Final version

NATURAL RESOURCE MANAGEMENT AGREEMENTS IN FIRST NATIONS' TERRITORIES

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1.0 Introduction

1.1 Background

Native communities are increasingly involved in negotiations for greater control of the management of natural resources within their traditional territory. This is either for exclusive management or a role in management with other partners, commonly called co-management. Due to many factors, a Native community may be inadvertently compromising rights and potential capabilities if the proper information and experience are not made available to them. Negotiations and implementation may also be hampered though the Native community may have all these resources. This can be caused by other parties' unwillingness to try what is perceived as new methods of management to them, though the methods may have already been developed over generations. More fundamentally, there is an unwillingness by other governments to address the jurisdictional question.

Co-management implies two or more partners. Theoretically, a balanced co-management scheme is where both partners have equitable duties and responsibilities. In practise however, the partnership is unequal, which has been hardly out of preference. Indigenous peoples in Canada have historically been driven out of conventional natural resource management through a succession of provincial and federal legislation combined with a lack of recognition of indigenous resource rights and capabilities. This is changing because of many factors. They include a reassertion of self-government, a more co-operative approach by other governments such as the current Canadian government's recognition of inherent rights, human rights ethics like the International Declaration of Indigenous Rights, and the recent Sparrow Supreme Court of Canada decision. Collectively, these factors support redressing the balance between the Native aspiration of protecting the land for future generations with that of sharing natural resources with contemporary society.

1.2 Purpose

The purpose of this project is to undertake a content analysis of a selection of natural resource agreements,

dissect and build upon them, in order to use the result as a guide by those involved in negotiating or implementing their own.

1.3 Approach

1.3.1 A list of policies, agreements and their analyses were reviewed to come up with a framework of elements that can be the ingredients for a generic agreement. Some of these agreements work while the remaining were undergoing negotiations during this project.

1.3.2 The agreements were chosen based upon geographic representivity, different types of natural resources, aspiration, and most importantly, its success or lack of it. A few of the agreements were signed recently, some within the last 12 months. For these particular ones, it is difficult to determine their success due to the short time they have been in existence.

1.3.3 Interviews were conducted throughout the project to clarify the issues. It was also an opportunity to learn how negotiators would approach the project differently to improve their particular agreement or its implementation. This provided the opportunity to learn from their experience.

1.3.4 The resulting product is universal since it includes what could be considered the bare necessities from an aboriginal perspective. Conversely, the intention here is not to go into detailed analysis of any agreement in particular. The hope is that the outcome of this project will be a unique tool for resource management planning and implementation. Depending on circumstances, segments can be expanded to meet the requirements of a specific Native group's needs.

2.0 Description and Analysis of Agreements

The policies and agreements analyzed come under various titles. The first group come under the headings of Memorandum of Understanding (MOU) or Terms of Reference (TOR). These have the general purpose of establishing a general framework as the basis for cooperation between aboriginal groups and the various levels of government. The belief is that in order to accomplish mutually beneficial projects and activities to achieve the common goal of conserving, preserving and advancing fish, wildlife and other natural resources, a framework should be established listing the principles that will guide future negotiations and cooperative efforts. Both MOUs and TORs tend to be broad in scope and are not limited to any single natural resource. For example, the MOU signed by the Federation of Saskatchewan Indians involves joint wildlife conservation and development activities. The ToF put together in Cape Croker earlier this year is a joint effort by First Nations on how First nations should approach negotiations involving resource management agreements.

The second group come under the title Agreements. This group can be considered the next logical step once aboriginal groups have established a framework that will guide them in entering resource management agreements. The particular agreements looked at in this project were specific in the resource(s) involved. For example, in the interim agreement between the Algonquins of Golden Lake and Ontario, the agreement involves only the hunting of moose and deer although during the course of the hunt, other wildlife may be taken. In the Anishnabek Conservation and Fishing Agreement, the primary resource is only the fisheries.

The third group come under the title of Acts or Bills. Most of the policies and agreements analyzed in this project were agreed to and signed within the last year or so. At this point, the only group that has reached the point where the agreement has come close to being declared law is in the United States with the introduction of two Bills, one in the Senate of the United States titled "Indian Fish and Wildlife Resource Management Act of 1993" and in the House of Representatives, the "Indian Fish and Wildlife Resource Enhancement Act of 1993".

A brief synopsis of each of the agreements is as follows: most agreements have most of the elements within them, and are similar in nature, especially when it comes to co-ordinating research efforts. Since the agreements are general in scope, the real test is how it is applied to conform to individual circumstances. For instance, ownership is implied in varying degrees of strength by designing the agreement to accommodate the culture, legal foundation, and other principles outlined further on. Like treaties of old, the intent is carried out in creative and diverse forms of ancillary documents.

2.1 The Anishnabek Conservation and Fishing Agreement Union of Ontario Indians

After many years of altercations, the Union of Ontario Indians endeavoured to create an optional agreement for its communities so they can continue to not only practise their treaty and aboriginal rights to harvest fish, but also enhance the fisheries.

Introduction

Like most inland provinces, Ontario has jurisdiction over fisheries delegated to them by the federal Department of Fisheries and Oceans. To say that the Ontario Ministry of Natural Resources (OMNR) and the First Nations of Ontario have had a conflict over natural resources in Ontario would be an understatement. Other users of the fishery which include non-Native commercial fishermen, recreational anglers and their associations, cottages and resort owners have directed their usually uninformed concerns against Native harvesting to the province. The concerns have leaned from reasoned, valid questions about the impacts of Native rights all the way to racist ranting disguised as concern for the resources.[1]

Most of the Anishnawbek communities are part of the Robinson Huron Treaty, which explicitly recognizes the rights to harvest the natural resources "in their usual tract". Recent court decisions have reinforced this. Now, to comply with the directives of the Sparrow decision, OMNR finds itself having to take another approach to conservation by consulting with First Nations on fisheries management, which was not done in any substantive manner before.

Native people realize as well that the resources cannot take the same pressure on a continuous basis as the number of resource users continues to grow every year. The number of charges laid on Native people for

[1]Ontario Federation of Anglers and Hunters. 1993. Position Paper on Co-management of Crown Lands and Resources in Ontario.

various fishing infractions over the last few years, the desire to reaffirm their rights to harvest, and the realization of the state of the fisheries has provided the impetus for OMNR and the Union of Ontario Indians (UOI) to negotiate a fishing agreement in an attempt to ease conflict.

What Is It About?

The Anishninabek Conservation and Fishing Agreement (ACFA) signed in June 1993 has cleared the way for certain First Nations to begin negotiating agreements if they wish to do so. Member First Nations are defined as those communities who make up the Anishnabek Nation as represented by the Union from time to time. The communities are located around Georgian Bay in central Ontario.

The UOI makes it clear in the ACFA that in no way do they purport to bind any member First Nation. Also, by entering into the agreement, it does not establish precedents in law, policy or practise which can be construed as to represent the position of any member First Nation in respect to fisheries. Any community entering into an agreement is not precluded from entering into any other form of agreement with the governments of Ontario or Canada regarding the fisheries resource.

The ACFA sets the context and principles for potential individual fishing agreements between the province and First Nations. It establishes a framework of guiding principles that member First Nations can follow. The highlights of the guiding principles are conservation, aboriginal and treaty rights, economic development, training and other elements contained in indigenous natural resource agreements.

As part of the ACFA, a Fisheries Resource Centre is to be established that will provide an independent source of information on fisheries management issues including conservation, allocation, management and compliance.

Culture and Spirituality

Though the word culture does not appear anywhere in the text of the ACFA, it has been made clear that "aboriginal and treaty rights are recognized and affirmed" and "should be interpreted in a just, broad and liberal manner, taking into account their spirit and intent". While culture is not mentioned, the culture of member First Nations, and the importance of maintaining it along with spirituality has the opportunity to be embellished.

Legal Foundation

The ACFA is based on the legal foundation that existing aboriginal and treaty rights of the aboriginal peoples of Canada are recognized and affirmed in the Constitution Act, 1982, under s.35(1), providing the solid constitutional base for negotiations. These rights are to be interpreted in a just, broad and liberal manner, taking into account their spirit and intent. In keeping with Canada's fiduciary obligation to Native people, priority allocation after conservation goes to First Nations.

In the agreement, both parties recognize that member First Nations have inherent rights of self-government in relation to fisheries. While not defining what those rights are, they are the basis for negotiating and implementing individual fishing agreements. The purpose is to secure participation in the conservation and management of the fisheries resources.

One of the strong points of this agreement is the recognition of the inherent right of self-government and the protection of treaty and aboriginal rights. Ontario is committed through the Statement of Political Relationship (SPR). This guiding document establishes the relationship between the province and the First Nations at a government-to-government level. Although Ontario was the first province to openly recognize inherent rights, the SPR has no legal binding effect. The apprehension of Ontario Native leaders is that the SPR will be a useless piece of paper if the New Democratic Party is ousted at the next provincial election.

Negotiation Policies

With the ACFA already in place, First Nations have the option of entering into negotiations. They are not bound by any of the ACFA's contents and have the option to choose the elements within the agreement with which they can build their own, one that will best suit them, their circumstances and priorities. Notwithstanding the foregoing, the agreement may include any additional matters which Ontario and the individual First Nation may want to negotiate.

Should a member First Nation decide to pursue negotiations, both parties will jointly determine the negotiating process. The First Nation and the province may request the Indian Claims Commission, a mediating body between both governments, to facilitate.

In the event that the negotiations towards an agreement reaches an impasse, the negotiating parties shall attend a formal meeting within 30 days to attempt to resolve it. If the parties cannot come to an agreement, a dispute resolution mechanism will be decided upon which again, may include the Indian Claims Commission.

Funding required to negotiate and implement individual agreements as well as the ACFA, will be provided by the province. This includes training and employment of Native fisheries enforcement officers. But it is only to the extent that funding is appropriated by the legislature to the Ministry of Natural Resources or as funding obtained from other sources permits. It is further limited by priorities set by the Minister of Natural Resources, in consultation with the UOI.

Infrastructure Development

As part of the ACFA, the negotiating parties agree to jointly establish a Fisheries Resource Centre to act as a central and independent source of information upon technical matters relevant to fisheries. The functions and staffing of the Fisheries Resource Centre, and the composition of its board of directors, organizational structure, operations budget, funding and location are priority items being worked on jointly by staff and an

interim fishing committee.

A consultation program will be jointly developed by the parties as part of the Fisheries Resource Centre development. Groups to be consulted will include non-Native persons and entities with an interest in fisheries resources, including without limiting the generality of the foregoing: organizations representing persons engaging in sport, tourist and commercial fishing activities. The underlying purpose is to get all parties to understand what is going on by acquiring their support to avoid conflict, as much as possible, later on.

An important aspect to infrastructure development is the commitment of both parties to communicate on a consistent basis. In the agreement, both parties assent to meet regularly in accordance with an agreed-upon work plan to complete any jointly developed programs and economic development initiatives.

How Others View The Agreement

At the present time, six First Nation communities have expressed an interest in pursuing negotiations towards an agreement. Another six under the United Chiefs and Councils of Manitoulin have not made a conscious decision to use the ACFA, but are going on their own agreement for hunting and fishing. Two additional communities, Chippewas of Nawash and Saugeen Ojibway, have both pulled out of the UOI because they did not agree with the approach taken by their former regional body.

In fact, the latter two are pursuing their own plan because of their dissatisfaction with the UOI approach, and had been before the ACFA was in place. Both communities were the initiators of a Great Lakes First Nations coalition on fisheries. It was loose knit and ran almost entirely on the goodwill funding of the two dozen or so communities willing to co-operate, since there was not support form either the provincial nor the federal governments, nor major political Native organizations. Their emphasis was on addressing needs from a community perspective.

One of their ideas, which they felt to be plagiarized without due credit, was the creation of the fisheries resource centre to work on political and technical issues, with an objective of bringing communities up to speed on their rights and what they should be expecting, as opposed to the limits defined by the province. This is seen a extremely important because many communities need that kind of education, and were calling upon either of the two reserves for advice. This is because it is not taught in school, or taught to the average Indian Joe on the street, and certainly not with the government.

According to Eric Johnson, the Chippewas of Nawash communications person, the two communities pulled out because of several fundamental differences. Firstly, there was the recognition of only the province having jurisdiction, albeit limited, over Native fishing rights. It was felt to be a deterioration of the federal trust responsibility for Native people. Additionally, there was discomfort with the emphasis on having third parties at the negotiation table, influencing how Native rights should be defined.

Secondly, the ACFA was seen as limiting geographical areas or labelling them,so that little opportunity was available for addressing areas outside of the Treaty boundary, or defining the area according to the Indian Act reserve boundary, or provincial boundaries.

Thirdly, there fear of a B.C. court decision to the effect that all member First Nation communities are bound by a fisheries agreement signed by their respective tribal council, whether they individually agree to it or not. This was a primary reason for pulling out.

Last but not least, there is a sense that the kind of fisheries management envisioned in the ACFA is inconsistent with an integrated approach to watershed management, taking into consideration micro-climates, hydrology and biodiversity.

Both reserves became frustrated with the lack of political support and are now going at it alone. They felt that

the ACFA "kiboshed" what they were trying to do. It may be particularly bitter because the UOI negotiator is from the Chippewas of Nawash. They are sticking to their principles and have made the commitment to pour their resources into management instead of just talking about it, as it seems to be with many other communities.

There may have been some haste on the part of the UOI in demonstrating support during the development of the agreement. Some Native leaders were amused, some not so amused, at finding their names and their individual efforts used without their permission to show their supposed involvement. The implication was that they supported the agreement when that was not always the case.

Ownership

Nothing in this agreement makes any reference as to how information, collection method, analyses and results would be processed as far as ownership is concerned. This is something that will have to be dealt with, especially when the Fisheries Resource Centre comes into being. Along with developing the Centre, consultations with interested parties will hopefully allow them to feel ownership, or at least partnership, thereby giving the agreement a chance to work. Although the cornerstone of the Centre will be its information base, some of the information will, in all probability, come from Native people, including elders. There is no mention of compensation or recognition.

Conservation of Resources

In the agreement, the conservation of a sustainable fishery is paramount in importance, with Native food fishery second in priority. All parties involved in the agreement accept the fact that they have an interest in the fishery and consequently, have a shared responsibility to preserve, protect and enhance those resources for the benefit of future generations. Both the province and the Native community recognize that it would be advantageous to promote and foster co-operative intergovernmental relationships and
to devise shared management strategies to ensure the overall co-ordination of fisheries resource

conservation.

The ACFA does not specifically state how the fisheries resources will be managed except that conservation and ongoing management must be based on sustainable yield principles, to ensure the survival and viability of fish stocks for the benefit of future generations. This will probably be handled on an individual agreement basis depending on the state of the fisheries resource involved in the agreement.

As far as managing the resource while bridging two cultures, the traditional ecological knowledge (TEK) held by Native people, and the western scientific principles adhered to by non-Native people, the province is willing to look at TEK and consider sharing information.

> "But the way that I think it specifically might get expressed in a fishing agreement might be around the way in which the science of fisheries management happens - that the government is prepared to look at working together where we share our data and indicate or show how we think about fish, how we monitor and count them and keep track of them, and try to rehabilitate the populations.
>
> At the same time, ask First Nations to likewise share their methods with us- we refer to it as their traditional information - (it's) about the same thing so that we try to move away from the assumption that we are the ones that know, that we are the ones that have the real science, and get into much more information sharing about ...what we've observed. (This is) because we have only been doing hard science for a pretty short period of time, (so) that (other) information can be really important. It's often handed down from generation to generation in communities...important information for us to have."[2]

It does not take much to see the necessity of a co-operative intergovernmental relationship fostered among all governments having jurisdiction in the Great Lakes and all other bodies of water within or partially within the borders of Ontario. A suggestion is that an intergovernmental management strategy be devised to ensure

[2]K. Wishart. Native Operations Unit, OMNR. pers.comm. March 11, 1994.

overall co-ordination of conservation and management, as well as compliance. Currently, there is informal, sporadic representation of First Nations in Canada on the Great Lakes Fisheries Commission, although the American Great Lakes Indian Fish and Wildlife Commission holds a seat on the Commission. Likewise, lake wide management plans put into place by the province rarely have informed consent of Native leaders, let alone input.

Training

The parties agree to jointly establish training programs for individual members of the member First Nation communities to obtain greater access to employment opportunities in fisheries assessment, management and compliance.

Improved access to the fisheries resources could be a component of First Nation economic development including, but not limited to, commercial fishing and processing, manufacturing and marketing, sports and recreation, and tourism.

The parties agree to jointly develop economic initiatives such as grant and loan programs to enable member First Nations to take advantage of them. If commercial fishing is agreed upon, it will go ahead on the principle of a willing buyer and willing seller.

Management

The extent of management will depend on how quickly a community can get people trained and employed to meet its needs for regulating the local fishery. There are no limits on options for exclusive authority, shared authority and advisory involvement on the part of the First Nation. An individual community may want to take on only certain small and relatively easy tasks first, then graduate to a greater management role.

The ACFA lists other elements which First Nations can address if they so desire. These include under

conservation, management and allocation:

- the approach to interpretation of aboriginal and treaty rights in order to give effect to the spirit and intent of those promises;
- who is entitled to harvest fisheries resources;
- in what geographical area;
- which species, and in what quantity;
- methods and techniques to be used;
- times of harvest;
- accountability to regulatory regimes;
- recording and reporting requirements;
- data collection and information sharing;
- extent of priority allocation consistent with traditional, cultural and nutritional needs.

Under compliance, member First Nations can also address any of the following:

- rules, prohibitions and penalties to be enforced;
- by what body(ies) and under what authority shall rules, etc, be applied;
- who shall enforce such rules, etc;
- who shall decide on potential charges;
- cooperation with compliance\law enforcement agencies, including own.

