

Canada



ESKETEMC

**AGREEMENT-IN-PRINCIPLE
ESKETEMC MIGRATORY BIRDS
CHAPTER**

**Public Release Chapter
March 31, 2010**

This public release document is for consultation purposes only. It is not necessarily representative of the final position which may be taken in respect of a matter, and is subject to change. It is without prejudice to the position of the parties in any proceeding before any court or in any other forum and will not be construed as an admission of fact or liability and will not be tendered or relied upon in any such proceedings.

ESKETEMC MIGRATORY BIRDS CHAPTER

BACKGROUND

Canada, British Columbia and the Esketemc are engaged in treaty negotiations in the British Columbia Treaty Commission process. Our treaty negotiations include public consultation and internal review of documents under negotiation by the three Parties.

This document is part of a group of chapters under negotiation for the purposes of an Agreement-in-Principle.

OBJECTIVE

The Parties are releasing this document as a sample for public information. However, it is intended that the Chapters in any future Esketemc Agreement-in-Principle would be read and understood in the context of the Agreement-in-Principle as a whole.

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For further information on the negotiations, please contact any of the following people:

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ESKETEMC MIGRATORY BIRDS CHAPTER

GENERAL

1. The Esketemc has a right to hunt Migratory Birds for food, social and ceremonial purposes in the Esketemc Territory throughout the year in accordance with the Final Agreement.
2. The Esketemc right to hunt Migratory Birds is a right to hunt in a manner that is consistent with the communal nature of the Esketemc hunt for food, social and ceremonial purposes.
3. The Esketemc right to hunt Migratory Birds described in paragraph 1 cannot be exercised on land owned or in use by, or expropriated, or otherwise acquired by Canada from time to time.
4. The Esketemc right to hunt Migratory Birds for food, social and ceremonial purposes is limited by measures necessary for conservation, public health and public safety.
5. Except as otherwise provided under an Esketemc Law, all Esketemc Citizens may exercise the Esketemc right to hunt Migratory Birds for food, social and ceremonial purposes.
6. The Final Agreement does not preclude the Esketemc from entering into an agreement with a federal department or agency, which agreement provides for access and hunting on land owned or in use by that department or agency by Esketemc Citizens in accordance with that agreement and Federal and Provincial Laws.
7. Subject to paragraph 8, Federal and Provincial Laws respecting licence fees charges or royalties in respect of the hunt of Migratory Birds will not apply to the hunt of Migratory Birds under the Final Agreement.
8. Nothing in the Final Agreement will affect Canada's ability to require Esketemc Citizens to obtain licenses for the use and possession of firearms under federal laws.

ESKETEMC HUNT

9. The Final Agreement does not preclude Esketemc Citizens from hunting Migratory Birds outside of the Esketemc Territory throughout Canada in accordance with:
 - a) Federal Law and Provincial Law;
 - b) Any agreements, that are in accordance with Federal Law and Provincial Law, between Esketemc and other aboriginal people; or

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- c) any arrangements between other aboriginal people and Canada or British Columbia.

TRADE AND BARTER

- 10. Esketemc Citizens may trade or barter Migratory Birds hunted under the Final Agreement in accordance with any Esketemc Law made under paragraph 16.c):
 - a) among themselves in Canada; and
 - b) among other aboriginal peoples of Canada residing in British Columbia.

SALE OF MIGRATORY BIRDS

- 11. Esketemc and Esketemc Citizens may sell Migratory Birds only if the sale of Migratory Birds is permitted under Federal and Provincial Laws, and any such sale of Migratory Birds will be in accordance with Federal and Provincial Laws and any Esketemc Laws enacted under paragraph 18.
- 12. Esketemc and Esketemc Citizens may sell inedible by-products hunted under the Final Agreement in accordance with any Esketemc Laws enacted pursuant to paragraph 16.

TRANSPORT AND EXPORT OF MIGRATORY BIRDS

- 13. Any export of Migratory Birds and their inedible by-products, including down, hunted under a Esketemc right to hunt Migratory Birds will be in accordance with Federal Law or Provincial Law.
- 14. Any transport of Migratory Birds and their inedible by-products, including down, hunted under a Esketemc right to hunt Migratory Birds will be in accordance with Federal Law, Provincial Law or any Esketemc Law made under paragraph 16.g).
- 15. Migratory Birds hunted in accordance with the provisions of the Final Agreement may be transported within Canada throughout the year.

