
First Nation Rights and Turkey Harvest Management in Ontario

A Response to the

*Proposed Ontario Ministry of Natural Resources Wild Turkey Management
Plan for Ontario, 2007 (EBR Registry #010-2424)*

and to

*Proposed Amendments to Regulations Under the Fish and Wildlife
Conservation Act (1997) to Implement a Fall Hunting Season for Wild
Turkeys, and Establish Open Seasons for Spring and Fall Hunting of Wild
Turkeys in Specific Wildlife Management Units (EBR Registry #010-2429)*

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CAID

Preface:

First Nation Rights and Turkey Harvest-Management in Ontario was written as a submission to the Ontario Ministry of Natural Resources. As such, the terminology used may be offensive to Aboriginal people. The Proposal was written in response to Ontario's proposal to harvest wild turkey, excluding First Nation rights to turkey management and harvest.

Dr R. G. Herbert

Submitted to:

- Patrick Hubert, Ontario Ministry of Natural Resources.

Shared with:

- First Nations of Ontario

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Prepared by Dr. Richard G. Herbert B.Sc., D.V.M.

Christian **A**boriginal **I**nfrasturcture **D**evelopments
A Not-for-profit, Charitable NGO
Suite 203-1, 4109 Fourth Avenue, Whitehorse, YT Y1A 1H6
Canada
info@caid.ca www.caid.ca

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Dr Richard G. Herbert

1.0 Introduction

This document outlines the necessity for inclusion of Ontario's First Nations as stakeholders in all Ontario Ministry of Natural Resources (MNR) wildlife policies, procedures and regulations. The document then offers basic strategies for First Nations of Ontario to partner with the MNR in the harvest-management of wild turkey in Ontario. These strategies are able to harmonize with the Ontario government's proposed Wild Turkey Management Plan for Ontario (2007); EBR Registry # 010-2424. Finally, the document offers critique on the MNR's proposed amendments to regulations under the *Fish and Wildlife Conservation Act* (1997) to implement a fall hunting season for wild turkeys, and establish open seasons for spring and fall hunting of wild turkeys in specific wildlife management units; EBR Registry # 010-2429.

1.1 Ontario Ministry of Natural Resources and First Nations of Ontario are Partners:

Pre-contact, the land now called Ontario was populated by Indigenous People. These people lived on the land hunting, harvesting, and trading with other indigenous people in neighbouring lands. Pre-contact trade routes were extensive and used by European explorers and then later by corporations such as the Hudson's Bay Company.

In 1763, King George III issued a *Royal Proclamation* also known as the Indian Charter of Rights. The proclamation established:

- Aboriginal land was protected from encroachment or settlement;
- Boundaries for an Indian country¹ with all lands not voluntarily ceded to or purchased by the Crown;
- Aboriginal Peoples were a nation under the protection of the Crown;
- Aboriginal lands were reserved to Indigenous People as their Hunting Grounds; and,
- Trade with Aboriginal People, "shall be free and open to all our subjects²."

The *Royal Proclamation* from King George III (1763) established most of Ontario's land mass as an Aboriginal nation whose Hunting Grounds were open to Aboriginal "Free Trade"; a trade based at least in part on hunting.

The *Constitution Act* (1982) of Canada recognizes and affirms Canada's Aboriginal Peoples' pre-existing aboriginal and treaty rights. It also honours the *Royal Proclamation* (1763). As a result, Aboriginal People can not be defrauded of their land or their rights. In this regard, the *Constitution Act* (1982) recognized and affirmed Canada's Aboriginal Peoples are a nation with Hunting Grounds and the right to free trade from pursuits within those Hunting Grounds. The Aboriginal right to hunt and to trade in a free and equitable environment in Ontario is a guaranteed right for all of Ontario's First Nations. This right is also guaranteed by the United

¹ Report on the Ipperwash Inquiry, Stanley B. Linden. (2007)

² The Royal Proclamation of 7 October 1763.