Communication

The agreement makes a general statement on communication as well as prescribing a process for negotiating First Nation agreements. The parties will jointly develop communications strategies to inform both Native and non-Native effected communities and user groups.

2.2 1993-94 Interim Hunting Agreement Between the Algonquin Golden Lake First Nation and the Government of Ontario

The genesis of the Agreement arose from moose hunting charges against members in 1990. The decision was made to negotiate a way for the Algonquins to exercise their rights to harvest within their territory, which includes the ecologically sensitive Algonquin Provincial Park. So far, four annual interim agreements have been signed, each building upon the lessons of the preceding one.

The first cornerstone of the implementation of the Agreement is the creation of Ontario's first Native cross-deputized conservation officer. Although he is accountable first and foremost to the Golden Lake First Nation, this person has also developed a good working relationship with the Ontario Ministry of Natural Resources district conservation officers. The second is the creation of an Algonquin justice committee made up of elders who sit on a rotating basis to decide on possible abuses of the Agreement by members of the community. Thirdly, there is a Co-ordinating Committee made up of three members from both the province and the First Nation.

While the community had developed Algonquin Nation Law through extensive consultations, a Co-ordinating Committee of half government and half Algonquin people review the planning, data collection and analyses to implement the Agreement. The MNR biologist is depended on for much of the biological information because Golden Lake does not yet have its own biologist, although the hunters provide harvesting information. Joint management is the approach taken for decision-making, with much consultation done at the community level first before bringing it to the Co-ordinating Committee for ratification.

Despite the success of the hunting agreements for both Ontario and Golden Lake, the province was unwilling to sign a similar agreement for fishing with the community based on the previous principles. The First Nation decided to exercise their right to fish anyhow within the parameters of those principles to maintain consistency.

Background

The Algonquins have steadfastly asserted their rights to the lands in the Ottawa Valley watershed for over 220 years, with recognition dating back as early as 1760 by the first colonial governments. There is no evidence that the Algonquins ever gave up their land, sold it, or lost it in war. There have been at least 26 petitions to governments asking that they live up to their promises concerning rights to the land. They base the government to government relationship on the Royal Proclamation of 1763, which has never been rescinded, therefore continues to be in full force and effect to protect Indian lands. The Treaty of Niagara the following year only reaffirmed peace and trade with Indians. The Algonquins assert that they have unsurrendered aboriginal rights in their traditional area, which is not disputed by a provincial court decision.

The Agreement was also in response to a land claim dating back to the 80's for traditional territory of the Ottawa watershed in eastern Ontario covering some eight and a half million acres of land. (Golden Lake First Nation Land Claim, Information Sheet 5). Compensation in direct dollar value for loss of land and its use would have reached an astronomical amount. So, the alternative was a proposal to establish an independent, self-sufficient Algonquin economy; with the rights and powers necessary to protect it from future threats.

An escalating public misinformation campaign was launched by a public interest group made up of tourist camp operators and other locals. The red herring was the unfounded threat of the century old park falling under the control of the Algonquins, only to be converted to an amusement park, among other dire consequences. An innocent tourist stopping at any of the dozens of local businesses was inundated by pamphlets and posters predicting the eminent demise of Algonquin Park if it fell under the control of the people whom it was named after. Much of the historical and legal information was so loosely interpreted that it subtracted from an intelligent discussion with its proponents, who held onto their version with little thought for accuracy (Save Algonquin Park literature and pers. com., August 1991).

The Algonquins of Golden Lake's responses were reasoned, calm rebuttals. Their approach not only added to their credibility based on evidence alone, but contrasted sharply with the frantic rhetoric of people who

refused to listen to opposing viewpoints. The present policy of Golden Lake is not to even respond to comments any longer since the battle is not with the public interest groups, but rather with the government of Ontario.

Although the *Save Algonquin Park* committee purported to present a balanced view, their public information meetings were otherwise (Egansville Leader press clippings, 1991-1992). Often Golden Lake representatives were pointedly uninvited or not given fair opportunity to present their side of the debate. A candidate for the Liberal riding, Len Hopkins, was so vociferous in his biased opposition that the party questioned his credibility. He eventually lost, partially due to the openly racist views he espoused. The experience of Golden Lake with open racism led to their initiative of a workshop on the subject as well as the proposition to create a Native-run centre in Ontario to deal with human rights violations due to it.

A number of local loggers also let their views be known that neither they nor the province should allow Native people to manage timber, since there is no experience. They ignored the fact that the timber companies historically excluded Native people, and that aboriginal rights to resources were virtually ignored, thereby compounding the problem of limited Native access.

Hunters and environmental protectionists argued that Native harvesting would forever negatively impact the fish and ungulate species, again, not admitting that the resources had always been harvested by a minimal number of Algonquin people, with any impacts due to substantially greater non-Native access in terms of activity and sheer numbers. The Park was created not because it is a healthy ecosystem, in fact the opposite is true. It is because it is the last fragment of a fragile location heavily impacted by logging, tourism, fishing, increasing human occupation and natural conditions.

Relations were not the best prior to the Agreement. The Algonquins were forced to become stealthy hunters in the Park over the decades to avoid being charged by provincial officials. The Province's position for years

was that the Algonquins were a part of a treaty in neighboring territory despite their not having been signatories. This was only reversed recently as a factor in dealing with the outstanding land claim.

Agreement Principles

The Agreement was not modelled after any other. It had a simple beginning as a custom made document jointly created by both the Algonquins and the Ontario Ministry of Natural Resources. Each year's accumulated experience was used to update the agreement for the following hunting season. It is perhaps the most detailed of the Canadian natural resource agreements since it had been around longer, and since it deals with one First Nation community only, has the opportunity to be very specific. Unlike the majority of the other agreements reviewed here, there is a specific geographic boundary limiting its application, defined by the traditional territory.

The overall objective is to manage moose and deer in order to safeguard Algonquin rights to harvest unmolested. Right upfront, it recognizes Algonquin law, not by-laws, nor regulations, but the right of a government to make its own laws pertaining to acceptable methods of harvesting and use of the meat. The province does not interfere at all with this part, rather it understands the necessity of the community deciding for itself how it wants to conduct the harvest. Since the Algonquin territory is so vast, there are seasons for different locations. Some of the hunting seasons are a little longer than those set by the province for non-Native hunting. Since one of the threats to Native hunting is the reduction of land on which to hunt, the province agrees that there will be no enlargement of existing nature reserves, wilderness zones, or the like during the term of this Agreement.

Native harvests are set by community consultations. Killing a pregnant female animal is taboo, and besides, according to one elder, it tastes awful. So while a season does not end until mid-January for other deer and moose, the taking of female ones ends in early December to prevent the risk of killing a pregnant one. Each year a harvest study is conducted to find out how many animals are taken, and in what ratio for age and sex group. The ratio is balanced by using a tagging system, among other common management practises.

Nor is anyone going to fault a hunter for taking other wildlife species for food that he may come across while hunting. There are no real restrictions except for wolves, loons, and rare, threatened and endangered species. In other circumstances, where an individual member of Golden Lake is in need of food, there is a need for meat for community or ceremonial purposes, special permits will be issued.

Since there have been difficulties in the past with enforcement officials misunderstanding an Algonquin hunter returning to retrieve a carcass with a vehicle, or seen coming out of the forest in the evening after having spent the few remaining hours after the kill to gut it and haul it towards the road for pick-up, the Agreement states that hunters can use cars or trucks to assist them in retrieval.

Another misunderstanding with MNR enforcement is the confusion created when a Native person is found hunting with a non-Native person. While it may be a perfectly innocent arrangement, there have been incidences of the hunters taking advantage of an aboriginal right. The Agreement is clear: it will not apply to an Algonquin who chooses to hunt with any person who is not an Algonquin. This discourages the ambiguous practise.

Basic safety is accomodated. Firearms are to be properly stored and transported.

Financial Resources and Infrastructure

Like nearly all agreements, Ontario promises to make its best efforts to fund the implementation according to what is available. It provides funding for one unspecified Algonquin official along with half the costs of a support staff person and the costs necessary to run their office. The office is equipped with approximately $70,000 worth of equipment needed to carry out conservation enforcement activities, including a boat, motor and trailer, four wheel drive vehicle for transportation, snowmobile, electronic equipment, and personal clothing. The direction to the staff is given by the chief and council as a measure of their governance.

The Algonquin official, in reality, the lone conservation officer (CO), Dennis Sarazin, is responsible for the "observance" of the Agreement through community consultations and surveys. He also co-operates with the

local provincial conservation officers who also have responsibility for the Agreement, although to a much lesser extent. The Agreement will not recognize the jurisdiction of any government, yet in practise if a provincial conservation officer comes across a Native incident, he defers it to the Algonquin CO, and vice versa. According to Dennis Sarazin, for the most part, MNR concedes jurisdiction to Golden Lake, so that there has been practically no need for mediation or disagreement over who is responsible.

A unique aspect is the community-based justice system set up to deal with possible offenders. Five judges are appointed to the court, mostly elders, with each sitting of the court consisting of three judges. If an offender is found guilty by the panel of three elders, that person must perform community work to return something to the community that was taken away, or hunting and fishing rights can be suspended. Often, abuses are animals taken without cause - no permit, out of season, wrong group. The meat of the animal is taken from the offender and given to those in need such as a single mother or other elders. If the offender refuses to comply with the decision, the Ontario government is informed that the person is no longer considered to be an Algonquin for the purposes of the laws and are then subject to provincial laws. No one has rejected the community court's decisions yet.

The Co-ordinating Committee is made up of three Native and three non-Native Ministry of Natural Resources representatives. They contribute to the planning, reporting and monitoring of hunting; analyze other information relevant to harvesting; and conduct public communication. The Algonquins are still pursuing the creations of an interim agreement on fisheries management through the auspices of the Committee, but the province has been reluctant to address this for the past two years. This has not stopped the Algonquins; they continue to harvest fish regardless.

Achievements

Better relations between the previously adversarial Ministry of Natural Resources and the Algonquins of Golden Lake are perhaps the single most important accomplishment. This came about because the province

finally agreed that it is less expensive and less antagonistic to co-operate with Golden Lake as partners while acquiring essential harvest and population information for better deer and moose management decisions. The province agreed to no longer create any more protected, and therefore off-limits areas to Native hunting.

Like most communities, not everybody is capable of hunting. Occassionally someone will share an extra moose or deer with those in the community who could benefit from the meat. Dennis Sarazin tells of an incident when community people were asked to show up at a certain place on the reserve to receive meat. All that they had to do was pay for the expenses of a professional butcher hired to do the job. A non-Native person who happened to be driving by noticed an exchange of money and automatically assumed that wild meat was being sold. The observer immediately called up the media and Ministry of Natural Resources, who in turn, did not react negatively as may have occurred in the past. Instead, they called first to find out what was going on. Once their questions were answered, there was no further action taken which may have lead to an embarrassing situation for the province if it jumped to the obvious conclusions.

In the short term, harvest surveys by the Algonquins were able to prove that Native harvests were far below that of non-Native harvesters, contrary to the propaganda generated by non-Native fearmongers. Even when the Algonquins limited their harvest quota to a certain number of deer and moose, their actual take was much lower than even that. Subsequent and improved surveys have only confirmed this. The 1992-93 Interim Hunting Agreement Fact Sheet revealed the following:

- total moose harvested in the land claim area were 89 by the Algonquins and 331 by non-Natives;
- total deer harvested in the land claim area were 39 by the Algonquins and 16,373 by non-Natives;
- the Algonquin harvest in Algonquin Park was 39 deer and 89 moose;
- the non-Native harvest in Algonquin Park was 138 deer and 57 moose.

Algonquin hunters were not too discriminatory before the Agreement in harvesting animals. The improved

relationship with MNR brought biologists into the community to describe the life cycle of moose and deer, along with practical advice on choosing the proper animal for the best quality meat. This is in contrast to non-Native hunters who may prefer to shoot for a "trophy" buck with a wide antler spread, or bull moose with similar characteristics, with nutritional aspects being secondary. Now, hunting is more specific, aiding in long term management of the species. The recordkeeping of both harvesters and Golden Lake staff have also made them more aware of the benefits of good management. Observation skills of harvesters are improved, their traditional knowledge is given importance, and moose and deer benefit.

A key to harvest management is the ability to codify traditional Algonquin law, which defines who can hunt, what the community uses are, the seasons for moose, deer and trout, enforcement, harvest restrictions and offenses, the administration of the Algonquin Nature Department including allowances for deputy officers, other duties such as training harvesters, exemptions, and the court.

Dennis Sarazin, the conservation officer, successfully passed the MNR CO training requirements and is perhaps the first, and only, cross-deputized CO in Canada under the direction of his own First Nation government yet recognized as a CO by the province. Along the way, he, the head negotiator Greg Sarazin, Kirby Whiteduck and other staff learned how to do their own technical work instead of depending on provincial or outside biologists to do it for them.

Golden Lake is perhaps the furthest along in Ontario in terms of implementing natural resource agreements. There is much praise from other Native communities about the Algonquins being helpful in providing guidance to assist them in negotiations, planning and implementation. The recognition provided for leadership and inspiration is no mere flattery in a province where dozens of First Nation communities could only hope to achieve the same - where co-operation is not always the name of the game - even if given the right mix resources, opportunity, community support and committed people to make it successful. With communities still not getting co-operation from the province despite the Sparrow court decision, and despite having won a court decision against the province, one questions the consistency of the Ministry of Natural Resources in

negotiations with other First Nations.

Conclusions

The Algonquins are still building an overall resource management plan. They have nine students learning resource management via satellite under the Resource Management Technician Program.

After more than two centuries, for the first time, both the provincial and federal governments have agreed to discuss the overall land claim.

The Agreement is successful in meeting its primary objectives to improve access to moose and deer for Algonquin hunters, while enabling them to become partners in management. Ontario is seen as making progress on wildlife resource management issues with First Nations, and therefore supporting the principles of the Statement of Political Relationship, the guiding bible between itself and Native communities.

The Algonquin negotiators see the limits as obvious: the text of the Interim Hunting Agreement explicitly states no recognition of jurisdiction. The coming negotiations will hopefully address that.

2.3 The Federation of Saskatchewan Indian Nations Wildlife Development and Conservation

Strategy

Memorandum of Understanding on Wildlife Management

On May 17, 1993, amid much fanfare at the 11th Annual Native American Fish and Wildlife Society meeting co-hosted by the Federation of Saskatchewan Indian Nations in Saskatoon (FSIN), a Memorandum Of Understanding was signed as a truce between what were once Native and non-Native adversaries. Signatories included the Minister of Environment and Resource Management on behalf of the Province of Saskatchewan; the Canadian Wildlife Federation; and the Saskatchewan Wildlife Federation. Another one similar in nature was signed with the Minister of Indian Affairs.

The intention of this document is to state general principles and to provide a broad framework for future agreements. It is a record of the Parties' intentions, and is not intended to be a treaty nor to create legally enforceable obligations. There is much emphasis on developing practical applications for protection of fish and wildlife and their habitat through joint conservation efforts. Yet depending on the particular project, there may be joint management or Indian management, although the determining factors are not specified. All signatories have a recognized common interest in conservation: the Saskatchewan First Nations have the unique Constitutionally protected treaty and aboriginal rights to harvest. The other parties do not enjoy nor had much interest in aboriginal rights beforehand, except viewing them as an annoyance conveying special rights to a certain segment of the population. Now, the non-governmental conservation organizations gain comfort in creating a partnership in wildlife management. The province can feel confidence in an orderly exercise of treaty rights within shared territory.

The MOU blankets the whole of Saskatchewan, and does not have a time limit. Saskatchewan is made up of 72 First Nation communities with 153 parcels of land set aside as reserves. The people are Swampy Cree, Plains Cree, Lakota, Saulteaux, and Dene. Like most provinces, the northern half has more abundance of natural resources because development has not encroached as much as in southern Saskatchewan, which is farmed.

While the agreement is purposely vague in particulars relating to practical application, there is a commitment to train and employ Native people as wildlife officers to enforce the provincial Wildlife Act. In addition, there is a newly created entity called the Indian Wildlife Development Round Table, which will be established for communication with all parties. What the MOU offers, which did not exist before its signing, is the opportunity for Saskatchewan First Nations to become formally recognized, active partners in managing the province's fish and wildlife using a combination of both provincial and cultural wildlife management methods. On the Native side, it is understood that rights to harvest resources mean little if there are no resources available. The mutual interest is to conserve fish and wildlife populations at a sustainable level, whether it is for treaty harvesting, sport, or to maintain sheer ecosystem dynamics. The scope of the agreement revolves around a handful of overlapping areas:

1) joint management boards to increase species population levels and overall wildlife management, including:
   - joint decision-making for protecting endangered populations;
   - acquisition and ownership of information;
   - wildlife habitat rehabilitation and protection;
   - developing guidelines for conserving and utilizing wildlife;
2) Native wildlife officers;
3) financial and technical assistance for First Nation initiatives;
4) intercultural exchanges through:
   - workshops;
   - awareness of the different resource users;
   - development of materials for public awareness and education;
5) joint consultation and communications through a permanent "Indian Wildlife Development Round Table" for policy, legislation and management.