JURISDICTION

- 16. Esketemc Government may make laws respecting the Esketemc right to hunt Migratory Birds in accordance with the Final Agreement and obligations of Esketemc under and consistent with the Final Agreement in relation to:
 - a) the distribution among Esketemc Citizens of Migratory Birds;
 - b) the designation of Esketemc Citizens as hunters of Migratory Birds;
 - c) the methods to be used for, the timing of, and the geographic location for hunting of Migratory Birds;

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- d) the trade and barter of Migratory Birds hunted among Esketemc Citizens and with other aboriginal people of Canada resident in British Columbia;
 - e) the sale of inedible by-products, including down, of Migratory Birds;
 - f) the administration of documentation to identify Esketemc Citizens as hunters;
 - g) the field dressing of Migratory Birds in preparation for transport; and
 - h) other issues as agreed to by the Parties.
17. In the event of a conflict between an Esketemc Law made under paragraph 16 and a Federal Law or Provincial Law, Esketemc Law will prevail to the extent of the conflict.
18. Esketemc Government may make laws respecting the rights and obligations of Esketemc in relation to:
- a) the management of Migratory Birds and Migratory Bird habitat on Esketemc Lands; and
 - b) the sale of Migratory Birds, other than inedible by-products, if permitted by Federal Laws and Provincial Laws.
19. In the event of a conflict between an Esketemc Law made under paragraph 18 and a Federal Law or Provincial Law in relation to Migratory Birds, the Federal Law or Provincial Law will prevail to the extent of the conflict.

DOCUMENTATION

20. Esketemc Government will issue documentation to identify Esketemc Citizens who are authorized by Esketemc Government to exercise the right to hunt Migratory Birds under the Final Agreement.
21. Esketemc Citizens to whom the Esketemc Government has issued the documentation referred to in paragraph 20, will be required, on request by an authorized person, to produce that documentation when exercising the right to hunt Migratory Birds.
22. The Documentation referred to in paragraph 21 and issued by Esketemc Government, will:
- a) be in the English language and, at the discretion of Esketemc, in Secwepemctsin; and,
 - b) include the name and address of the person.

ENFORCEMENT OF FEDERAL LAWS, PROVINCIAL LAWS OR ESKETEMC LAWS

23. The Parties may negotiate agreements concerning enforcement of Federal Laws or Provincial Laws or Esketemc Laws in respect of Migratory Birds. Those

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agreements will not be part of the Final Agreement, will not be a treaty or land claims agreement and will not recognize or affirm any aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

24. Subject to agreement negotiated in paragraph 23, Esketemc Law made in accordance with this Chapter may be enforced by persons authorized to enforce Federal Law or Provincial Law or Esketemc Law in respect of Migratory Birds in British Columbia.

CONSULTATION ON INTERNATIONAL NEGOTIATIONS ON MIGRATORY BIRDS

25. The Final Agreement will provide for the consistency of Aboriginal government laws and other exercises of power with Canada's international legal obligations.

COLLABORATIVE CONSERVATION MEASURES

26. If, in the opinion of the Federal Government, conservation measures are needed to protect a particular population of Migratory Bird and those measures may adversely affect hunting by Esketemc under the Esketemc right to hunt Migratory Birds, the Federal Government will Consult with Esketemc in respect of:
 - a) the necessity of the conservation measures;
 - b) the nature of the conservation measures;
 - c) measures to minimize or mitigate restrictions or limitations on the Esketemc right to hunt Migratory Birds resulting from the proposed conservation measures; and,
 - d) if applicable, the Esketemc role in the development and the implementation of the conservation measures.
27. If Esketemc is of the opinion that conservation measures are needed in respect of a species of Migratory Bird that is hunted by Esketemc under the Esketemc right to hunt Migratory Birds, Esketemc may present its views to Canada in respect of the need for such conservation measures and its proposed role in the development and implementation of them, and Canada will give full and fair consideration to the Esketemc proposal.
28. Where the Federal Government has authorized the implementation of conservation measures and the conservation measures will affect the Esketemc right to hunt Migratory Birds:
 - a) the Federal Government will use reasonable efforts to avoid, minimize, or mitigate restrictions or limitations on the Esketemc right to hunt Migratory Birds to the extent possible; and
 - b) the Federal Government, if requested, will provide written reasons to the Esketemc on the conservation measures adopted.

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29. Notwithstanding paragraph 26, if Canada believes on reasonable grounds that an emergency exists within the Esketemc Territory it may act unilaterally to address the conservation emergency without first Consulting the Esketemc in accordance with paragraph 26. However, as soon as practicable thereafter, Canada will inform the Esketemc of, and provide reasons for, its action.
30. Notwithstanding paragraph 26, if Esketemc believes on reasonable grounds that an emergency exists within the Esketemc Territory it may act unilaterally to address the conservation emergency without first Consulting Canada in accordance with paragraph 26. However, as soon as practicable thereafter, Esketemc will inform Canada of, and provide reasons for, its action.

OUTSTANDING ISSUES:

- Esketemc will work with Canada to establish administration and capacity for the use and possession of firearms.
- Esketemc is seeking language that will facilitate trade and barter with other aboriginal people in Canada that have agreements that are in accordance with Federal and Provincial Law.
- Esketemc prefers to state the substantive rights in each Chapter. Esketemc is not challenging the division of powers as set out in the *Constitution Act, 1982* however would prefer that the greater certainty statements around Federal and Provincial authorities be set out more specifically elsewhere in the treaty.