRITAIN AND THE UNITED STATES FOR THE PROTECTION OF MIGRATORY BIRDS IN THE UNITED STATES AND CANADA

BY C. GORDON HEWITT, D.Sc., DOMINION ENTOMOLOGIST

FOR many years the numbers of our migratory birds such as ducks, geese, insectivorous birds and shorebirds, which class includes the plovers, sandpipers, snipe, woodcock, etc., have been decreasing. This decrease is a matter of common knowledge and observation throughout the Dominion. Certain of these migratory birds, such as the Eskimo plover, which formerly existed in enormous numbers and was killed for the market, the Labrador duck, the passenger pigeon and the great auk have now become extinct. Others such as the whooping crane and the wood duck, the most beautiful of our native ducks, have become so reduced in numbers as to render their continued existence without further protection a matter of doubt.

From a national standpoint the prospect of this continued decrease involved serious economic considerations. Leaving out of account the value from an æsthetic point of view of this portion of our Canadian wild life, great as that is, and regarding it as an economic asset to the country, we were faced with the gradual reduction of our migratory wild-fowl, whose value as food and as means of securing recreation is inestimable, and of our insectivorous birds, which are of even greater importance to the welfare of our agricultural interests.

Insectivorous birds constitute one of the chief natural agencies controlling insect pests affecting field

crops, orchards and forests. In field crops alone the annual loss in Canada due to the depredations of insect pests is, on a conservative estimate, not less than \$125,000,000. And, with the development of the country, the damage caused by insect pests is increasing, while the numbers of insectivorous birds have been decreasing.

The chief causes of this decrease in the numbers of our migratory birds are as follows: Canada constitutes the chief breeding place for the greater number of these birds. With the settlement of the country the breeding places of many species have been destroyed. The clearing of the land has involved the clearing of the nesting sites of insectivorous birds; the draining of marshy areas and the settlement of the prairies have driven wild-fowl from their former breeding and feeding places. Such causes are, therefore, unavoidable to a large extent. On the other hand, while many of the provinces have excellent laws governing the protection of game, non-game and insectivorous birds, it has not always been possible to give these birds adequate protection. The increase in the number of persons who carry guns and the improvement of modern sporting guns have had their effect on the abundance of wild-fowl.

Even with the strictest enforcement of protective laws Canadians would have been unable to prevent the continued decrease of migratory birds unless the requisite protection

were given to such birds during the time that they are in United States territory. In other words, our migratory birds cannot be adequately protected from continued decrease without co-operative protection in Canada and the United States.

It is a well-known fact that while some of the states of the Union had excellent laws, which they enforced, others failed to protect their birds. In some states the shooting of wild fowl in the spring was permitted; this involved the killing of birds, usually mated at that time of the year, on their way to their breeding grounds in the north. This discouraged many Canadians, who naturally asked why they should protect their wild-fowl for the market gunners in the south. The existence of such market gunners, who annually killed enormous quantities of Canadian-bred ducks and geese for the markets of the big cities in the United States, constituted one of the greatest causes of reduction and one of the chief obstacles to any rational attempt to prevent such reduction and to maintain our stock of wild-fowl. Not only were game birds affected, but insectivorous birds were likewise killed by thousands during their winter sojourn in the south; this destruction has been particularly serious in the case of the robin, one of our important cutworm destroyers.

As a result of the efforts of sportsmen, game protective associations and other organizations interested in the conservation of the wild fowl and other migratory birds in the United States, the Federal Migratory Bird Law was enacted in 1913 for the purpose of securing more adequate protection for migratory birds which by reason of their migratory habits could not be successfully protected by the efforts of individual states so long as other states were derelict in the matter. The objects of the Federal regulations were: To reduce the open

seasons, which varied greatly in different states; to secure a more uniform open season, not exceeding three and one-half months, fixed in accordance with local conditions, so that the sportsmen would have shooting at the best time of the year; and to prevent the shooting of migratory birds in the spring. A close season for a period of years was given to certain birds, particularly shorebirds, and the shooting of insectivorous birds was entirely forbidden. The majority of the states amended their laws to conform with the Federal regulations, and although certain states, in which the influence of the market hunter and gunners with no thought of the future appeared to predominate, objected to Federal interference, the outcome of this increased protection and elimination of spring shooting has been a noticeable increase in the numbers of wild fowl. This increase has also been observed by Canadian sportsmen.