Ron Stebe, the Saskatchewan Wildlife Federation (SWF) negotiator, told of the rancor between its pro-hunting membership and that of FSI:

> "Practically every year previously, there were resolutions on the floor at our annual SWF meetings calling down Indians. This was despite having Native representatives coming to speak to our members. There was so much sniping going on between us in the newspapers, and the media loved it. I mean, they need something exciting to sell newspapers. It was really due to Roland Crowe, the head of FSIN, who made the first attempts to contact us and try to get something better. Now that he is stepping down, I don't know what will happen. I just hope that the next chief makes this as much a priority as he did"[3]

Benefits to Signatories From Agreement

The Canadian Wildlife Federation (CWF) was a signatory but in conversations with both their office and SWF, they admitted having little to do with either the negotiations that lead to the MOU or its implementation. They were asked to be partners since they are the national body representing provincial organizations in similar situations with First Nations in Canada. For CWF, they have set a precedent on a national level which will undoubtedly influence any other discussions or agreements that their provincial counterparts may have with Native groups in the future. This MOU builds upon their change of attitude too, which was not the most favorable to Native people in the past, although great strides have been made (CWF, Rights and Privileges, 1989).

Ron Stebe, the SWF spokesperson, describes the relief when energies are not spent on slinging arrows at each other, but rather at positive relations and concrete efforts. He recognizes that some Native communities felt that the MOU was not protective enough of their rights, so were not overenthused with it. "It takes time, and not everybody is ready". The SWF, for its part, can begin to chalk up sucessful projects while learning

[3] Pers. conv. March 24, 1994.

to appreciate the culture and knowledge of the original people of the province that its members inhabit.

The lack of participation was echoed by John Dantouze, a Dene and FSIN vice chief for northern Saskatchewan (pers. conv. March 1, 1994). There is some isolation of the smattering of Dene communities in the northern part of the province from FSIN due to geography, linguistics, culture and traditional land uses, among others.

The Province of Saskatchewan is very supportive. This is proven by the creation of an aboriginal unit consisting of five Native regional liaison people who speak their own languages, three additional employees working strictly on co-management, and support staff. They will be soon sharing staff with FSIN so that the Native organization can keep up with the onslaught of activity, especially in an area where there is little experience or technical knowledge. Besides, as Murdock Carrier, the Native Liaison for the Saskatchewan Environment and Resource Management Branch sees it, "it is good business. The stewardship is by the principal users in their traditional harvesting areas. We have shown that resource management is better that way."

The FSIN can probably feel the most benefits since they began with next to nothing, had a bad relationship to boot with potential allies, and were spending time defending their rights in court. Now opportunities are available so that conservation efforts can be carried out and harvesting principles can be chronicled and enforced. Customized Native management will work better because it responds to Native concerns; the provincial system does not, so that Native harvesters will be able to get away from being hauled into court for practising what they have always done.

Culture and Spirituality

The MOU specifically states that the parties "respect the traditional Indian viewpoint that the earth is the

foundation which provides nourishment, shelter, medicine and comfort for people, and that man must harmonize his actions with nature". This statement provides the indigenous perspective for conservation, so that conservation is not reduced to scientific equations such as quotas. It can be applied to either Native or non-Native uses, proving its usefulness in a modern day and multicultural context.

Collection and Ownership of Information

Fish and wildlife populations are not at their hardiest in Saskatchewan. An aspect of the MOU is to collect baseline information to assess the situation in order to plan for the most effective conservation action. There is an emphasis on training Native people to do the research. Like most provinces, Saskatchewan has little idea of the extent of Native harvesting, nor was there any forum for gathering and utilizing the traditional ecological knowledge of the harvesters for long term planning. The MOU now offers an opportunity for monitoring and long term planning. In keeping with the spirit of joint management and respect, it is left to Native people to "define and exercise their culture and to blend their culture with contemporary wildlife management practises. In this regard, Indian Elders have a role to play". Information is created and owned jointly, and can be individually used by the parties, and uses of information.

Decision-making

Not all activities that SWF or the provincial government carries out will involve the First Nations, and vice versa. A part of the joint action is to have First Nations involved in "plans, policies or measures designed for the protection, development and management" of a species in serious decline. The MOU does not explain how an issue will be found to be of mutual interest, or who makes the finding. It may be easy to jointly agree on a species used for food, such as moose, but there may be difficulty in getting attention to a secondary species like aquatic plants, a food source to moose. One party or the other may not want involvement and can possibly put up barriers to prevent joint management. Although it is not stated in the MOU, Murdock Carrier, in charge of implementing the MOU from the Saskatchewan Environment and Resource Management, envisions an arbitration panel if a joint decision cannot be made, or is rejected by the provincial

minister of environment. If that does not work, while the Agreement is not legally binding, a last option may be to go to court if nothing can be accomplished in good faith. This has not yet been tried, so is suppositional.

Current Activities

Neither the Saskatchewan Wildlife Federation nor especially the Canadian Wildlife Federation knew what FSIN was working on, since they were removed from the actual implementation. Their fundraising efforts for habitat improvement will be used for some of the projects under the MOU.

Approximately 25 co-management agreements are on the table to date with individual First Nation reserves, tribal councils and Metis communities. They are not species-specific, rather, they are for integrated resource management. The James Smith First Nation, Shoal Lake, Red Earth, Peter Ballantyne and Deschambault have already signed agreements.

Some communities are close to signing, while elders in other communities prefer to sit on this for a while before committing themselves. The province is even recommending that a community wait a few years to see how the others work out before discussing one for their territory. If all agreements are signed, eventually about 50% of the land of Saskatchewan will be under them.

The method for initiating co-management agreements begins only at the request of the community. The Ministry of Environment informs FSIN of the intent of the community, although some communities prefer discussions on their own. It is up to FSIN to communicate with the community. However, since staff are limited to one person right now, there is no possibility for FSIN to be at all discussions even by those communities who would like to use their provincial political organization.

The Indian Wildlife Development Round Table meets at minimum twice a year. If an important issue comes up, a member can request a meeting between those scheduled times. FSIN is now a full partner, at least

officially, in everything having to do with natural resources. Since it does not yet have the capability though, it is still at a disadvantage.

The Meadow Lake Tribal Council established a natural resource management school for Native technicians. There are currently three classes of approximately 15 students each. Already there are eight Native conservation officers. A hunter safety course is being tailored exclusively for Native people.

Funding

There is no mention of FSIN acquiring access to the revenue currently going to either the provincial or federal governments from fish and wildlife resources, such as licenses. Nor is there mention of compensation for lost access to resources. There is a clause which exempts the province from any expenses save that of its representatives. Any projects may therefore be dependent on the good will of the province to fund, so there would be little independence for FSIN to truly decide or fund activities that it may see as a priority. In this case, joint decision-making could hardly be said to be equal in nature.

Conclusions

The MOU is barely a year old. Since this is the first time any agreement on fish and wildlife management has come to pass in the province, this experiment is only the infancy, with much to come in the future. There is still much to be worked out on a practical level.

For example, two neighboring First Nation communities, Onion Lake and Thunderchild, both reluctantly share a segment of land considered the traditional territory of each. The province does not want to sign a co-management agreement which would prejudice the interests of one against another. So it is hoped that they can encourage a co-management agreement with both parties and the province. The provincial government is even willing to look at an agreement with The Pas in northern Manitoba, whose hunters have traditionally harvested in Saskatchewan. Flexibility is the operational word here.

Norm Stevenson, the FSIN co-ordinator behind the MOU, considers the first year so successful that the MOU may have outlived its usefulness. This is due to almost too many initiatives proposed by both the provincial government and conservation groups that a halt had to be put on individual negotiations until consistency was assured for all First Nation communities. A new, more detailed agreement is actually getting the final touches at the time of this writing, and will be available in the 1994 fiscal year.

The recommendations for making a better agreement are a commitment for funding so that Native communities can carry out their part of co-management. This can be done through revenue shared by the province for the resources taken not only out of provincial lands, but also those lands which happen to be in traditional territory.

2.4 Interim Measures Agreement Between British Columbia and The Hawiih, The Ahousat, The Hesquiaht, The Toquaht, and The Ucluelet First Nations.

Introduction

Throughout the summer and fall of 1993, tens of thousands of anti-clearcutting demonstrators and over 800 arrestees blockaded access to Clayoquot Sound logging operations on Vancouver Island in British Columbia. The international attention thus generated enabled the Nuu-chah-nulth of Clayoquot Sound to coerce the B.C. government to negotiate an agreement with them. Its purpose was to force the B.C. government to include affected aboriginal communities in decision-making processes on natural resource management issues in Clayoquot Sound. It was also an attempt to rectify a prior, and erroneous, B.C. government announcement that "the Clayoquot Sound Land Use Decision (CSLUD) of April 1993 had been made with the approval of the First Nations."

The objectives of the Interim Measures Agreement range from the wish to conserve the region's ancient rainforest ecosystems to the need for sustainable economic development initiatives. The aboriginal community constitutes over 43% of the population base, yet has unemployment levels ranging from 70-75%.

Empowering Aspects

The 'agreement in principle' was understood by First Nation negotiators to incorporate real decision making and veto powers. However, prior to ratification, B.C. Premier Harcourt publicly interpreted the role of the First Nations to be merely consultative in nature. This rather upset the aboriginal negotiators members of the aboriginal communities like the Aboriginal Tourism Association as well as environmental groups including the Sierra Legal Defense Fund and Natural Resources Defense Council[4]. Subsequent negotiations refined the wording so that as it is written now, the roles of First Nations' representatives range from advisory in nature to joint management, although it is still open to interpretation.

Nelson Keitlah, chairperson of the NCNTC Central Region interprets the agreement to mean nothing less than full participatory joint management, a position that the NCNTC will insist upon being fulfilled.

In a nutshell, this Agreement is a bridging tool meant to:

- conserve resources for future generations;
- promote sustainable resource use;
- incorporate aboriginal values in planning processes;
- fund regional, culturally appropriate training and education initiatives; and
- enhance economic diversification.

History

The Agreement was initiated by the First Nations negotiators who "holed themselves up" in a hotel in Victoria

[4]Francis Frank, Chief Councillor of the Tla-o-qui-ahtt. pers. comm. Dec. 16, 1993.

B.C. for over 40 days. Their aim was to prepare for the treaty making process required by the B.C. Treaty Commission, and to simultaneously address as many of their peoples' neglected economic needs as possible.

It is an interim measure involving several communities of the Nuu-chah-nulth Tribal Council. It affects those peoples whose traditional territories are in Clayoquot Sound, as well as the Ucluelet First Nation, in adjacent Barkley Sound, both of which are located on the west coast of Vancouver Island, B.C.. It is designed to be effective for the next two years or longer if the parties so desire.

The agreement was ratified by all parties on March 19th, 1994. The signatories were the Premier of British Columbia, Mike Harcourt; the Minister of Aboriginal Affairs, the Honourable John Cashore; Hereditary Chief Earl George for the Ahousat First Nation; Chief Councillor Richard Lucas for the Hesquiaht First Nation; Hereditary Chief Bert Mack for the Toquaht First Nation; Chief Councillor Francis Frank for the Tla-o-qui-aht First Nations; and Chief Councillor Larry Baird for the Ucluelet First Nation. The negotiators involved the above mentioned people or their designates, as well as other representatives of the First Nations.

Recognition of Traditional Authorities

It is the first time since the Douglas Treaties were signed a century ago with the federal government that the precedent setting situation has arisen in that the province recognizes the authority and responsibilities of the HAWIIH, or hereditary chiefs "who are the highest authority in the traditional system of government"[5] . Moreover, representatives of the Nuu-chah-nulth Tribal Council (NCNTC) are hoping that recognition of the First Nations as governments during the negotiation process, within the text of the agreement, as well as in its execution, will be precedent setting for other B.C. First Nations (Chief Francis Frank of the Tla-o-qui-aht First Nations and spokesperson for the Central Region First Nations Meares Island, Dec. 16th, 1993).

[5]Clifford Atleo, Central Region Coordinator of Clayoquot issues, B.C. government news release, March 19, 1994.

Environmental Protection

Another aspect of the agreement is that it includes an attempt by the First Nations to stall further resource extraction processes in Clayoquot Sound until the treaty process is complete. Clayoquot Sound is one of the last areas on Vancouver Island with a viable aboriginal marine fishery (Joe Martin, Tla-o-qui-aht) and has five of the nine remaining intact old growth rainforest valleys on the Island (David Weston, Nanaimo Free Press March 25, 1994).

Political Gains for Provincial Government

The B.C. government had hoped to defray aboriginal, regional, national and international criticism of the 1993 CSLUD by participating in the negotiations initiated by the First Nations, and subsequently by ratifying the agreement with them. Some media analysts have remarked that the image of the Harcourt government has been bolstered by virtue of associating with the moral authority of the First Nations (Helen Maserati, Bureau of National Affairs).

Mechanisms

The agreement calls for the establishment of a joint management board whose functions will be:

- overseeing other groups created by the Agreement to ensure their compliance with its objectives;
- reviewing resource plans and policy decision;
- initiating new work;
- realizing fiduciary responsibilities;
- hearing public complaints;
- developing terms of reference and staffing a forest inventory of Clayoquot Sound including plant and animal species and culturally modified trees.

The Board's decisions must be ratified by a majority of aboriginal representatives. If a recommendation of the Board is not followed within 30 days, and a Board member so requests it, Cabinet can be invoked. If Cabinet disagrees with the board upon the referred matter, a special council composed of the Hawiih, provincial ministers, and, if appropriate, a federal minister shall meet to consider solutions. What will happen if this Council cannot resolve outstanding issues within given timeliness is not specified.

Legal Matters

The agreement is designed to be without prejudice to the issues and processes involved in treaty making, or outstanding related court cases. Where a court of law may find any part of the agreement to be illegal, it is not to affect the remainder of the agreement, which may or may not alter the spirit or the intent, depending on what goes missing.

To circumvent possible future implementation problems, the Agreement recommends exploring ways to amend existing legislation before legal problems arise.

Economically Viable Alternatives

Nelson Keitlah has said that if sustainable logging is possible, this would be considered. When asked about the B.C. government's and the logging industries' relentless push to practice 'forestry' in Clayoquot Sound,

Francis Frank replied that the Nuu-chah-nulth have led a marine-based life style for the past 5000 years, and that this is not about to change to logging. He expressed the wish to make tourism the mainstay of his peoples' future and hopes that this agreement will conserve pristine landscapes and resources long enough to obtain permanent protection by treaty.

A list of general economic intentions includes "increasing local ownership within the forest industry". Another is the creation of a joint working group to consider a land- and water-based list of sustainable economic enterprises in the region including:

- exploring the concept of a tribal park
- foreshore management and shellfish harvesting
- value added component of the forest industry
- the whale watching industry
- Tofino Airport and Pacific Rim National Park
- completing and implementing the "Living Hesquiaht Harbour Plan".

An alternative to intrusive resource extraction in Clayoquot Sound is ecotourism (Francis Frank, December 1993: Western Canada Wilderness Committee, summer, 1993). For example, Joe Martin and his brother from Tla-o-qui-aht took the initiative several years ago to set up a whale watching business in Tofino, as well as prevent the degradation of Clayoquot Sound's natural resources until the treaties are actually signed.

Similarly, the Hesquiaht have built a lodge next to a popular coastal hot spring destination on their territory.

Through their 3 year old "living Hesquiaht harbour study" and the support of this agreement, they are hoping to rehabilitate and conserve marine resources (Nelson Keitlah, chairperson, NCNTC Central Region) that were destroyed by International Forest Products (Interfor) through landslides and siltation caused by previous logging (Sam Miki, Hesquiaht research coordinator and Hereditary Chief Simon Lucas, B.C. Aboriginal Fisheries Commission).

Funding, Training and Employment

Funds to implement the economic initiatives consist of $250,000 initially and $500,000 per fiscal year thereafter for as long as the agreement stands. A rough calculation to help understand what this kind of money can accomplish follows:

The Agreement envisions aboriginal people to be funded for training:

- to become foresters;
- to work in silviculture;
- stream rehabilitation;
- salmon enhancement;
- road reclamation
- recreation site and trail construction and maintenance;
- to become park and forest wardens and managers;
- to develop skills in tourism and other businesses
- to realize community and infrastructure opportunities.

According to Christoph Danninger, a licensed European forester presently studying forestry in B.C., sustainable forestry techniques are not presently taught in British Columbia. In Europe, training even an ordinary forest worker to become familiar with sustainable forestry techniques takes from 2 to 3 years. Hence, for the sake of simplicity all potential training costs have been estimated for two years. A minimum of four expert instructors would be necessary, namely in the areas of forestry, aquatic ecosystem rehabilitation and management, business development, and engineering. At $60,000 per annum for two years this would subtract $480,000 from the total $1,250,000 endowment, leaving $770,000 to be spent on student wages of, say, $30,000 per annum over two years, i.e., 12.8 students.

Thus calculated, the number of potential skilled jobs created as a result of the agreement is no more than 12 over a two year period. This neglects infrastructure and other costs associated with such a training program, which would have to be factored into a more realistic 'job generation through training scheme' than the simplistic model presented here.

The stated economic goal of the agreement is to reduce aboriginal unemployment levels to those comparable in the local non-aboriginal population. The funding levels envisioned in this agreement or this level of employment generation will not be able to comply with this intent (Valerie Langer, Friends of Clayoquot Sound).

To put the amount of funding provided for this agreement's implementation into perspective, the B.C. government invested in $50 million worth of shares in MacMillan Bloedel just a few days before the Clayoquot Sound Land Use decision in April 1993. It has been argued by members of the media (Hume, Vancouver Sun, April 1993) that this money could have been more appropriately spent. One example of a more appropriate investment this money was submitted to the provincial government and to the NCNTC for consideration. It involved establishing a regional educational facility based on the Renewable Resource Technology Program of Arctic College in Fort Smith, N.W.T. (Correspondence between Silvaine Zimmermann, the office of John Cashore (then Minister of the Environment, now Minister of Aboriginal Affairs; Francis Frank, and Nelson Keitlah).