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Nations in their *Declaration on the Rights of Indigenous Peoples* (2007).

The MNR has the mandate to manage wildlife in Ontario on behalf of the Crown and in the best interest of its citizens. However, this mandate does not include management of Ontario's wildlife on behalf of First Nations of Ontario who, by *Royal Proclamation* (1973), are a Nation under the protection of the Crown. A Nation with Aboriginal Hunting Grounds, hunting rights, and the right to free trade. Rights firmly established, never extinguished, and guaranteed in the *Canadian Constitution Act* (1982) and in the United Nations *Declaration on the Rights of Indigenous Peoples* (2007). Only legitimate First Nation governances have the legal mandate to manage wildlife on behalf of their Nation and in the best interest of their citizens. As a consequence, First Nations of Ontario are partners with the MNR to jointly manage wildlife in the Province of Ontario in the best interest of their respective citizens and nations.

1.2 Rights of Ontario's First Nations:

The Canadian policy of forced Aboriginal assimilation^{3 4} that dictated Ontario policy and law for over 100 years has been exposed for the genocidal policy it was. While the residential school system supporting forced assimilation has been dismantled, nothing else has changed in Ontario policy and law. Over 100 years of policy and law that subverted Aboriginal title and rights in support of the forced Aboriginal assimilation policy remain "on the books". Included within these Ontario policies are beliefs, with their supporting laws and regulations, that the Crown has legitimate title to "all" land and its resources within the boundaries of the Province of Ontario. This belief and its supporting policies, laws and regulations contradict the *Royal Proclamation* (1763); thus, breaking the rule of law. In fact, this unfounded claim by the Crown over all Ontario's land and resources is proved wrong with the settlement of each and every Aboriginal land claim.

The world has recognized that modern nations, such as Canada, built on the colonization of Indigenous Land did so in violation of the rights and title of its Indigenous People. The sole purpose of violating aboriginal rights and title were to gain permanent possession of Aboriginal lands and resources. The world has also recognized that perverted policies, laws, and regulations still exist within countries like Canada to continue the denigration and annexation of Aboriginal Peoples, Aboriginal land, and Aboriginal resources. In response, the United Nations has set the world's standard for a just and equitable relationship between colonizing governments and their Indigenous Peoples within the United Nations *Declaration on the Rights of Indigenous Peoples* (2007).

In Ontario, there is no more overt a disregard for Aboriginal rights and title then with the Ontario Ministries of Natural Resources and Northern Development and Mines (MNDM). The MNR and the MNDM have consistently prevented Ontario's First Nations from developing sustainable

³ JR Miller, Shingwauk's vision, A history of native Residential Schools (1996) 46.

⁴ John Miloy, A national crime, the Canadian government and the Residential School system 1879-1986 (1999).

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economies by denying Aboriginal people their rights and title. Despite clear Aboriginal title to Aboriginal lands and clear Aboriginal rights within the *Royal Proclamation* (1763) to manage resources on these lands to the benefit of First Nations, the MNR blocks the right of First Nations to harvest and trade in renewable resources while the MNDM blocks the right of First Nations to own and control the development of minerals from their ancestral land. In short, the MNR and the MNDM became focal points for policies and legislation to empower the policy of forced assimilation. All Aboriginal rights and title to traditional trade pursuits as hunter-gatherers and to non-traditional trade pursuits through mineral wealth were violated and both renewable and non-renewable resources were placed under the control and ownership of the Crown.

The policy on forced Aboriginal assimilation included a deliberate attempt to separate Aboriginal People from their ancestral lands. This was accomplished by (1) creating Indian Reserves, (2) preventing the oral teaching of Indigenous skills to live on the land with the forced separation of children from their Elders at a very young age and internment in residential schools while (3) violating Aboriginal hunting and trading rights to develop sustainable economies founded in traditional lifestyles. In Ontario, this meant the MNR had to ensure Aboriginal rights to hunt, trap, and fish were never connected with traditional oral law and modern markets for meat, fish, fur, and other animals products. If this had ever happened, First Nations in Ontario would have thriving sustainable economies and become impossible to assimilate. There would have been no legacy of poverty, disease, despair, and social injustice in Ontario's First Nations.