The results of the Federal Migratory Bird Law in the United States indicated the possibilities and served to emphasize the need of international co-operation. The question of international co-operation was first informally discussed by the writer with the Biological Survey of the United States Department of Agriculture at Washington in January, 1914. Later in the same month the subject was discussed in Ottawa at the annual meeting of the Commission of Conservation and the following resolution was passed:

"Resolved, 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."

In the following month (February, 1914) the United States Government submitted to the Canadian government for its consideration the draft of a convention between Great

Britain and the United States for the protection of migratory birds in the United States and Canada. The draft of the proposed convention was submitted to the several provincial governments for their views, as the question was of provincial concern. The provincial governments unanimously approved of the principle of the convention. As objections that were not considered to be insuperable were raised by only two of the provinces, and, as the Departments of Agriculture and of the Interior, and the Commission of Conservation, strongly concurred in the opinion that the protection of these birds, as provided under the proposed convention, particularly on economic grounds, was most desirable, an Order-in-Council was passed on May 31st, 1915, stating that the Canadian Government was favourably disposed to the conclusion of the proposed Treaty. With a view to securing the settlement of our objections to certain provisions of the treaty further negotiations were undertaken in Washington early in the present year, as a result of which all the objections raised were completely met with the exception of one that would have affected the vital principle of the proposed treaty, namely, the elimination of spring shooting. Accordingly, a revised draft convention embodying the changes, together with certain other improvements, was prepared and submitted to the Canadian Government in March, 1916. After further consideration of this revised draft by the Government an Order-in-Council was passed on the 29th June, 1916, stating that "Canada is prepared to agree to the conclusion of the convention" conditional to the adoption of certain other amendments which had been agreed to as a result of informal negotiation.

The treaty was signed in Washington on 16th August, 1916, by His Majesty's Ambassador, Sir Cecil Spring-Rice, G.C.V.O., and the Secretary of State of the United

States, Mr. Robert Lansing. On the unanimous vote of the Committee on Foreign Relations it was ratified by the Senate of the United States on 29th August, 1916.

Before giving the articles of the treaty it will be of interest to quote the words of the preamble:

"Whereas many species of birds in the course of their annual migrations traverse certain parts of the United States and the Dominion of Canada; and, whereas, many of these species are of great value as a source of food or in destroying insects which are injurious to forests and forage plants in the public domain, as well as to agricultural crops, in both the United States and Canada, but are nevertheless in danger of extermination through lack of adequate protection during the nesting season or while on their way to and from their breeding grounds;

"The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the seas, Emperor of India, being desirous of saving from indiscriminate slaughter and of insuring the preservation of such migratory birds as are either useful to man or are harmless, have resolved to adopt some uniform system of protection which shall effectively accomplish such objects. . . ."

The following are the articles of the treaty:

ARTICLE I

The High Contracting Powers declare that the migratory birds included in the terms of this convention shall be as follows:—

1. Migratory Game Birds:

- (a) Anatidæ or waterfowl, including brant, wild ducks, geese and swans.
- (b) Gruidæ or cranes, including little brown, sandhill, and whooping cranes.
- (c) Rallidæ or rails, including coots, gallinules and sora and other rails.
- (d) Limicolæ or shorebirds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, plovers, sandpipers, snipe, stilts, surf birds, turnstones, willet, woodcock, and yellowlegs.
- (e) Columbidæ or pigeons, including doves and wild pigeons.

2. Migratory Insectivorous Birds: Bobolinks, catbirds, chickadees, cuckoos, flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, night-hawks or bull bats, nut-hatches, orioles,

robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills, woodpeckers, and wrens, and all other perching birds which feed entirely or chiefly on insects.

3. Other Migratory Nongame Birds: Auks, auklets, bitterns, fulmars, gannets, grebes, guillemots, gulls, herons, jaegers, loons, murrelets, petrels, puffins, shearwaters, and terns.

ARTICLE II

The High Contracting Powers agree that, as an effective means of preserving migratory birds there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities.