Resource Use In Clayoquot Sound

About 23% of Clayoquot Sound has been logged within the last 30 years (Satellite Map, Sierra Club of Western Canada). The remaining landscape includes two major watersheds Megan and Clayoquot containing 2 of the last 6 of an original 97 primary watersheds for more than 50,000 hectares on Vancouver Island, as well as 3 smaller secondary watersheds.

Non-consumptive Users

These ecosystems also harbour old growth dependent species such as the endangered Marbled Murrelet (Schwaegerl, Wulff; Western Canada Wilderness Committee 1993); hitherto undescribed species of tree-

substrate dependent lichens (Wulff, Freihe Universitaet Berlin, 1994), unusually high densities of bear dens in hollowed out trees, and it is the least fragmented of the remaining old growth left on Vancouver Island. The biodiversity of such ancient rainforest watershed is incomparable with second growth forests. Neither government nor industry has ever undertaken detailed ecosystem-wide research efforts oriented at documenting and studying this diversity of life forms and habitat structures in Clayoquot Sound. However, such initiatives were undertaken by the Hesquiaht First Nation just over three years ago, and the Biosphere Project two years ago, along with volunteer researchers of the Western Canada Wilderness Committee and Conservation International.

The forest is also becoming an important recreational resource for wilderness tourists with the Hot Springs Cove Trail, Meares island Trail, Clayoquot Valley Witness Trail. Furthermore, these ancient forests are of important cultural and spiritual significance (Francis Frank, Joe Martin) - both anthropologically and currently.

User Conflicts

Prior to the signing of this agreement, the above described values - whether scientific, cultural, or recreational - were not assigned any significance by the B.C. government nor the logging industry. The B.C. government was not concerned about the opinions of stakeholders other than the forest industry. To get the government's attention, environmentalists staged the most numerous and continuous mass demonstrations and acts of non-violent civil disobedience in Canadian history during the summer of 1993.

International powerbrokers became concerned in response to public protests over poor forestry practices by the transnational forest companies operating in Clayoquot Sound, as well as the B.C. government's disregard for aboriginal peoples' rights. This led to fibre contract cancellations and finally to the threat of international economic sanctions against B.C./Canadian forest products.

Economic Importance of Forest Resource

The only users of the forest resource presently drawing a direct monetary benefit are the logging companies and their employees, including 27 direct jobs for Clayoquot residents, none of whom are aboriginal. Quantifying and qualifying indirect and other uses such as cultural, educational, spiritual, and recreational must still be done. The south east portion of Clayoquot River Valley is an important area for the traditional use of living cedars, as evidenced by the density of culturally modified trees.[6] The agreement strongly protects such trees from being disturbed in any way.

The agreement does not include any specific agreements with any private companies to date. What the agreement does spell out in greater detail is how much timber can be cut, where, and by what date without any commitment to transferring land use rights from the transnational logging companies to the First Nations on whose traditional territories they operate. However, the various decision making and advisory bodies

[6]Francis Frank, pers. comm. Dec. 1993.

mentioned in the Agreement may be able to delay such activities if management plans put forward by the logging companies are not deemed satisfactory by the joint management bodies.

Conflict Resolution Strategies

Prior to the mass demonstrations of 1993, the Harcourt government responded to environmentalists' concerns by financing a pro-logging industry propaganda campaign, and undertaking several trips to speak with customers, politicians and media in Europe to attempt to undermine the credibility of the environmentalists and their message. Only when the provincial government admitted to poor logging practices, committed itself to improve forestry practices, and entered into serious negotiations with the First Nations, did the government's credibility improve among European members of Parliament.[7]

Potential or Existing Conflicts

Presently, the forests of Clayoquot Sound are still covered by tree farm licenses which cover most of the valuable valley bottom timber stands except those of the Megan Valley, designated as parkland since April 1993. Logging in Clayoquot Sound is dominated by two transnational logging companies, MacMillan Bloedel and Interfor. As long as these stakeholders 'handle' the resource, the distinctions between the users and

[7]pers. commu. with members of the Canada Delegation of the European Parliament. S.Zimmerman. Jan1994.

managers of the past will continue to be blurred. Both transnationals have immensely powerful lobbies in the government and an abysmal environmental track record. MacMillan Bloedel alone has 22 convictions under the Fisheries Act, the Environmental Protection Act, Ontario Water Resources Act, Pesticide Act, and the Waste Management Act between 1969 and 1990 as compiled for Sierra Club of Western Canada. Interfor logging practices have caused landslides and erosion in the Escalante area of Clayoquot Sound (verbal communication by Chief Simon Lucas and 1993 videotape documentation by Western Canada Wilderness Committee).

Lack of Confidence

It has been noticed by Adriane Carr of the Western Canada Wilderness Committee, that most of the chief aboriginal negotiators are strongly opposed to clearcutting in Clayoquot Sound. Nevertheless, the First Nations were unable to incorporate any direct wording against clearcutting into the Agreement. This worries some groups like the National Resources Defense Council about the real power First Nations will have when attempting to implement their positions in joint-management bodies.

As long as the Agreement fails to outlaw clearcutting and these transnational forest giants are allowed to harvest in Clayoquot Sound, the environmental community will lack confidence in B.C.'s commitment to changing forest practices. Greenpeace and Friends of Clayoquot Sound are now focusing on these companies' track records in their boycotting campaigns.

Polarization

Intransigence can be expected to continue, as reflected in the forest workers' mass rallies on Vancouver Island in opposition to Council on Resources & Environment (CORE) report during March 1994. Forest giants have led a very effective scapegoating campaign against environmentalists to divert attention away from the results of past over cutting and efficiency management mechanization schemes. Under-educated forestry workers fear losing high paying blue collar jobs, and this undermines their willingness to accept change, or to accept the rights of other resource users.

Conclusion

It is too early to tell whether the hopes and aspirations of the First Nations and environmental groups will be met as the Agreement was only signed a few weeks before the writing of this analysis. If it manages to delay further logging in Clayoquot Sound until Treaties are signed, the somewhat tenuous partnership between the Nuu-chah-nulth Tribal Council, Central Regional, and B.C.'s largest and most active environmental groups may be strengthened, benefitting the long term priorities of both groups. If implementing the spirit of the Agreement fails, the provincial government will lose face in the international community, which may result in trade sanctions, reduce options for everyone, and hurt forest workers as well as their employers and the loss of biodiversity and the old growth forests.

2.5 Denendeh Conservation Board

Northwest Territories

In anticipation of the successful negotiations of the Dene/Metis Comprehensive Land Claim, the NWT Denendeh Conservation Board (DCB) was set up in the late 1980s. The membership of this strictly advisory board consisted of five aboriginal, and an equal number of representatives drawn from the government and public. It was modelled after the Wildlife Management Board, provided for in the initialled sub-agreement of the Dene-Metis comprehensive land claim Agreement-in-Principle. The main goal of the DCB was to reach consensus on issues such as establishing commercial and subsistence wildlife quotas, reviewing scientific research results, and generally make resource management recommendations to the GNWT Minister of Renewable Resources.

> " The DCB was created in 1986 to deal with renewable resource issues of interest to residents of Deh Cho, Sahtu, North Slave, South Slave, and McKenzie Delta regions of the western NWT; to make recommendations to the Minister of Renewable Resources on areas such as wildlife habitat and forestry with the Department's mandate."

While guidelines had been drafted in the previous year, the Board members, while recognizing that some provisions had since become outdated, accepted them as interim guidelines for operations. The Dene-Metis wanted the following in their Agreement:

> A) Exclusive game and fish harvesting rights on whatever lands and waters they were able to acquire through the land claim;
>
> B) Priority harvesting rights over those of competing hunters and fishermen, aboriginal and non-aboriginal throughout the settlement area, so that in the event of harvesting quotas being established, the Dene and Metis harvest would be the last to be restricted;

C) Guarantees that the Dene-Metis priority harvesting rights would be based on minimum needs level established by a survey formula set in times of abundant game and fish availability.

D) Exclusive trapping rights to take fur-bearing animals within the settlement region;

E) Priority rights with respect to commercial opportunities associated with game and fish harvesting and products;

F) A strong game agency in which the Dene-Metis would play a dominant role in the management of wildlife, fish and habitat of wild creatures throughout the claims settlement.

When the Dene/Metis Comprehensive Land Claim fell apart over differing views on "extinguishment", the DCB lost the potential construct within which it was intended to operate and was finally formally dissolved in the spring of 1993 after a long, slow death.[8]

The failure of the Conservation Board rested on five major problems (St. Germaine, 1991:20):

1) The DCB was losing the support of the aboriginal people, and thus becoming ineffective. To resolve this, it was recommended that:

- existing local and regional management structures should be organized to get the most of the communities. For example, use the local hunting and trapping association; or incorporate into the regional level council;

- increase communication with communities and stakeholder groups through formal news releases and bimonthly newsletters to maintain a high profile; and

- increase the separation between the DCB and the GNWT Department of Renewable Resources. DCB's identity and credibility had suffered because of it. For example, the simple act of setting up a separate phone line would distinguish it from the government department.

[8]Bill Erasmus, National Chief, Dene Nation, pers. comm. 1993.

2) In practise, the mandate of the DCB did not emphasize the conservation aspects of resource management. Instead, more emphasis was spent on regulation and mitigation of human activities that may impact negatively on natural resources, such St. Germaine recommended that the objectives of the DCB should be rewritten to emphasize the primary role the Board has in wildlife management and conservation and de-emphasize the objectives related to people.

3) The members of the DCB have not been as effective as they could be. The CB had become ineffectual because the members were not fully prepared to participate, or were not present, resulting in a lack of continuity. The wide spectrum of opinion, regarding what the role of a Board member ought to be, also contributed to this confused state. St. Germaine recommended that:

- The role of Board members be clearly defined and agreed to by all members. The manner is which members are delegated or elected to the position will, in large part, determine how much authority and legitimacy a member has with which to make decisions- without having to go back to his/her constituency for extensive consultation.

- Ensure quality participation of Board members by formulating and enforcing a strict code of conduct, ie; removing a member if a set number of meetings were missed. This makes members take the Board more seriously.

- Maintain the current representation split of 50% nominated by aboriginal organizations and 50% nominated by government.

- Redefine the quorum to appropriately preserve the 50/50 split should less than the full Board be meeting; and

- Establish and implement an effective committee structure to facilitate the deliberation and research of important issues before they are brought to the full Board.

4) The DCB had not established a focus and agenda for itself. Aside from the perception that the DCB was an extension of an existing government agency, the fact that the DCB responded most often to requests from the Department of Renewable Resources or third party interests (ie; non-aboriginal), simply clarifies the need

for an identity and purpose of its own. St. Germaine recommended that:

> - the DCB should conduct strategy sessions to determine what its long term agenda ought to be; and prioritize the needs of the Department of Renewable Resources as distinct from other user groups.
>
> - The DCB should establish meetings based upon single themes asset out from the above deliberations of needs assessment.

5) The resources allocated the DCB did not match its assigned responsibilities. Since the original intent of the DCB was to pre-implement the wildlife management component of the Comprehensive Dene/Metis Land Claim and that process had dissolved, the expectations of the DCB fulfilling the earlier Agreement in Principle wildlife management mandate did not materialize because of insufficient resources and authority.

St. Germaine recommended that the DCB should receive adequate funding for the following items:

- a full time director;
- an effective working committee structure;
- an increase in the number of meetings;
- production of a bi-monthly or quarterly newsletter;
- conduct independent professional reviews of issues;
- assuming that local and regional wildlife council structures become established, cease all regional Board meetings to reduce travel costs.

It is interesting to note that the perception of aboriginal people of government control over the decision-making process of the Board may have been unduly influenced by the very **nature of information** it requires to make sound resource management decisions.

The apparatus of existing and proposed regimes for natural resource co-management in northern land claims and government land use planning initiatives, includes the equal representation of aboriginal harvesters in its decision-making processes. This is **merely a political statement**. Although the theoretical and practical validity of traditional indigenous knowledge has been substantiated and continues to be documented at an

ever increasing rate, one must challenge what specific categories and types of information are being used to deliberate northern resource management issues/problems.

The dynamics of decision-making, after the German philosopher Jurgen Habermas (in Dahl, 1991:123) is ideally reached in group consensus on questions of truth and morals which could only be arrived at by discourse in an "ideal speech situation" (whereby true communication is only possible if the participants share a common information and belief system). If the premise is accepted that traditional indigenous knowledge is as theoretically valid and dynamic as that of western science, one must question the specific kinds of information applied in existing and proposed resource management regimes. The risk is that in comparable circumstances indigenous knowledge will remain subordinate to science (Johnson 1992 b:5).

Johnson also asserts that natural resource management necessarily encompasses the related spheres of i) aboriginal self-determination; ii) articulated modes of production (economy); iii) community spiritual healing; iv) youth and community education; v) cultural enhancement initiatives; and vi) integrated community planning processes that include traditional indigenous knowledge principles.

This concern with the principles of northern resource management was clearly demonstrated at the 21st Dene National Assembly, Bell Rock, July 29-August 5, 1991, when the following motion was unanimously passed (supporting documentation in a letter to Honourable Titus Allooloo, Minister of Renewable Resources, GNWT, from Bill Erasmus, National Chief of the Dene Nation, sent on Sept. 3. 1991):

> WHEREAS the Federal Government broke off negotiations with the Dene and Metis on November 7, 1990, which nullified the Final Agreement initialled on April 9, 1990; and
>
> WHEREAS the Denendeh Conservation Board was established to pre-implement the wildlife provisions of the Final Agreement; and
>
> WHEREAS the Dene Nation rejects the current structure and operation of the CB;

THEREFORE BE IT RESOLVED the 21st Dene National Assembly support an independent evaluation of the DCB to include direct consultation with the Dene Nation and funding for the development of a Dene position on wildlife management; and

BE IT FURTHER RESOLVED that the National Assembly support the following principles for a revised DCB or a new wildlife management body:

a) Increased resources for administrative and technical support (in) all the local, regional and national levels;

b) Increased reliance on traditional knowledge as an essential part of wildlife management; and

c) More effective consultation with communities and greater Dene control of wildlife harvesting regulations consistent with the Sparrow decision.

Shortly afterwards, the DCB sent out a press release on October 28, 1991 stating that:

"The DCB has decided to seek public opinion on the future of the Board. Late this summer, the Board commissioned Mackay and Partners Management Consultants to conduct an independent assessment of its operation and performance and provide recommendations respecting the future of the Board. The final report of the consultant was released last week during the Board's meeting in Yellowknife."

"In light of the failure of the Dene/Metis Agreement-in-Principle and the apparent lack of understanding of the Board's role by community representatives, members of the DCB felt an independent assessment and review was required", said Board chairman Jack Williams, "It was apparent that it was necessary to re-establish community-based participation for the benefit of the ongoing development of the Board."

The evaluation, written by Warren St. Germaine of the consulting firm, concludes that the DCB has had some notable achievements and has provided a useful forum for the co-management of resources that was not present prior to its creation.

Despite the successes enjoyed by the Board, the report also outlines some of the problems and setbacks

the Board has faced. One of those problems, communication between the DCB and the public, has resulted in a general lack of understanding by the public and elected representatives about what the role and function of the DCB is and what its mandate is. "The problems have been recognized, now we need to find solutions."

The President of the Metis Nation, Gary Bohnet said, "The DCB has not lost the support of all aboriginal people". Bohnet said he believes there is still a need for a co-management body such as the Board. However, he, like many other people, believes there needs to be more direct input from people at the community level.

Bill Erasmus, National Chief of the Dene Nation, has similar concerns. "This Board needs to communicate more closely with people at the grass roots level". He planned to discuss the future of the Board at a meeting of Dene chiefs in November 1993. The DCB is sending copies of the consultant's evaluation to interest groups throughout the western NWT. These include Dene Nation community councils, Metis locals, regional and tribal councils and the NWT Wildlife Federation. Each organization will be asked whether it supports the continuation of the Board and will be asked for specific direction on the future operation of it (DCB 1991). According to John Bailey, the DCB's first chairman;

> "Nobody mourned the disappearance of the Board when in October 1991, it ceased to meet. The Board had proven that it cannot compete with the State at law-making. Now, was the Board any more the hope for extension of Dene/Metis customary law and ways into the field of human relationships with country and wildlife. It had become just another disbanded agency - an experiment gone wrong."

In hindsight, we may learn more about northern co-management regimes by studying why this particular case failed:

i) it was only an advisory body with no legal decision-making powers;

ii) conversely, the GNWT Minister of Renewable Resources had final discretion;

iii) the DCB was widely perceived as being part of the GNWT apparatus; and iv) it had no independent fiscal, research nor planning capacity.

2.6 Zuni Conservation Project

Pueblo of Zuni, New Mexico

The Zuni of New Mexico took the opportunity to create a community-based resource development plan for their reservation using a $25 million dollar out of court settlement received from the United States Government. They developed the plan through much community consultation and are carrying it out now. It is possibly the only case in Indian Country where money is set aside in a trust fund to further natural resource management.

What Kind Of Agreement Is It?

The plan is purposely integrated for protection and development of waterbeds and freshwater resources, forestry, grazing of livestock, fish and wildlife, cultural resources, and lastly, protection from solid waste, especially the illegal transportation of it. It is to be carried out through a program of watershed rehabilitation using a computerized system for monitoring and management. This will be done,where possible, through co-operative programs with other public and private agencies. An important first step is simply identifying and acquiring lands necessary to sustain resource development. To ensure that the Conservation Project stays under Zuni community control, programs are being developed for training Zuni people to fill the professional positions to implement the plan.

The plan is divided into five sections:

1) the Zuni Declaration on Environment and Development;
2) Cultural and Economic Dimensions;
3) Conservation and Management of Zuni Resources for Development;
4) Strengthening the Role of Major Groups;
5) Means of Implementation.