In Ontario, today's most highly profiled abuse of Aboriginal rights is mandated through the MNR. The MNR has the mandate to manage wildlife on behalf of the Crown and in the best interest of its citizens. Therein lies the violation of Aboriginal rights. First Nations of Ontario have a right to the free trade of commodities obtained in their Indian country on their Hunting Grounds as defined in the Indian Charter of Rights²; and, they have the right, as a nation, to jointly manage wildlife with the Crown. Inherent in this right to manage wildlife are rights to:

- Base wildlife management on traditional Aboriginal culture;
- Hunt wildlife in a traditional manner;
- Harvest wildlife for the benefit of First Nations;
- Trade in harvested wildlife, including derivative industries;
- Manage and monitor wildlife populations and disease;
- Enforce established wildlife policies and regulations;
- Be an equal-share stakeholder in the discussion and development of wildlife policies, procedures, and regulations in the Province of Ontario; and,
- Be an equal-share partner in the benefits of wildlife polices, regulations, and harvests in the Province of Ontario.

1.3 First Nation Traditional Harvest-Management:

On September 29, 2006, the MNR initiated an Aboriginal consultation under section 35 of the *Constitution Act* (1982). The purpose of this consultation was to garner required Aboriginal input into, and informed ratification of, pending sweeping changes to wildlife management strategies in

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Ontario. These strategies were referred to as strategies for preventing and managing human-wildlife and human-deer conflicts in Ontario. While a number of First Nations and First Nation organizations may have responded to this constitutional-required consultation, none expressed their detailed unconditional desire to manage Ontario wildlife as a stakeholder partner with the MNR as did the Grand Council Treaty #3 (GCT3).

The Grand Council in Treaty #3 submitted a detailed proposal to harmonize a traditional Aboriginal harvest-management system with the MNR's desire to manage wildlife involved in human-wildlife conflict on November 14, 2006. The GCT3 chose to exercise its right, as a bonafide First Nation governance, under the *Royal Proclamation (1763)* and the *Constitution Act (1982)*. GCT3 chose to:

1. Manage its own natural resources for the benefit of its citizens; and,
2. Harmonize its traditional laws on natural resource management and utilization with other jurisdictions.

The GCT3 proposal would:

- Protect Ontario wildlife from commercial harvest;
- Be founded in existing aboriginal rights;
- Be able to provide trapping, hunting, and fishing of conflict wildlife;
- Have access to premium international markets;
- Self-sustain financially;
- Provide sustainable economic development for First Nation communities;
- Provide a traditional lifestyle for First Nation communities;
- Reduce provincial social welfare needs in First Nation communities;
- Create a new industry in Ontario;
- Create a new economy in many regions of Ontario;
- Be accessible anywhere in Ontario;
- Reduce the potential for wildlife disease transmission in Ontario;
- Help maintain disease-free wildlife stocks for hunting outfitters;
- Help ensure disease-free traditional wildlife diets for First Nation communities;
- Harmonize MNR stewardship with First Nation stewardship for conflict wildlife;
- Reduce human-wildlife conflict-related human deaths;
- Save Ontario money by reducing the cost of human-wildlife conflicts and social welfare payments; and,
- Have no direct cost to Ontario, after initial development.

There were no losing stakeholders with a harmonized First Nation harvest-management system for human-wildlife conflicts in Ontario.

Unfortunately, the MNR has broken the rule of law. The MNR has begun to proceed with wildlife-specific human-wildlife management strategies without allowing the legally required partnership for wildlife management with First Nations of Ontario to be defined and developed. It

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is this stakeholder partnership, and it alone, that has the legal mandate to manage wildlife in the Province of Ontario for the benefit of all nations. The current Ontario government proposed strategy to manage wild turkey in Ontario should be withdrawn until stakeholder Aboriginal strategies are incorporated into the proposed wild turkey management policies (EBR# 010-2424) and wild turkey management regulations (EBR # 010-2429).