1. The close season on migratory game birds shall be between March 10 and September 1, except that the close of the season on the Limicolar or shorebirds in the Maritime Provinces of Canada and in those States of the United States bordering on the Atlantic Ocean which are situated wholly or in part north of Chesapeake Bay shall be between February 1 and August 15, and that Indians may take at any time scoters for food but not for sale. The season for hunting shall be further restricted to such period not exceeding three and one-half months as the High Contracting Powers may severally deem appropriate and define by law or regulation.

2. The close season on migratory insectivorous birds shall continue throughout the year.

3. The close season on other migratory nongame birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murrelets 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.

ARTICLE III

The High Contracting Powers agree that during the period of ten years next following the going into effect of this convention, there shall be a continuous close season on the following migratory game birds, to-wit:

Band-tailed pigeons, little brown, sandhill and whooping cranes, swans, curlew and all shorebirds (except the black-breasted and golden plover, Wilson or jack snipe, woodcock, and the greater and lesser yellowlegs); provided that during such ten years the close seasons on cranes, swans and curlew in the province of British Columbia shall be made by the proper authorities of that province within the general dates and limitations elsewhere prescribed in this convention for the respective groups to which these birds belong.

ARTICLE IV

The High Contracting Powers agree that special protection shall be given the wood duck and the eider duck either (1) by a close season extending over a period of at least five years, or (2) by the establishment of refuges, or (3) by such other regulations as may be deemed appropriate.

ARTICLE V

The taking of nests or eggs of migratory game or insectivorous or nongame birds shall be prohibited, except for scientific or propagating purposes under such laws or regulations as the High Contracting Powers may severally deem appropriate.

ARTICLE VI

The High Contracting Powers agree that the shipment or export of migratory birds or their eggs from any State or Province, during the continuance of the close season in such State or Province, shall be prohibited except for scientific or propagating purposes, and the international traffic in any birds or eggs at such time captured, killed, taken or shipped at any time contrary to the laws of the State or Province in which the same were captured, killed, taken or shipped shall be likewise prohibited. Every package containing migratory birds or any parts thereof or any eggs of migratory birds transported, or offered for transportation from the Dominion of Canada into the United States or from the United States into the Dominion of Canada, shall have the name and address of the shipper and an accurate statement of the contents clearly marked on the outside of such package.

ARTICLE VII

Permits to kill any of the above-named birds which, under extraordinary conditions, may become seriously injurious to the agricultural or other interests in any particular community, may be issued by the proper authorities of the High Contracting Powers under suitable regulations prescribed therefor by them respectively, but such permits shall lapse, or may be cancelled, at any time when, in the opinion of said authorities, the particular exigency has passed, and no birds killed under this article shall be shipped, sold or offered for sale.

ARTICLE VIII

The High Contracting Powers agree themselves to take, or propose to their respective appropriate law-making bodies, the necessary measures for insuring the execution of the present convention.

It will be seen that the most important provision is Article II,

providing for: (1) a close season on migratory game birds from March 10th to September 1st, with the exception given; (2) an open season of three and one half months; and (3) a close season throughout the year on insectivorous birds. The open season of three and one-half months may be fixed anywhere between September 1 and March 10 to suit the local conditions. The restriction of the open season on wild-fowl to three and one-half months will involve in some provinces a shortening of the present open season, but in view of the objects of the treaty and the experience that such restriction in the United States is increasing the supply of birds, this change will undoubtedly meet with the support of sportsmen desirous of preventing the continued decrease in the numbers of wild fowl.

The conclusion of this convention constitutes the most important and far-reaching measure ever taken in the history of bird protection. Some years ago efforts were made to secure

the international protection of birds in Europe, but while the general movement towards better protection for insectivorous birds was thereby furthered, the requisite co-operation on the part of all the countries interested was hampered by inactivity on the part of some of the governments and a considerable diversity of interests and opinion. Fortunately many of these difficulties do not exist in North America, and in the United States and Canada there is an ever-growing sentiment in favour of preserving what is left of our former wealth of wild life which has been so seriously depleted by improvidence in the past. This international measure will affect over one thousand species and subspecies of birds from the Gulf of Mexico to the north pole, and we may confidently look forward to not merely a cessation of the decrease, but to an increase of our migratory birds which are so valuable a national asset.