Background

In the early 70's, the Zunis realized that there was an overwhelming amount of damage to their 475,000 acre reservation from erosion. The sources of erosion were overgrazing, overlogging, and failed dams. There was an additional issue of lands taken away without permission nor compensation, plus coal and salt taken from Zuni lands without compensation either. The final insult was the construction of roads over archeological sites, taboo in the strong Zuni culture where respect for one's forefathers is paramount.

The agreement came about when the Zuni took the federal government to court over a breach of fiduciary responsibility to manage the lands properly on their behalf. In short, their argument was that the federal government allowed it to happen, so whether through intent or neglect, the cause was not up for debate.

That decade was used to thoroughly document the legal and environmental abuse. The Zunis felt so strongly about it that they risked the advance of over a hundred thousand dollars of their own funds in preparation for their case through expert witnesses and Zuni depositions, while being fully aware that they could very well lose in a court decision. But they felt there was nothing to lose and everything to gain. The approach was to document the impacts to the land from the most intensive century of use during approximately 1840 - 1940. At the same time, several strategies were used to ensure that if it ever went to court, that the Zunis would have as much of an upper hand as possible. For example, there was a change of venues for the court so that if it did occur, it would be close to Zuni territory.

The U.S. Government finally decided to settle out of court because it was already becoming too expensive along with the threat of it dragging on for another decade. Government legal opinion had probably seen little chance of their winning against an increasing amount of damning Zuni evidence.

Instead, an offer was made for reparation of past damage and protection and development of remaining natural resources, though there was no admission of fault by the United States, as is often the case to protect themselves from any future liability. An act of Congress passed on January 23, 1990 was needed to finalize

the deal, called the Zuni Conservation Act.

The Zuni Conservation Project consists of a staff of over 60 persons working on the formulation of a Sustainable Resource Development Plan. The financing is dependent on the interest generated from the $25 million trust fund (there is another indirectly related trust fund of an equal amount to compensate for the federal government's acquisition of land and resources, which is not a part of this conservation plan). There is no time limit - as long as the trust fund is properly invested and used as planned, there should be perpetual funding from the interest alone to match the planning envisioned for the next century or two, which is the Zuni projection of time.

The Act of Congress allowed two years for the community to develop the plan, which was just completed last November 1993, and is now in its first stage of implementation. As mentioned earlier, the community of 9,000 Zuni were involved in all stages of the development. It is felt that the Zuni religion guides most everything in this tight-knit community. Since everyone lives in one small section of the reservation, like most communities, there is little opportunity for anything to get out of hand. This is because, diplomatically stated, everybody is intimately aware of everything that goes on, with individuals safeguarding their rights through demanding a high level of accountability of their leadership and employees.

Achievements

The Project is staffed mostly by Zunis, assuring that the Tribe's local cultural knowledge is used. Intergenerational equity is additionally assured through consultation of religious leaders, elders, and youth. Special interest groups within the community are also extensively consulted on matters pertaining directly to them. There are Zuni Pueblo irrigation associations, livestock committees, a fish and wildlife committee, a cultural resource advisory committee, women's groups, and others which may come into being as issues arise.

Employees spend a lot of time communicating in the field with groups and individuals. It is a very social interaction yet necessary to continue community support. The Director of the Conservation Project, Jim Enote, sees science as the easy part, tacked on to the end to actually get a goal accomplished. It is the articulation of a goal, and method agreed to by the community, that is the laborious part.

It was felt that the greatest short term benefits were that the whole planning process created an environment of unity amongst the land users and the staff of the various disciplines.

Conflict resolution to settle outstanding land use conflicts was a large part of getting the planning process off the ground. This was done through discussion until a consensus was reached. It was accepted that the consensus may be only good for a year or two, until another factor came into play, demanding another round of discussions. Knowing how families are, and the dynamics of community life, it was expected that decisions were only temporary, and that flexibility is required to constantly adjust to new developments.

None of the decisions are legally binding, at least under federal law. The compliance for all decisions so far can be evidence of the strength and respect for the government of the Zuni by its members, though. The need for consensus guarantees that the decisions are taken seriously, so there have been no searches for alternative justice elsewhere. One may make the conclusion that it is deemed fair, and therefore useful and worthy of support.

Although there are many components to the Conservation Plan, there are limits in what can actually be accomplished due to the limited access to the trust fund. Jim Enote's wish list includes a conservation corps, promoting volunteerism, symposia, developing an environmental justice system, publications and printing, research into alternative energy, greater involvement of youth, more communication, and research into ecological and social economics, among other things. Right now the focus is resolving outstanding issues and implementing the practical aspects of the new plan.

Despite the Act stating co-operation with the Secretary of the Interior, the federal government has been pretty much non-participatory, nor does it have final decision-making authority. Rather, it is up to the community to decide what is done so that staff can prepare the budget for final ratification by the Zuni government. It is more important to the Zuni to get access to the money from the trust fund. This is substantiated by their legal opinion contending there is no requirement for obtaining signing authority by the Secretary of Interior for advances on the money. In fact, with the Secretary of Interior only seen as a burden due to their lack of expertise or lack of own funding to be a better partner, the Zunis are looking at placing all of the funds into private investments.

The experience of international experts in sustainable development provided the appropriate transfer of technology such as a compatible geographic information system and global positioning system. The development of their conservation plan, according to the Zuni Conservation Director, "is a hybrid of experience and technology adapted from around the world but with a solid base of Zuni cultural values ingrained into everything".

The Zuni Conservation Project is an example of greater co-operation with third world developing countries, where there is greater dependence on traditional knowledge than on the more science-based approaches taken in developed countries like the United States. The Zuni work with peoples in Nepal, Thailand, India and elsewhere; and are heavy contributors to the international development of indigenous intellectual property rights, most notably through the international Convention on Biodiversity.

Jim Enote hopes that in the long run, Native communities in North America will benefit from their experience and knowledge. It is felt that North America is actually missing out, despite other tribes being in similar situations. There is an open invitation to all who are interested, with a "package tour" offered to all visitors of the complex, consisting of a renovated lot of former garages. All disciplines - fisheries, watershed management, forestry, are adjacent to each other and meet often. There is little to no separation, everybody is familiar with each other's projects and has a hand in them, each discipline being the initiator and leader

for a particular project most directly related to them.

The Zuni foresee that other parts of the country, and the world, may get so bad that others will want to settle in their territory. Already, some of their non-Native neighbors think that it is such a great place, with a watershed, forest, and agricultural land, that there are requests to relocate onto the reservation. This is one of the long term issues which is being candidly discussed to ensure that there is enough for Zuni population growth as well as sharing with non-Native neighbors into the next century.

Conclusions

As had been experienced in implementing many other agreements, people are looking for "a monument" as evidence of the conservation plan's success. According to Jim Enote, the physical monument is not there. However, the act of bringing the community together, resolving age-old disputes on boundaries and uses, is seen as a key element in the future success of the Conservation Plan. The trust fund had opened up opportunities to give the Zuni a capability to do things that they were not in a position to do before, due to lack of funding and resources.

The main Zuni recommendation, if they had to do it all over again, was to leave out any requirements for co-operation with government agencies. The most is that co-operation would be at the discretion of the Native community. The Bureau of Indian Affairs, on behalf of the Secretary of the Interior, simply does not have the capability to do its part and is felt to be more of a burden than anything else. The other suggestion by the expert witnesses used in the seventies was to hire private consultants to develop the Conservation Plan, preferably theirs. This was turned down in favor of nearly full Zuni involvement, which lead to the community taking ownership and providing more initiative to get things accomplished.

2.7 Master Memorandum of Understanding Between the U.S. Department of Agriculture, Forest Service, and the Native American Fish and Wildlife Society

On May 18, 1993, a Master Memorandum of Understanding (MOU) was signed in a ceremony in Saskatoon at the Native American Fish and Wildlife Society conference. The signatories were the U.S. Department of Agriculture, Forest Service (FS), and the Native American Fish and Wildlife Society (NAFWS). The purpose of the MOU was "to establish a general framework for co-operation between the FS and NAFWS to accomplish mutually beneficial projects and activities in order to achieve the common goal of advancement of wildlife and fish habitat knowledge and the skills and stewardship of wildlife and fish resources. This co-operation will serve both parties' mutual interests."

The Forest Service (FS) has among its duties the responsibility of increasing the public's knowledge, awareness, involvement, and appreciation of natural resources. The FS, in cooperation with the states, manages national forests and grasslands. They are a multiple use natural resource agency of service to private landowners that want to apply effective forest and rangelands practises on their lands.

The NAFWS is a non-profit organization established to support the development of Indian tribal government fish and wildlife capabilities within a professional framework. The society is comprised of over 1000 professional biologists, managers, and technicians representing all aspects of tribal fish and wildlife management and conservation enforcement as well as 70 tribal governments and 8 tribal organizational memberships. Tribal wildlife and fish programs are managed on over 52 million acres, including projects designed to help implement the North American Waterfowl Management Plan. Although Alaska is a fairly new member, most of the tribes in the U.S. belong to the Society.

Originally developed by Carol Jorgensen[9] and Jack Capp[10] in the Alaskan region, the MOU reached the Forest Service office in Washington, DC. They were keen on the idea and decided that instead of just being applicable to Alaska, it should be applied to the rest of the country too.

Unlike federal lands reserved for Indians in Canada or the "reservations" in most of the lower 48 states, Alaska has no reserve land. In the 1960's, the Native people of Alaska began fighting for their land. The State of Alaska took the land around the villages. The Native peoples banded together to claim the land for themselves.

As a result, the Alaska Land Claims Settlement Act was passed in 1971. The Native people received title to 44 million acres of land and $1 million. The land title was not settled until late in the 1980's. The land and the money was used to set up corporations, with the community people as shareholders. The understanding was that Corporations were supposed to make profits for the shareholders. A board of directors was set up, along with CEO's.

The Alaskan Native people found this totally foreign concept of "ownership" and responsibilities defined by American law difficult to handle, coming from a subsistence lifestyle with little formal academic schooling. As it turned out, to no one's surprise, this was not in the indigenous peoples' best interests. Money was lost in vast amounts. Conversely, the people who made money were the generally non-Native lawyers, consultants and experts that told them how it should be done. Meanwhile the Alaska Native Corporations Act had virtually wiped out any recognition of aboriginal title and rights.

[9]Executive Director of Arctic Marine Research Centre and vice-president of the Native American Fish and Wildlife Society.

[10]Director, Department of Fish and Wildlife, State of Alaska.

Unlike other MOUs, this MOU does not apply to a specific group of Native people in the use of a particular natural resource. It does not even mention Alaska by name in the text. Rather, it is with the Forest Service and will apply optionally to 70 tribal governments and 8 tribal organizational memberships, most of them members of the Native American Fish and Wildlife Society.

Viewed as a starting point, the MOU is open-ended and not limited to a single resource or tribe. It can be used by individual states and tribes to serve as the basis for further negotiations. Although it is not formally approved by Congress, the FS views this MOU as an agreement in a similar perspective as they would a policy. The MOU gave the FS the leverage it needed to work with the NAFWS.

In the one year it has been in existence, the NAFWS has derived a few encouraging educational benefits from it. The FS has provided financial support to the NAFWS in various ways including providing funds to cover tuition costs for members of the Society to upgrade their skills. It also provided funds to high school students to allow them to attend student practicums that the Society holds. Students at these practicums are exposed to Native biologists, wildlife managers, enforcement officers and elders. It is a chance where they can blend the traditional science along with the western science.

> "I was trying to get money from the FS to help with our youth practicum. Once that MOU was signed, that actually enabled the FS to give us money. Prior to that, they had no way of actually giving us money directly...but once signed, because it specifically states for educational purposes for Native American youth, which was specifically what we were doing...Boom! That opened the door, they were able to give us money".[11]

The FS was also involved in putting together the Alaska Regional Conference as well as helping out on a major clan conference in Hanes, which provided an opportunity for all the clans southeast of Alaska to get together in Canada.

[11]Phone conversation with Ken Poynter, Executive Director, NAFWS, December 10, 1993.

In return, the FS receives co-operation with the aboriginal groups. The MOU has brought about a good relationship between the FS and the different tribes. This makes for a good working relationship when carrying out resource management projects or environmental impact studies. The co-operation and the participation the Forest Service now receives and the communication now taking place between the two groups enhances the work carried out. The FS finds that their work with the public is easier and has made them more efficient and alleviated some of the misunderstandings the FS has had with indigenous people in the past.

Some may find the MOU to be lacking in certain aspects. In regards to cultural affinity, some MOUs specifically mention the distinctiveness of the indigenous peoples involved. There is recognition, at minimum, to exercise their culture and blend traditional with contemporary practises in the use of the resources. Others go further by agreeing to recognize the inherent aboriginal and treaty rights, including the right to self-government. Nothing in this MOU explicitly acknowledges the aboriginal title to land or the cultural heritage possessed by the indigenous peoples involved. Although when you speak to C. Jorgensen, one of the key people behind this initiative, she comments that:

> "They (the FS) are recognizing it in the sense that I think there is an awareness...it's almost an unwritten kind of thing though, in the understanding of it. Everything we are dealing with in subsistence here is relating to customary traditional, spiritual and cultural uses by the people. The MOU is open-ended were we can still add things... again, it's kind of an implied understanding of respect for those things."

The only criticism K. Poynter has come across regarding the MOU, is from a few individuals who cautioned the FS for "not seeing this MOU with the NAFWS as a fulfilment of its trust responsibility to all federally recognized tribes." Since not all of the tribes in the U.S. are represented by the NAFWS, while the MOU has potential, it should not be seen as the answer to all concerns. When this was brought to the attention of the FS, they were willing to put this in the MOU as an amendment. However, the Society made it clear to the FS that it viewed the MOU as a way of the FS fulfilling its trust responsibility.

It would appear to some that the FS is making an attempt to understand the cultural differences of Native people. Actions like the FS contracting the NAFWS to help write their Native Liaison guide is a demonstration of this. As K. Poynter explained; "The society is currently working with the FS to put together an upper level manager's desk guide for dealing with tribes in the area of natural resources." This guide will serve to help other states that would like to sign an MOU with Native American tribes.

C. Jorgensen believes that through the MOU, the federal government tries to recognize that they must deal with the indigenous groups in Alaska at a nation to nation level. A government-to-government liaison officer works with the tribes. Part of his mandate is to work at understanding the relationship the indigenous people living, hunting and fishing on federal lands have to those lands and the ownership concepts of those people to the land.

This kind of information can be helpful when the two distinct societies try to co-operate in times when decisions have to be made, when the decisions involve federal lands, lands both groups recognize as being previously owned and used by Native Americans or Alaskan Natives.

The MOU may seem to be lacking because it does not explicitly state certain requirements deemed desirable by aboriginal people. It does however, contain key words that can, over time, address all of these issues. These key words include communicate, encourage, share, co-operate, partnerships, and joint project development. This is a far better approach to protecting the land while ensuring aboriginal access exists, as an interim measure until rights are dealt with, than the win-or-lose approach where the courts decide which group has rights to which resources. This way, access is assured, and conservation and protection of the resource(s) are assured too, both which are needed to fully exercise aboriginal rights to manage the land.

At this time, Alaska has signed MOUs only. The Alaskan Natives are hoping that they will get to tribal management in the years to come. As in other states where the Native people are managing resources under

their own government structures, Alaska is hoping to move forward and get into co-management, which they see as a concept utilizing the best of both worlds, using resources both groups have available. Once this step has been taken, it is only a matter of time before they proceed to the next step. Meanwhile, they are learning from other tribes that have gone through this process.

Culture

Some may find this MOU lacking in certain aspects. Some MOUs specifically mention the distinctness of the indigenous peoples involved and entitle them at minimum to define and exercise their culture and blend traditional with contemporary practises in the use of the resources. Nothing in this MOU explicitly acknowledges aboriginal title to land or the cultural values possessed by the indigenous peoples involved. This may be due to the generic use planned by the Forest Service to have it apply to many tribes in the United States.

It would appear to some that the FS is making an attempt to understand the cultural differences through such actions as contracting with the Native American Fish and Wildlife Society to help write their Native liaison guide.

Skills Development and Employment

In the one year it has been in existence, the NAFWS has derived a few benefits. The MOU gave the FS the leverage it needed to work with the Society. The FS provided financial support so that Society members can upgrade their skills. High school students now have funds to allow them to attend student practicums, thereby encouraging post-secondary education in natural science fields.

Conclusion

Viewed as a foundation or starting point, the MOU is open-ended and not limited to a single resource or tribe.

Rather, it can be used to serve as the basis for further negotiations. The benefit that Alaska has is using the experience of other tribes in the southern 48 through the NAFWS to guide their first steps.

2.8 The Indian Fish and Wildlife Resources Act of 1994

In the Senate of the United States

After over 10 years of work by various individuals and through the work of the Native American Fish and Wildlife Society, a bill was introduced in the Senate of the United States in 1993 titled the "The Indian Fish and Wildlife Resource Management Act of 1993". The companion document, "The Indian Fish and Wildlife Resource Enhancement Act of 1993" is before the House of Representatives.

Considered by some as long being overdue, the bill was designed to improve the management of Indian fish, wildlife, trapping, gathering and outdoor recreation resources, and for other purposes within the Bureau of Indian Affairs. The bill is not law at this time and is still under review. The Federal government explicitly states the trust responsibility it has to protect, conserve, restore, and manage Indian fish, wildlife, and gathering resources consistent with the treaty rights of Indian tribes" (Section 101).