1.4 Shared benefits:

When European settlers arrived in Ontario, First Nations shared their land and its resources. At the time of contact, Ontario's renewable resources were present in an overabundance. Since that time, some of these renewable resources were exhausted and others were markedly depleted by European settlers and their nations. Presently in Ontario, some of Ontario's renewable resources have been reintroduced and some are beginning to flourish.

The *Royal Proclamation (1763)*, *Constitution Act (1982)*, and the *Declaration on the Rights of Indigenous Peoples (2007)* have laid a clear foundation for a partnership between First Nations and the Crown for hunting and trade. This partnership would include those non-endangered species that have been reintroduced or historically protected by the MNR. In the Spirit that was extended to settler nations when they arrived in Ontario, the Crown should now realize its moral and legal obligation to share Ontario's renewable resources in a fair and equitable manner with First Nations. This obligation extends to the benefits of wildlife management and harvest. First Nations of Ontario have a right to harvest-manage wildlife for the benefit of their nation as does the MNR have the right to harvest-manage wildlife to the benefit of the Crown. The Crown has chosen to do this through hunting licenses, tags, and firearms regulations. GCT3 chose to do this through the harvest-management of wildlife as part of a traditional economy.

2.0 Objective:

The Crown allowed its citizens to hunt wild turkey in Ontario to extinction; a loss felt by First Nations. The MNR has reintroduced wild turkey into Ontario and now wishes to expand hunting access to wild turkey to control populations through harvest; a harvest that will financially benefit only the Crown. The government of Ontario has ignored the rights of Aboriginal Peoples first by hunting wild turkey into extinction and now again as the MNR advances wild turkey harvest strategies to the exclusion of the First Nation right to hunt and trade freely with wildlife harvested from their Hunting Grounds.

The GCT3 harvest-management submission to the MNR clearly identifies the resolve of Ontario's First Nations to partner in wildlife management and harvest, including with wild turkey. The re-institution of wild turkey harvest in Ontario and the manner in which that will be done must not be directed by the MNR alone. It must also be directed by Aboriginal governance and guided by traditional Elders. This direction, and direction provided by the MNR, must then be harmonized to provide Ontario policy for wild turkey management.

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What follows are basic strategies that must be further directed and guided by First Nations of Ontario before they can be harmonized into policy for Ontario. These strategies are based on the need to:

1. Share harvest with First Nations for individual, community, and national purposes;
2. Share harvest with the Crown;
3. Minimize human-turkey conflict; and,
4. Recognize the role of wild turkey in respect of the land.

3.0 Ontario Turkey Release and Management Framework:

The overall objective of the wild turkey program is to re-balance the land with the re-introduction of wild turkey into its role while respecting the wild turkey.

The objective of the release and management framework should be to restore the role of wild turkey back into the land.

Strategy 1: Establish the traditional value and role of the wild turkey by:

- Consulting Elders for guidance on wild turkey roles and traditional practices; and,
- Harmonizing traditional wild turkey roles and traditional practices with the MNR's concept of roles and acceptable practices.

4.0 Landscape-Level Population Management:

The objective is to harvest-manage wild turkey, when necessary, to maintain healthy, disease free wild turkey populations.

Strategy 1: Establish sustainable harvest-management levels in the Mixedwood Plains Ecozone and the Boreal Shield Ecozone by:

- Consulting Elders for guidance on respectful harvest methods;
- Establishing inter-nation harvest allocations; and,
- Joint monitoring of wild turkey populations.

5.0 Human-Turkey Interactions:

The objective is to minimize interaction while educating landowners about wild turkey roles and benefits for their land.