In summary, the Act proposes to:

1) reaffirm and protect Indian use of and to conserve, manage and enhance the use of the resources by Indians;

2) enhance and maximize tribal capability and flexibility in managing fish and wildlife;

3) support the Federal policy of Indian self-government and tribal self-governance by authorizing and encouraging government-to-government relations and cooperative agreements between the different levels of government;

4) authorize and establish Indian bison ranching demonstration projects;

5) establish an Indian Fish Hatchery Program;

6) establish an Indian Fish and Wildlife Resource Management Education Assistance Program;

The first three objectives are the critical ones. The first addresses recognition in the use of the resources by Indians, with a reaffirmation of this and the objective to protect it. The second provides for Indians to enhance their capability to manage the resources and with flexibility. The third objective will encourage Indians to work with non-Native governments knowing that they are at the same level. The remaining three help to strengthen the bill by providing the requirements to carry out the above.

Management of Indian Fish, Wildlife and Gathering Resources

Once the bill is enacted, Indian fish and wildlife resource management activities will be supported through promises of a) government-to-government relationship between Indian Tribal governments and the US; b) protection of Indian fishing, hunting, gathering, or trapping rights guaranteed through treaty, statute or Executive order, or Federal court decree; c) development and enhancement of Indian tribal governments' capacities to manage resources; d) protection, conservation and enhancement of resources important to Indians and promote development and utilization of these resources; e) promoting development and use of resources for maximum benefit by Indians by using tribal resource management plans; f) authorizing and supporting tribal co-management or cooperative activities at levels of the decision-making; developing the resources required to meet Indian subsistence, ceremonial , recreational, and commercial needs.

Management Program

To help achieve the above objectives, a Wildlife Resource Management Program will be established within the BIA. Tribal management of Indian resources and implementation of this Act will be promoted through contracts, cooperation agreements, or grants. Any Indian tribe or organization can enter into a contract with

the BIA allowing them to plan, conduct, or administer any program, operation, or facility with any agency that provides technical fish and wildlife assistance currently administered by BIA.

The bill also has an avenue whereby a tribe or organization can request to have any activity having an adverse impact on Indian resources or Indian harvesting and gathering, reviewed with necessary actions taken to alleviate the impacts.

Management Activities

As part of the activities surrounding the resource management program, these may include but shall be not limited to:

1) the development, implementation and enforcement of tribal codes, ordinances, and regulations;

2) the development, implementation of resource plans, surveys and inventories;

3) conducting of fish and wildlife population and life history and habitat investigations, habitat restoration, harvest management, and use studies;

4) fish production and hatchery management;

5) the development of tribal conservation programs, including employment and training of tribal conservation enforcement officers; and

6) participation in co-management of fish and wildlife resources on a regional basis with Federal, State, local or foreign agencies.

Needs Assessment of Management Programs

To determine the needs of the Indian fish and wildlife resource management programs, an independent needs assessment will be conducted by the BIA six months after the date of enactment of this Act. The assessment will look at management efforts and investment made by the Federal government towards Indian fish and

wildlife resource management compared to federally assisted non-Indian fish and wildlife resource management.

The assessment will also review tribal codes, ordinances, and regulations in existence and the need to update these. It will also determine the need for professionals to administer Indian fish and wildlife resource management programs and the need for training, and developing the curricula. The assessment will also document the condition of Indian fish and wildlife resources and identify any obstacles to Indian access to federal or private programs generally accessible to the general public.

Indian Fish and Wildlife Resource Management Plans

To meet the management objectives, an Indian fish and wildlife resource management plan may be developed and implemented for each tribe, and in coordination with other resource management plans. The option of having Indians or BIA develop and implement the plan is open to the tribe or organization. The plan will;

1) determine the condition of the fish and wildlife resources,

2) identify specific tribal fish and wildife resource goals and objectives;

3) establish management objectives of the resources;

4) establish, where applicable, hatchery management objectives for the Indian Fish Hatchery Assistance Program

5) define critical values of the Indian tribe and its members and provide comprehensive management objectives;

6) use existing survey documents, reports, and other research from Federal agencies and tribal community colleges; and

7) be completed no later than 3 years after the initiation of activity to establish the plan.

Assistance

The BIA is authorized to provide financial and technical assistance to enable Indian tribes to update and revise tribal codes, ordinances, and regulations governing tribal fish and wildlife resource protection and use. If there is a need, tribal conservation officers, tribal fisheries and wildlife biologists, and other professionals will be hired to administer Indian fish and wildlife resource management programs under this program. Training will be provided for resource personnel including tribal conservation officers under a curriculum incorporating law enforcement, fish and wildlife conservation, species identification and resource management principles and techniques. Any other financial and technical assistance as determined necessary by the BIA will be provided.

Alaska Natives

If the bill as it now stands becomes law, all tribes and tribal organizations in the United States would have equal access to all that is contained within the bill, except those in Alaska. Section 201 (g) states:

> "...the Secretary may enter into grants and contracts with Alaska Native entities to provide financial assistance to assist such entities in expressing their views and participating fully in the Federal and State decision-making process with respect to fish and wildlife management activities in Alaska."

and in Section 605,

> (d) This Act shall not apply, except as provided in section 201(a), to lands and waters located within the State of Alaska other than lands and waters contained within the Annette Islands.

The view taken by D. Schwalenberg[12] in reducing the "Alaskan" component in the bill to an insignificant level of participation is that it "will drastically slow down the overall management development on the Alaskan land base which represents 20% of the U.S. area, 50 million acres of which is currently in ownership of Alaska

[12]Dewey Schwalenberg, Executive Director of the Bering Sea Commercial Fisheries Development Foundation, is wildlife management biologist by training. Pers. commun. April 6 & 7, 1994.

Natives"[13].

His argument is that although Alaska has a complex land ownership pattern, the Native people and their governments must still be entitled to protect the resources that are paramount to their cultural, religious, traditional subsistence lifestyles and physical existence. Mr. Schwalenberg goes on to say that "Practical management concerns require that special attention be provided for minority indigenous groups to ensure that the dominant society does not exercise undue constraints on the lifestyles of the indigenous people".

In his closing paragraph, Mr. Schwalenberg points out that:

> "It is ironic indeed that we are today discussing the legal authorization of Alaska Native government participation in resource management activities when, to my personal knowledge, many Alaska Native communities have already begun to implement projects to manage moose, caribou, bison, sea otter, marine mammals, musk oxen, marine and freshwater fisheries, and migratory waterfowl and seabird populations. The truth is that the indigenous Alaska Native people have historically been THE managers of their resources and are fast approaching an interactive level between traditional and scientific management. The appropriate language in SB 1526 (the bill) could dramatically speed up this process to the mutual benefit of native, state, and federal entities and, most importantly, to the protection and conservation of the resource".

Education in Fish and Wildlife Resource Management

Scholarship Program

Fish and wildlife management scholarships will be made available to full-time Indian students enrolled in management-related fields of study. Each student receiving a scholarship will be required to enter into an

[13]Letter to Honourable Daniel K. Inouye, Chairman Senate Committee on Indian Affairs, 838 Senate Hart Office Buldg, Wash. D.C. March 30, 1994 from D. Schwalenberg.

agreement whereby they agree to accept employment with an Indian tribe or organization, the BIA or the Fish and Wildlife Service, and work 1 year for every year assistance is given following completion of their studies. Scholarship assistance cannot be denied solely on the basis of scholastic achievement if the applicant has been admitted to and remains in good standing.

Fish and Wildlife Education Outreach

An education outreach program will be conducted to generate interest in careers in fisheries or wildlife biology. A program will also be maintained to attract professional Indian biologists for employment by Indian organizations.

Fish and Wildlife Biologist Intern Program

A Fish and Wildlife Biologist Intern Program will be established for at least 20 positions. Individuals selected must be taking studies leading to advanced degrees in fish and wildlife resource management-related fields. Those entering this program will be required to enter into an obligated service agreement to work in a professional fish or wildlife management-related capacity for one year for each year of scholarship assistance.

Those accepting will be required to work with their prospective employer during any break in school more than 3 weeks in duration. That time will be counted as part of the intern's obligated service agreement.

A Cooperative Education Program

A cooperative education program will also be maintained for the purpose of recruiting promising Indian students. These students interested in a fish and wildlife management career will enter into a cooperative work agreement. Financial need will not be a requirement to receive assistance under this program.

The above programs will be administered until a sufficient number of personnel are available to administer

Indian fish, wildlife and outdoor recreation and gathering resource management programs on reservations and in regional resource management areas.

Indian Fish Hatchery Program

An Indian Fish Hatchery Assistance Program will be established within the BIA to produce and distribute fish of species, strain, number, size and quality to meet resource needs, including but not limited to, Indian subsistence, ceremonial and commercial fisheries needs.

The BIA will submit a report identifying the facilities comprising the Indian Fish Hatchery Program, the maintenance and rehabilitation and construction needs of the such facilities; the criteria and procedures to be used in evaluating and ranking fish hatchery maintenance and rehabilitation project proposals submitted by the tribes, and provide a plan for their administration and cost-effective operation of a fish and hatchery maintenance rehabilitation project proposals submitted by Indian tribes.

Indian Bison Conservation and Management

Section 301 (a), this program allows Indian tribes and tribal organizations to develop and maintain an Indian Bison Conservation Program to meet their needs. Funds provided under this program can be used to conduct research related to Bison management. The program will also set up an Indian Bisons Ranching Demonstration Projects to support those tribes that want to initiate, manage, and maintain bison.

Native Hawaiian Community-Based Fisheries Demonstration Projects

This section recognizes Native Hawaiians as being a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago. Section 402 proposes among other things to support the involvement of Hawaiians and their communities in the management, conservation, enforcement, and economic enhancement of traditional Native Hawaiian fisheries, the rights to fish, and authorize and establish Native Hawaiian community-based fisheries demonstration projects.

Authorization of Appropriations

Section 501 states that "This act will authorize the appropriate sums as may necessary to carry out the purposes stated in this Act". The concern raised by P. Hayes, Director, Trust Responsiblity, BIA, is that under current budget limitations, this bill heightens funding expectations beyond reality. It is not clear what the budget allocations will be for this act, nor the funding mechanisms that will kick in once it is enacted. The phrase "as may be necessary" can be interpreted in many ways.

Miscellaneous Provisions

Protection is afforded to the Indian people and the trust responsibility the US has towards them. Section 603b covers this with "Nothing in this Act shall be construed to diminish or expand the trust responsibility of the United States toward Indian natural resources, or any legal obligation or remedy resulting therefrom".

Nor does the Act relieve the government of their treaty obligations through Sec. 604, since "Nothing in this Act shall be construed to diminish or adversely affect the rights of Indian tribes established in existing Indian treaties or other Federal laws or court decrees".

Although recognition is given in Section 101(5) in that "Indian tribal governments serve as co-managers...", Section 605(a) states.."Nothing in this Act is intended, or shall be construed as authorizing any expansion or change in the respective jurisdiction of Federal, state, or tribal governments in the management of fish and wildlife resources...". It would appear that, once this bill is enacted, nothing changes as far as jurisdiction of the resources are concerned.

Conclusions

As the bill is not law at this time and is presently under review, it is difficult to look ahead and predict the outcome. Some of the comments concerning the bill are the expectations of expanded service that cannot be presently fulfilled under current budget constraints; the appearance of it modifying portions of ANILCA and

ANCSA, two landmark authorities which provide for management of fish and wildlife resources in Alaska; and, the limitations of the wording in Sec. 101, finding (2) whereby the "United States has a trust responsibility to protect,...". P.Hayes[14] finds this to be too restrictive in that tribes have hunting and fishing rights both on and off reservation lands. The finding does not adequately cover the hunting and fishing rights of the tribes off trust held lands. The term "responsibility" should be deleted and the "and rights protection responsibilities" should be inserted. The additional language would clarify that the tribes have hunting and fishing rights both on and off the reservations.

As far as Alaska is concerned, it is unclear what impact the bill would have on the management of fish and wildlife resources in that state.

The bill is slated to be reviewed by the Senate Committee on Indian Affairs on April 13, 1994. Once it proceeds past this Committee, it goes to the Senate floor for vote. The Chairman will have the option of moving it forward or delaying it for whatever reason. The companion document will go to the House.

Once the documents have gone through the Senate side and the House side independently, it will go to a conference committee made up of a small number of Senators and Congressmen, who will form a joint conference committee on the bill and iron out any discrepancies. After this is done, it will be voted on. It will then be reviewed by the administration and if it is signed, it then becomes law.

In speaking with Ken Poynter and D. Schwalenberg of the Native American Fish and Wildlife Society, they are hopeful that it will be passed in 1994.

[14]Patrick Hayes, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Department of the Interior. In a statement to the Natural Resources subcommittee on Native American Affairs on S.1526. October 8, 1993.

The USFWS is concurrently working on a Native American Policy for their department which is an integral part of delivery of technical and financial services to Native Americans. It is expected to be signed soon after a final review by the Native groups is completed.

3.0 Reasons For Choosing Elements

This section describes a selection of elements that can be considered as a part of a natural resource agreement. The elements were chosen from a number of sources. They range all the way from terms found in older treaties and land claims that are expressed in a contemporary form; to new ideas just finding their way into discussions for natural resource managment.

No single agreement has all of the elements, although some elements appear in nearly all agreements. Certain elements may be seen as more important to one community and therefore are given a higher priority. Even when elements are the found in several different agreements, there is a different interpretation and practical means of carrying them out. This can depend on circumstances such as community dynamics, funding availability and the general practises of the local governments.

The elements are organized so that one starts at the beginning: the fundamental reasons for overseeing natural resources. The process of an agreement can be constructed so that it follows in a hopefully logical order: the need for political involvement to get the proper wheels turning; the nuts-and-bolts aspects to physically set up a management capacity; the administration to keep it running smoothly; and last but not least, the practical aspects of natural resources conservation.

Many of the elements intertwine in many ways, which is how it should be when holism is the intent. It is consistent with the indigenous cultural symbolism of the never ending circle because one part leads into another seamlessly. Yet there is an interdependence of the elements because the sum of them is greater than all the parts.

3.1 Culture and Spirituality

> "Native American sacred ways...guide a person's behaviour towards the world and its natural laws...One of the great strengths of Native American sacred ways is their viability or

> adaptability. These ways are viable because they were aboriginal, and in many cases still are, practical systems of knowledge. The "scientists" of the sacred were holy people working together, arguing, challenging, playing, so that life could go on; so that "The People" could, as far as possible, live well and long."[15]

The reason for starting off with spirituality and culture is because it is the basis for all facets of indigenous life; and, it works.

If a community is to have a feeling of ownership towards a natural resources management agreement, they must be made to feel that they created it and created it for themselves. Therefore, the agreement must reflect the culture of the community. Culture is the sum total of achievements and learned behaviours. Indigenous culture is an outward manifestation of a spiritual relationship with the Creator.

A basic tenet of indigenous cultures worldwide is the reason for being on this planet in the first place. It is said, in different ways, that the Creator made the earth for all natural things. Each of these, in turn, has a responsibility. The responsibility of taking care of the earth falls upon indigenous peoples. In return, the earth will take care of them. It is a balance of give and take, strengthened by a healthy respect for natural things, and reverence to the Creator.

The implications of responsibility are enormous: one's actions must effect the earth as little as possible so that future generations can also live. It is alternately referred to as thinking seven generations ahead, or borrowing the earth from the future generations.

It is understood that the Creator gives life. Life includes natural things that make up what is simply referred to as "the land". Therefore, life is the land, and since humans are living, the people and the land are one.

[15]Walters Beck, Francisco. The Sacred. Arizona: Navaho Community College Press. 1992.

It has often been said that when the land is taken away, the spirit that gives life to that particular group of indigenous people has been killed. What is left are shells of what were once human beings, forced to live on other peoples' terms and in their countries.

The contemporary challenge is to maintain the basic tenets of spirituality and culture within a dominant society of dissimilar values and culture. Conflicting values obtained from "outside" schools, media, employment and personal relationships can overwhelm traditional values that do not have as strong a foundation as they once did in the past.

Therefore, in exercising rights inherent in indigenous peoples' government to manage land and resources, the guiding philosophy must reflect the spirituality and culture of the local indigenous people. It should be nothing new nor foreign, since it is based on an existing way of life. However, it may include new thought to apply it to current issues. The final agreement will then reflect the individual identity of the people involved, including language and preferred communication methods, and allowing for a wide range of evolving lifestyles.

If, for example, ceremonies depend in part on the provision of certain plants or sites, the agreement should ensure that those resources are protected to maintain a current way of life. If the language is in decline, the production of educational materials in the Native language can be used to promote fluency.

Indicators of spirituality and culture can include:

- the frequency and types of traditional activities or ceremonies;
- the rate of participation;
- population speaking Native language;
- use of Native language in written, oral and visual media;

- trends in Native language use;
- the use of traditional medicine;
- the perceived value of traditional foods;
- traditional cultural facilities;
- elders' participation in activities;
- availability of Native teachers, and level of teaching in Native language;
- and level of craft production for sale.[16]

Lastly, the use of traditional ecological knowledge management systems (TEKMS) the application of culture as science, is increasingly recommended but can be difficult to distinguish or understood on its own terms, let alone integrated with western science. Many agreements stress cooperation, but it is often cooperation using western science methodology and data collection, with TEKMS not an integral part of management.[17]

3.2 Political and Legal Foundation

A spiritual/cultural foundation establishes the personal and societal source of responsibility to the land. A political/legal foundation is the basis for a negotiating relationship with another government.

The goal here is to immediately establish the working relationship on a government to government basis. The message conveyed is that this is a transaction to fulfil historical responsibilities through honourable conduct. It is not viewed as something done out of the goodness of their heart, or "at the pleasure of the Crown". Reiterating this, and often, reinforces the resilience of First Nation governments. The other party is consequently reminded that it is dealing with a nation holding certain rights and privileges.

[16]Strathearn. 1991. Using Development Indicators for Aboriginal Development: A Guidebook. 1991. Economic Development Staff Program.INAC.

[17]Strathearne. 1991. Summary of the International Workshop on Indigenous Knowledge and Community-based Resource Management. UNESCO.