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Strategy 1: Establish an effective harvest-management system harmonized between First Nations and the MNR by:

- Defining grades of wild turkey harvest skills;
- Defining differences between harvest-management and recreational harvest;
- Zoning harvest areas by harvest skill and method of harvest; and,
- Providing harvest opportunities for recreational hunters away from sensitive harvest areas.

Strategy 2: Establish teaching materials on wild turkey roles by:

- Consulting Elders on traditional roles for the wild turkey;
- Consulting MNR biologists on ecological roles of the wild turkey; and,
- Harmonizing the traditional and ecological information into educational material.

Strategy 3: Establish Eco-buffer zones capable of providing natural habitat by:

- Consulting Elders on traditional habitat and relationships of the wild turkey;
- Consulting MNR biologists on habitat and food webs for the wild turkey;
- Harmonizing the traditional and biological information into an applicable format; and,
- Defining Eco-buffer zones away from people and transportation routes.

6.0 Habitat Management for Turkeys in an Ecosystem Context:

The objective is to promote ecosystems that are more than just able to provide habitat for wild turkey. These ecosystems must be able to attract turkey and other wildlife away from conflict with humans while preferably having its own population regulation system.

Strategy 1: Promote ecosystems on privately owned land by:

- Consulting Elders on traditional habitat and relationships of the wild turkey;
- Consulting MNR biologists on habitat and food webs for the wild turkey;
- Harmonizing the traditional and biological information into an applicable format; and,
- Provide incentives for landowners to establish ecosystems on their property.

7.0 Proposed Amendments to Regulations:

The MNR's proposed amendments to regulations under the *Fish and Wildlife Conservation Act* (1997) for changes in wild turkey harvests have been drafted without input from or consultation with Aboriginal People in Ontario. The *Royal Proclamation* (1763) and the *Constitution Act* (1982) clearly establish that First Nations in Ontario have a right to the free trade of commodities

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obtained in their Indian country on their Hunting Grounds, including wild turkey. These rights have never been extinguished and in them Aboriginal People in Ontario have the right to jointly manage wildlife with the Crown. This includes the development of wildlife harvest regulations.

The Grand Council in Treaty #3 chose to exercise these rights on November 14, 2006 and jointly manage wildlife within Treaty #3 as an equal partner to the MNR. This in response to a lawfully required consultation of Aboriginal People in Ontario by the MNR. The MNR has not facilitated the finalization of that constitutionally required GCT3 consultation process; a legally-required consultation that would define a working partnership with GCT3 for wildlife management within the territories of Treaty #3. In this regard, the coming into force of any wildlife policies or wildlife regulations since November 14, 2006 have broken the rule of law in Ontario. Pushing forward with any new proposed wildlife regulation changes in Ontario will only further break down the rule of law in Ontario.

The MNR should immediately suspend all proposed wildlife regulations and policies, including its wild turkey EBR Registry numbers 010-2424 and 010-2429, until the MNR finishes the consultation process it began with Grand Council Treaty #3 on September 29, 2006. Further, the government of Ontario should immediately halt all policy and regulation created under the mandate given to the MNR from coming into force until the MNR fulfills its required consultation with GCT3 and returns the rule of law to Ontario.

8.0 Concluding Remarks:

This strategy paper sets the stage for the harmonization of the established objectives. However, no change in Ontario land, wildlife or fish regulation will respect the rule of law until a traditional aboriginal consultation process is facilitated for the GCT3's November 14, 2006 submissions on traditional harvest-management to the MNR. The Ontario government must, by rule of law, allow First Nations to define their role in wildlife harvest-management in Ontario.

Nothing in this strategy paper is intended to or shall be construed so as to abrogate or derogate in any way from any existing aboriginal or treaty right, as recognized and affirmed by the *Royal Proclamation* (1763), *Constitution Act* (1982), negotiated treaty, or the rights of Indigenous Peoples as declared in the United Nation *Declaration on the Rights of Indigenous Peoples* (2007).