Politics is the process by which people make decisions about those issues that they cannot address without recourse to authoritative means of compliance or agreement within a given domain. In any political system it is important to know:

- What decisions are political decisions?
- Who makes decisions?
- How decisions are made?
- Where decisions are made?

In aboriginal communities, these are particularly difficult questions to answer because these communities are asking basic questions about their political and constitutional order. Thinking about aboriginal governments means thinking about the role of politics in everyday life. Adding the practical potential for taking control of natural resources can be onerous on aboriginal communities, which often have a small number of people, excluding many of those with the necessary skills working outside of the community (Cassidy, 1989).

When it comes to natural resources, rightful access to them includes not only harvesting or "taking" of resources, but all decision-making based on good information in order to make the resources last "seven generations ahead", in Iroquois parlance. This is not only consistent with traditionally cultural aspects of utilizing the land, it makes biological sense. One has to have basic information in order to make good decisions. If the resources are to be shared, then a political partnership recognizing this upfront will establish every partner's roles.

The actual practise of resource management establishes the right. In Canadian legal requirements used to establish land claims, it is referred to as the **use and occupancy** of territory. Furthermore, history proves the point. It is widely accepted that before colonialism, North American ecosystems were comparatively healthier, with more abundant and diverse species. This is due to indigenous resource management before the term was ever coined, or in everyday Indian English, "taking care of the land". Thousands of years of

indigenous human occupancy and use on the North American continent has still managed to retain the land in a balanced state, whereas less than 500 years of non-indigenous occupancy and use has managed to tip the balance in favour of deterioration and arguably permanent destruction.

3.2.1 Aspects of Aboriginal rights In International Law Or International Political Support

The draft Universal Declaration on the Rights of Indigenous Peoples include the issues of land, resources, environmental protection and development. Specifically,

> "recognition of their distinctive and profound relationship with the total environment of the lands, territories and resources which they have traditionally occupied or otherwise used."[18]

This includes the ability to protect and rehabilitate the total environment and its productive capacity; also to engage in traditional and other economic activities, including hunting, fishing, herding, gathering, lumbering, cultivation and other practises which may evolve over time.

The International Labour Organization describes indigenous peoples as a collective group who freely identify themselves as having distinct social, economic, cultural and political institutions[19], in short, a government. These governmental institutions are the embodiment of a culture originating from one's spiritual relationship to the land and Creator. An inherent right for aboriginal title to the land comes from the past and continued use of those governmental institutions.

[18]United Nations Working Group on Indigenous Populations. 1992. Geneva: United Nations Department of Public Information.

[19]*Convention Concerning Indigenous and Tribal Peoples in Independent Countries*. Geneva: International Labour Conference.

As such, there exists the inherent right of government distinct from, although co-existing with, subsequent governments within the same land base. For the purposes of this paper, the legal argument for the inherent right to self-government is consistent with the Royal Commission on Aboriginal Peoples' paper Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution.

3.2.2 Aboriginal Title

The fact that aboriginal people were here first is at the core of the notion of aboriginal rights arising from title to the land. Building on this idea of original use and occupancy, Peter Cumming has defined aboriginal rights in "Native Rights and Law in an Age of Protest"(1973), Alberta Law Review, as "those property rights which Native peoples retain as the result of use and occupancy of lands."

3.2.3 Treaties

The textbook definition of a treaty is an agreement made between nations. Legal thought interprets treaties made with Indian nations as "domestic treaties", that is, agreements made with Indians who are subject of the Queen. Obviously, not everyone is in agreement here; debate includes whether Indian treaties are in a class by itself, known as sui generis (Morse, 1985).

Treaty rights are those practises and conditions specifically protected as the land in question becomes a shared resource under the treaty. For example, among other things, Treaties #3 to #11, Robinson-Superior, Robinson-Huron, as well as unilateral declaration on the part of the Crown, the Royal Proclamation itself, all specifically protect the right of aboriginal people to "pursue their avocations of hunting and fishing throughout the tract". The more recent James Bay and Northern Quebec Agreement, the Cree Naskapi Act, and the Inuvialuit Agreement deal with harvesting in a much more substantive manner outlining how management is to be done.

Since the treaties or their rights have never been expressly extinguished with the consent of First Nations,

these rights are considered to be as valid and comprehensive today as they were before any restricting legislation was imposed. Such regulations and restrictions are contrary to the intent of the treaties since they limit Native rights without consent.[20]

Many non-Native people, including now Prime Minister Chretien, thoughtlessly suggested that olden day treaties should be put aside because they are irrelevant. This is the basis of the 1969 White Paper. However, the opposite holds true in determining a healthy future for those whose ancestors signed treaties. As difficult as it may be when it comes to implementation, the Treaty-making process not only has continuity but it also is characterised by substantive concerns over lands and natural resources and by cross-cultural conflicts (McNab 1989).

Hunting, fishing and trapping rights are still practised, despite some very oppressive legislation. The exercise not only provides the obvious cash to an otherwise marginalized harvester, the meat provides food and nutrition, the exercise contributes to good health, being on the land adds another layer of knowledge of changes to the ecosystem, and lastly, provides an invigorating sense of self and one's relationship to the planet and Creator.

Inherent in the treaty or aboriginal right to continue to harvest from the land is the ability to manage it. The right cannot simply be seen as "taking" from the land indiscriminately, since this not only goes against all fundamental spiritual and cultural principles, it also has no basis in common sense. Nor is the right a matter of individuality only, but a balance of both individual and collective rights held by the community or treaty beneficiaries.

In contrast, the federal government's policy for wildlife resource agreements is modelled after the

[20]Special Report to the Canadian Bar Association. 1986.

comprehensive land claims agreements. The Minister of Environment has ultimate authority over wildlife. This is reiterated in the Department of Environment's Aboriginal policies, in direct contradiction to any recognition of equitable jurisdiction arising from a nation-to-nation political relationship. The model of a co-management board whereby Native and non-Native representatives make recommendations but are always subject to a ministerial override has earned much criticism with this approach, despite the Sparrow decision limiting it to grounds of conservation and safety. The authority held by the Minister of the Environment is seen as unacceptable because it denies inherent rights to manage the land. The present regime of advisory roles, restrictions on jurisdictional discussions and therefore management, little to no recourse in the event of a ministerial override, and little opportunity for formal training and education, all add up to dissatisfaction with the current federal policy.

A new approach is needed to recognize resource management with various levels of governments without necessarily making one subordinate to another. An alternative approach is co-jurisdiction, whereby the authority to manage lands and resources is recognized. The federal election in October 1993 turfed out the Conservatives in favour of the Liberals under Prime Minister-elect Jean Chretien. The Liberals' Red Book policy promises recognition of the inherent right of self-government. There is a cautious hopefulness in Indian country to this policy change. The uncertainty lies in the definition of an inherent right from an holistic aboriginal perspective or a compartmentalized federal perspective. It may be too early to tell right now.

3.3 Negotiation Policies

Other governmental negotiation policies are defined according to their values, with little corresponding reflection of indigenous values. Now that indigenous world views are being recognized for their intrinsic value, governments, industry, environmental non-governmental organizations, commercial institutions and such are adopting those views with perfunctory recognition of their source, if at all.

The prospect of discussions to exercise inherent rights to land and resources are formidable at best because

it is fundamentally an assertion of power, usually seen by outside governments as taking away power, or jurisdiction, from them. Rare is the fairness and open manner so often counselled by judges in court decisions, or the trust responsibility taken seriously without undue acrimony.

2.3.1 Respect

As innocuous as it may sound at first, discussions should be carried out in a forum where first and foremost, there is an environment of respect for the other parties. This will go far to maintain the trust responsibility of outside governments or agencies dealing with Native people in a fair and non-adversarial manner.

If there is any hint of disrespect, or perception of disrespect - for example in the form of condescension, inattention or lack of responsiveness - the other party may feel that their time is being wasted, regardless of the discussion items. Nevertheless, respect does not necessarily mean agreement. One can disagree tactfully. Furthermore, respect goes far when dealing with people of different educational and professional backgrounds, languages, agendas, time availability, and other factors.

There are real differences and cultural incongruities, much like a cultural traffic intersection where cars can and do collide. This incongruence is multi-dimensional; it is not well understood and is a result of the relationship of two very different traditions -aboriginal and European - both of which are predicated on highly diverse tribal origins. The European is based largely on institutional relationships and promises and the traditional North American is based on personal, family consensus and commitments. These differences are often rationalized and justified after the fact.

3.3.2 Nation to Nation Relations

Other governments are increasingly recognizing aboriginal governments as exactly that - governments. Negotiators have recommended that this needs to be stated upfront and often to remind the government and the indigenous potential beneficiaries.

Part of an address by Premier John Savage to the Union of Nova Scotia Indians in 1993 states:

> "...These are not discussions between a government and a group of citizens. We accept that these are negotiations between nations. When a non-Native government deals with a Native community, the relationship is nation to nation. This is a concept that it will not be easy for all to accept, but it is the reality and we will stick with that reality."

The unique nature of the relationship between the First Nations and the Government of Ontario is the Statement of Political Relationship signed in 1991. It was the first of its kind where formal recognition was declared by a province in Canada.

3.3.3 Preparation

First and foremost, adequate time and resources are necessary for adequate preparation so that not only the negotiator(s), but the Native community as a whole feels comfortable and understands fully what is going on.

Roles and responsibilities of the negotiating team should be established at the beginning so that everybody knows what is required of them. An ingredient in maintaining a smooth process is retaining the same negotiators throughout. Losing a negotiator, searching for a new one and waiting for the newcomer to catch up can stall progressive discussions.

Information on the substance of the discussions, as well as the responsibilities of the negotiators and other staff should be available so the Native community(ies) have those speaking on their behalf accountable to them in a timely and understandable manner.

A visual timetable displaying the planning and subsequent accomplishments can compare the rate of progress to that aspired to in the planning. Doing this will keep the discussions in the forefront of people's attention. The planning and subsequent work should also be done with the objective of achieving results as quickly as possible so the community can see that progress is being made for their benefit.

Penalty clauses should be inserted for any delay or non-fulfilment of deeds.

3.3.4 During Negotiations

Perhaps the most important component of negotiations in keeping with the nation to nation relationship is the foundation of equal decision-making. This demonstrates the respect of each party for the other's stated nationhood. Since there are some First Nation communities who do not accept being citizens of Canada, but rather see themselves as part of their Nation first, the notion of subordination to the government of Canada must be accommodated before discussions of substance can be expected to resolve long standing issues.

The provincial, territorial or federal government can demonstrate good faith on their part with interim agreements or policies put in place, if need be, so that Native people can continue to use the land and waters as usual. This can be for subsistence purposes or for any ongoing economic activity, for instance, forestry or fishery related. The principle of First Nation access first to resources should be according to the Sparrow principle of first priority after conservation and safety.

Notice of development or renewal of existing resource development activities by other parties should go out to the Native community too, with the community able to put a halt to activities if impacts are expected, such as the legal **caution** that the Teme Augama Anishnabai in Ontario had to stop land development for two decades during their negotiations. If development activities continue, with subsequent impacts to the land, the development will prejudice treaty and aboriginal rights to harvest and manage resources, since there may be little remaining to harvest in a sustainable manner. The government should be held liable for allowing this to occur since there is no use in attempting to negotiate a resource management agreement if there are no resources left. Likewise, a temporary suspension in negotiations is an option before making a decision to permanently withdraw without political or financial penalty if the Native party lived up to its part of the negotiation principles.

Similarly, financial penalty clauses can be inserted to ensure that the other governments fulfil their obligations on time to advance an agreement, especially if again, the Native community fulfilled its workload in the agreed upon amount of time by both parties.

An intermediator can be either an asset or a drawback, as a last resort before going to court. Many negotiators have said that it boils down to the character, and the willingness or lack of it in coming to some kind of mediation.

3.4 Infrastructure Development

An organization is a collection of resources structured or distributed in a planned, formal manner in order to focus them on the achievement of specific goals. Every organization has a purpose: to meet the need of some group in society. How that need is met through day to day administration plays a large part in the success of any endeavor.

3.4.1 Management

Management is how the business is run. The manager is the decisive employee responsible for tasks carried out to fulfill the terms of the agreement. While theoretically all parties are informed and involved throughout; it is easier to control quality if the manager is directly accountable to a clearly distinguishable body in order to avoid the possibility of conflicting bosses.

A manager is responsible for achieving results with and through the efforts of other people. They have two levels of concern: technical and personnel. For example, managers use their technical skills to deal with bookkeeping and personnel skills to draw the best out of staff.

Their goal is to ensure the **right things** happen:

- with guidance from decision-makers, determine the best approach to carrying out the mandate;
- motivate staff to reach their related, yet individual, objectives;
- assess the actual results achieved against the plan;
- identify gaps between goals and results to identify and resolve problem areas.

3.4.2 Physical Assets

Location

The location can be on-reserve and/or off-reserve. Choosing a location on-reserve may give more security against being subjected to provincial and federal taxes, as well as conforming to another government's land planning zones and specific laws. However, if your primary audience is off-reserve; or your start-off point to get to hunting, fishing or other grounds is easier from an off-reserve location, then that may need to be investigated further. Besides outright purchase or leasing arrangements, land and buildings can be acquired at little to no cost through surplus real estate holdings of the provincial or federal government - an option when discussing partnerships for resource management.

Site

The base of operations often begin as loaned space within the local council office or band office, or other unused space in existing office buildings. As staff and equipment accrue however, there will probably come a time when there will be a need for secure space which can accommodate both.

Office Equipment

The basic office equipment may begin as borrowed, loaned, donated, leased or purchased. Without belaboring the obvious, basic office equipment includes word processors, printers, photocopiers, fax machines, desks and chairs, file cabinets and other storage facilities, answering machines. Since it is not always easy to predict one's office equipment needs, it is not such a bad idea to lease mechanical equipment

like a photocopy machine temporarily to see whether it will be sufficient or easy-to-use before committing a sizeable portion of money towards it.

Basic office equipment components are now being made expandable to adjust to growing needs in the future. By acquiring such equipment, which may be a little more expensive up front, the overall costs may be lower because it is not neccessary to purchase all new equipment in order to upgrade. This is especially true of computers and computer programs, where "new generations" of them may make previous lines obsolete, or at least wanting in new and improved capabilities. Now, computers, telephone systems, and desks are examples of items made to accomodate your growing requirements as you need and/or can afford them.

While perhaps all communities may find the new computer information highways useful, remote locales may find being on Canada's Internet (the largest), to be extremely useful and cost effective to acquire information available to all, inquire through your own questions, or communicate with others. The basic equipment needed is a telephone hook-up, a computer modem and the advice of a computer whiz.

Specialized Equipment

Natural resource management may demand specialized equipment. The equipment can be very expensive and technical, like a computerized Geographic Information System; fragile, like laboratory equipment measuring minute particles of material; highly mechanical like a boat engine; or bulky or heavy like timber cutting machines. While budgetary expansiveness, or lack of it, is probably the determining factor in choosing equipment, the most expensive that one can afford may not necessarily be the best for one's needs. Equipment that is too difficult to use simply does not get used, despite its potential to do impressive things. So the investment in expensive or highly technical equipment may end up not worth the trouble. It is wise to know one's limits to learn, repair, and carry out the work before investing in it.

Partnerships with universities, government(s) and industry as well as trade shows may expose the natural resource manager to the latest specialized equipment available. Conversely, another option for acquiring equipment is by requesting donations of perfectly good second-hand items which are no longer needed by the donor yet fulfill the introductory need of the recipient.

3.4.3 Employment and Training

Community-based natural resource management requires appropriate and stable training, employment and enforcement. Since most communities do not have a roster of university educated graduates to choose from, and if the commitment is to employ local people as much as possible, a variety of opportunities will allow people of all ages to become part time and full employees, skilled or unskilled laborers, thereby creating ownership.

Despite the availability and credibility of newly created environmental science programs through mainstream post-secondary institutions, their focus is often insufficient to meet the needs of Native communities, due to a focus on science principles while ignoring Native philosophies and practises. Yet these programs at least provide basic scientific analysis skills which are needed especially when debating other scientists' data. Without it, self-government can be circumvented temporarily and sometimes for years, by depending on generally non-Native outsiders to direct the supposed community-based program. It is difficult to avoid cultural and academic bias, which must be overcome before the outsider truly understands how the community wants to have work done.

This can be circumvented by providing local training in stages. Not all work needs an academic degree, even highly technical work. Life skills, motivation, ability, meticulousness, can all go far in learning to carry out quality work. Candidates for employment can alternately receive theoretical and hands-on training, along with supervised employment to practise newly-learned skills. Programs can be jointly developed with post-secondary educational facilities for academic credit for two year terms, four year terms, or on an as-needed

basis.

Employment may not be for what is perceived as natural resource management either. A person may have little desire to learn new skills or want full time employment. Employment can be in the form of hiring Native people and their equipment, like snowmobiles or boats, to transport others to remote and difficult-to-find sites. Other creative ways of employment will increase awareness of the community's natural resource management, so that ownership is reaffirmed.

in order to maintain a viable natural resource administration, stable employment, a respectful and appreciative administration, and healthy salary can keep staff happy and dedicated. "Use 'em or lose 'em" is the guiding factor. Otherwise, bright and dedicated Native people can be discouraged from applying or staying in a job if basic employment conditions are not met.

3.5 Ownership

3.5.1 Definition of Ownership and Need

Ownership implies not only the obvious physical things, but also the less tangible assets pertaining to how things are carried out, which is the basis of this element.

The purpose of establishing protection of ownership of intangibles is to safeguard the use and distribution of it. Ownership principles are cultivated to credit and compensate the interests of the community as a whole or the individual(s) against unauthorized privatization from others. They rest on informed consent.

Indigenous knowledge is no longer acceptably viewed as a part of the global commons, the property of everyone, freely available to all. The reversal is particularly poignant when it is now the indigenous peoples, the "originators and practitioners" themselves, who are defining what belongs to them, instead of others defining it without their knowledge nor consent.

There is a need for socially and environmentally responsible action on the part of industry, natural resource developers, academics and governments to address this need sooner than later. Much academic discussion had been motivated by the International Year of Indigenous Peoples, in 1993, as well as the previous year's Conference on Environment and Development, both primarily with the formal encouragement of the United Nations.

3.5.2 Intellectual Property Rights

Intellectual property rights encompass the preservation, compensation and acknowledgment of indigenous knowledge bases in fields such as medicine, agricultural and natural biodiversity, environmental management, and culture; all directed towards those who provide it. The contributions made by indigenous peoples in these areas are only slowly being acknowledged, and mechanisms to provide compensation are at very preliminary stages (Cunningham, 1993).

The World Wildlife Fund's Recommendations for a Code of Practise (1993) recommends that national governments put laws into place to protect intellectual property. Indigenous people in Canada may disagree with this because it can be stated with good reason that the federal government should not have jurisdiction over indigenous heritage and knowledge since it is not theirs to begin with. Battles over repatriation and archaeological finds only highlight the limits of the laws when it comes to protecting indigenous heritage. The laws are defined by another government, of a different culture, with a focus on things that may not be of importance to Native people. Vice versa, Native priorities may have no legal protection under the law.

3.5.3 Cultural Property Rights

Cultural property rights focus on enabling indigenous peoples to preserve and control the use of their relics, archaeological sites, textiles, skeletal remains, rituals, songs, legends, and other materials. The repatriation of cultural material to several indigenous groups, mostly by museums, is a sign that some cultural rights have been recognized, but numerous issues await resolution (UN Dept.of Pub.Info. 1992).

The Status Report on Endangered Spaces done on behalf of Chiefs of Ontario (1992), includes geographical sites too, which directly demonstrate the link between land and culture. The sites are mostly sacred in nature, or provide materials for ceremonies although the ceremonies themselves do not occur there. Since exclusive jurisdiction is rarely the case, laws and agreements need to be changed so that indigenous people can continue to use the sites without harassment, and so the sites can continue to exist without threat of destruction or tampering.

Geographical locations can include, but are not limited to:

- traditional fasting sites;
- monumental sites and sacred formations;
- sites of pictographs and petroglyphs;
- burial sites and cemeteries;
- ceremonial sites and places;
- gathering areas for plants, materials and quarries;
- traditional and historic sites;
- other specially designated sites and places.

3.5.4 Ownership of Natural Resources Agreement

In striving for an agreement, a community has to feel comfortable with it, that they "owned" it in order for it to have any kind of success. It should not be felt that the agreement is imposed upon the community, even if it is a good one on paper, if the community does not want it or feels pressured into agreeing to it. The agreement may have been developed without sufficient consultation, or none at all, or ignores important aspects of the community's needs. It may not listen to what is being said, but instead imposes what may well work somewhere else, but not in this particular situation. It may not respond to how the community wants action. It may go against cultural values. In short, the question to be asked is, why support something if it is not of our own making? The key rests on informed consent.

3.5.5 Ownership of Research Methods

Before any kind of research is carried out, whether it be a survey, interviews, collection of specimens, or library research, the concept of a need to do the research with the goals outlined should be discussed first jointly with the community and the researcher. This is to determine whether the research is needed in the first place, or if it is going to respond to the questions that the community wants.

It has even been suggested that licenses be issued from a single, streamlined source, with an appropriate cost attached. This will emphasize the authority and interest of a research project particularly when the community may not directly benefit from it. The license can include guidelines and prohibitions that must be followed. The licenses can be issued for temporary residence, collection of materials, requirement to hire people and/or equipment, train people, observations of unusual sightings, etc. The Convention on International Trade of Endangered Species can be used as a guide.

The design of a study is next, or how the work is actually going to be carried out. Data collection should be carried out in ways that are acceptable to the community. Analysis and results should be done together, since each may have insight that may complement the work. Finally, conclusions and distribution of results should be released to the community first. This allows them to decide whether the research contents should be released to the public. They may want only a portion of the information to go out publicly, or not at all. Care should be taken when releasing any unpublished information to the public domain. The community may want to distribute it themselves or have an outsider do it for them in the right atmosphere. It should also be decided upfront who will respond to queries, and keep the message consistent, so that it does not appear that there is internal disagreement or confusion.

3.5.6 Natural Resources Property Rights

One aspect of ownership includes the natural resources within the ancestral territory, whether they are the "raw" materials or whether they are used to provide pharmaceutical benefits from complex extraction.

Survival International (England) has made some convincing arguments for marketing South American rainforest products used and harvested by the indigenous people. The argument is based on the premise that marketing may not, in fact, provide financial stability to the community in the long run. This is because the products, generally foods like "Rainforest Crunch" and personal hygiene products most notably promoted by the environmentally-correct "Body Shop", cater to a fickle, trendy white customer with spare income. There may be short term benefits, but whims change, which may result in a short lived market which may collapse just as the indigenous rainforest people become dependent on it.

Furthermore, improper short term extraction of a natural resource may upset the ecosystem balance, causing further havoc. The white market demand may leave little choice to the indigenous harvesters leading to an over harvest one particular resource, thereby having a negative impact on the biodiversity of the ecosystem as a whole.

Another aspect of ownership of natural resources is the way that Native people do not get compensated for resources taken out of their traditional territories, whether or not they may are directly involved in the extraction. One option is for companies to buy permits or leases to extract trees, minerals, oil, and water. Recreational sports hunters and fishermen, or outfitters buy licenses for harvesting fish, wildlife and waterfowl. Rare is the agreement where the revenue derived from resource extraction flows to the First Nation(s) in that territory or that the Native communities have a decision on the extraction or use of the revenue by the provincial, territorial and federal governments.

Not only is there a moral case for revenue sharing, in the case of the Robinson Huron Treaty, William Benjamin Robinson, the negotiator specifically inserted a clause for revenue sharing, realizing the economic potential of the land:

> "...Her Majesty...further promises and agrees that should the Territory..at any future period produce such an amount as will enable the Government of this Province, without incurring

> loss, to increase the annuity hereby secured to them...and...the same shall be augmented from time to time...as Her Majesty may be graciously pleased to order."

Ownership of natural resources presupposes that decision-making of the uses and revenue sharing are part of a Native community's prerogative in designing an agreement.

3.5.7 Ownership of Indigenous Knowledge

Indigenous knowledge, or the more lengthy traditional ecological knowledge management systems (TEKMS), represents the accumulated experience acquired over many hundreds of years of direct human contact with the environment. Unlike western science which is widely accessible through the global network of institutions of research and higher learning, TEK is specific to particular cultures and societies. Until recently, there has been very little formal recognition of traditional land and natural resource management skills.

An agreement that is made to reflect the community's values will be based on the traditional knowledge of the individuals. The following recommendations are to ensure that traditional knowledge is incorporated not only into the text of an agreement, but as importantly, in its implementation.

i) Recognition Of The Existence Of TEKMS In All Its Forms

Unfortunately, there could be a complete disregard or disbelief in the existence or usefulness of traditional knowledge by the other party. If there is acceptance, traditional knowledge can be grudgingly used to validate western science methods[21] so that it is viewed as something less than equal to western science. The burden of proof is on the veracity of traditional knowledge and its potential usefulness, which western science does not have to constantly confirm. In effect, it is like comparing apples to oranges.

Admittedly, it is difficult to integrate western science and TEKMS at best. Adequate frameworks need to be

[21] B. Herbert, INAC, Anecdotal Information in the NWT.

developed. However, there is no rigorous or accepted way of incorporating indigenous land use information and attitudes towards land into planning processes (F. Duerden, Introduction to the Indigenous Land Use Information Project, Ryerson Polytechnical University, 1993). Nevertheless, the knowledge needs to be given equal respect for the information it contains in its own right, without having to prove itself against a different set of values. This is especially important when western science research methods, while valid in its own right, may not be sufficient to address the concerns of local people, and local land conditions, for whom TEKMS was intentionally developed.

While there is increasing recognition of TEKMS, it can be sometimes only in forms that are patently obvious. For example, traditional knowledge is understood to be highly accurate by academics and biologists when it comes to observations of local animal populations.

An oft-repeated frustration by Native people in southern Canada is the difficulty they face in establishing credibility for their methods with academics and government agencies. Since Native communities in the south have been subjected to more intense land development and settlement, and are therefore less able to practise harvesting on as wide a scale as in the North, there are certain assumptions by non-Natives, whether professional or the general public, that TEKMS is not as strong, or again, non-existent.
It may seem to be a facile analogy on the surface to state that the closer a Native community is to an urban area, the less "Indian" an individual is, with an accompanying weaker TEKMS.

While there is a measure of adaptation of non-indigenous cultures (and vice versa), the core identity of an indigenous culture is often still present when it comes to natural resource management, manifesting itself in less conspicuous ways to an outside observer. For example, it could be something as simple as rotating ponds during waterfowl hunting season or hunting another area within the family territory to give the first area a chance to "rest".

ii) Use Of Traditional Management Systems

Even if the skills and practises of TEKMS are defined, many negotiators described the difficulty of getting any real incorporation into a study or management system. The difficulty is increased when the people with the traditional knowledge may speak a language other than English, and have a totally different approach, so that even if translators are used, the world views of two different cultures may clash. If the recorder or research director does not understand, or is the one holding the funding and writing the report, the choice may be made to simply ignore the information since it does not fit into western research methods.

An extra effort needs to be made to ensure that those with traditional knowledge are not only heard, but listened to, otherwise, the ownership of the agreement will be weakened if their vital information is ignored.

iii) Willingness To Use And Expand The Community's Skills

Lastly, an agreement should include funding to hire and train Native persons to carry out work, whether it be using traditional or western knowledge, or a combination of the two. A commitment is needed to make the extra effort to train a person to do the work in a proper manner, or to teach the newcomer the skills involved in documenting the particular management system.

Despite the existence of some co-management boards for over a decade, there is only a small increase overall in the number of Native professionals trained in the necessary sciences; limited compensation for the knowledge of Native traditional knowledge contributors, and assignment to limited tasks when employment actually occurs. Admittedly, some work is highly technical and demands equally skilled persons to conduct the work in situ or analyze it in a distant urban area. However, there is room for improvement through a genuine commitment to make it work.

iv) Compensation

It is often said that no one person "owns" knowledge, therefore should not get credit for it, nor financial

compensation for something that belongs to the people as a whole.[22] The other side of the argument is that people's time, accumulation of knowledge, willingness to assist, and hospitality need to be compensated, and compensated adequately. While on the one hand, one can argue that culture is priceless, and that accepting money for it reduces it to a commodity, on the other hand, this argument has been used as a way to cut costs by not having to pay for people's time and knowledge. Researchers need to value people's knowledge as much as their own, particularly considering that the researcher already receives a salary for the gathering of **his** knowledge from the indigenous people.

However, an individual or community may feel uncomfortable with accepting money in exchange for sharing their knowledge. Nevertheless, there are ways to compensate other than money, but it should be discussed upfront so that everybody is comfortable. Compensation offered can be goods or services equal to the amount of a salary. For example, a harvester may want or need groceries, household articles, or equipment like an outboard motor. Services can be a return flight to an urban area, wood cutting and splitting, or house repairs. The compensation, of course, should be commensurate with the amount of time and knowledge imparted.

3.6 Conservation of Resources

The following principles are generally acknowledged as fundamental in developing a resource management plan under an agreement.

3.6.1 Definition of Conservation

Conservation is understood here as more of a principle for defining how natural resource management is actually carried out. While there are many definitions of conservation, it can be summed up as planned management of a natural resource to prevent exploitation, neglect or destruction. In Indian terms,

[22]Chief Peter Kelly, Treaty #3, Chiefs of Ontario Heritage Workshop, 1994.

- take only what you need
- use all of what you take
- do not destroy life for sport.

The conservation and management of natural resources is consistent with aboriginal values, and consequently, aboriginal rights. Conservation measures enacted as a fulfilment of rights to the resources can only be for the whole of the First Nation on a collective rather than individual basis. This is a distinguishing feature of aboriginal rights as opposed to individual rights, and arises from the culture of being responsible for not only oneself, but towards one's family and community. Thus a single person cannot reason that he has the aboriginal or treaty right to do what he alone wants.

The Sparrow court decision views "the allocation of the resource after reasonable and necessary conservation measures have been recognized and given effect to." The order of priority is i) conservation; ii) Indian fishing; iii) non-Indian commercial fishing; iv) non-Indian sports fishing; so that the burden of conservation measures do not fall primarily upon the Indian fishery. It further states that any regulation of Native fisheries can only pertain to conservation, so that the objective will be scrutinized to assess the aforementioned priorities.

It is with some discomfort that Sparrow leaves the conservation objective to "those having expertise in the area". This leads one to wonder whether measures are indeed valid to protect the fish, habitat, ecosystem integrity, Indian harvesting, or whether they could be politically or statistically skewed by experts defined solely as such by the federal government. Additionally, who determines what is valid? Questions to define conservation objectives, what kind of assessment should be done, and by whom, along with who would determine the validity should be jointly decided upon by both parties to protect the best interests of each. This is where the use of traditional knowledge will be tested. An approach using the contributions of both traditional and western knowledge can bring more comprehensive results since it is coming from two viewpoints that probably do not overlap.

3.6.2 Integrated Management of Resources

The integrated management of resources is a western conservation term most similar in nature to the traditional Native belief where the land, living things and elements interdependent on one another. Managing a single resource, without acknowledgement of how it fits in with everything else, is artificial and could be damaging in the long run - what you don't know can hurt you. Now that western scientists have a greater awareness of variable spatial relations, there is a movement towards small and large scale integrated management to conserve a healthy, diverse ecosystem.

3.6.3 Watershed or Migratory Path Conservation

There is even a trend towards shared management of a wider watershed or migratory path of fish and wildlife since it is seen as making more sense to have all groups with management responsibilities to pursue the same goals while sharing information on a co-operative basis. This is important for species that cross inprovincial and international borders.

3.6.4 Safety in Managing and Harvesting Resources

Safety is common sense. It includes handling oneself in a responsible manner, as well as co-workers or harvesting partners, the public in the vicinity, other living and inanimate natural things, buildings and other structures, and the environment as a whole. It is a part of aboriginal culture, where one is given responsibilities by the Creator as a part of living in balance with the Earth.

Safety can take the form of regulations or advice. It is safe to say that safety advice starts out as discretionary, eventually progressing to a legally enforced rule once it is proven that not following the safety guidelines leads to destruction of human life, property, or environment.

There are already a number of laws and directives pertaining to safety standards. They could be for, but are not necessarily limited to:

- properly maintained equipment - gun, chainsaw;
- human health protection limits - fisheries consumption for pregnant women;
- aquatic health protection limits - maximum allowable amount of contaminants;
- fish health protection limits - maximum allowable contaminant limits;
- methods of handling equipment - firearm safety course;
- limited times when one can do something - daylight only.

Safety and Jacklighting

Jacklighting or night hunting is perhaps the most controversial issue when it comes to hunting safety and wildlife management and may never be resolved. Native people are either against it totally or uneasily acknowledge its existence but do not like it. Some maintain they have an aboriginal right to continue to harvest fish and wildlife in the manner that they are in the habit of doing regularly.

Meetings with elders acknowledge that this is how they may have harvested in their prime, but with the improvement of guns, high intensity lights, and relative ease to go after fish and large animals, it is now frowned upon as being unsporting and dangerous.

In the absence of definitive court decisions, communities have to reconcile night hunting with the stated principle of respecting animals. Questions that can be debated are: Do the animals have a fair chance? Do we do this for sport or to harvest in the most successful way? If only mature animals are taken because of a stated respect for the life cycle, how can a harvester determine the age or sex of the animal at night, or whether if it is a female with young in hiding, or that it is animal sought? Will the rules change then? If the animal is shot and wounded, how does a harvester go after it in the dark, especially if it travels a distance and cannot be found the next day? How can an unretrieved animal that has died or abandoned and left with unnecessary pain be reconciled with the stated principles? What is going to happen when someone is accidently shot?

Whether a community comes out for or against night hunting, a reasonably firm community consensus will

assist in establishing a rule to be enforced under self-government. This will help in case the enforcement agency is not the Native government, where jacklighting is strictly forbidden. Furthermore, the legal counsel may use a disagreement against the defendant if it is seen to be their advantage to demonstrate that the community is in disagreement.

3.6.5 Retention of Biodiversity

Biodiversity is the word used to describe the incredible variety of life on Earth, in all its wonder and mystery. It describes the variety of ecosystems and species around the world and the genetic variation found within and between species. It refers to the complex interdependent relationships, sometimes called the "web of life" among all animals, plants and micro-organisms that is needed for survival. It includes the different varieties of apples, peaches and corn that we enjoy and the variation of dogs and cats that are kept as pets (Canadian Biodiversity Strategy, 1994).

Life Sustaining Services

The air we breathe, the water we drink and the soil that produces our food are all products of biodiversity. Scientists have begun to understands that by carrying out "ecological services", such as oxygen production, water purification and climate control, living things maintain th physical conditions that make the planet habitable. Biodiversity supports all life, including human life, on Earth.

Cause For Concern

Despite the importance of biodiversity, there is a global crisis. Ecosystem, species and genetic diversity are being eroded and lost at a rate that far exceeds natural extinction rates. Such changes threaten the many ecological, economic, spiritual and cultural benefits derived from biodiversity.

Extinction is forever. Once an animal or plant is lost, it cannot be resurrected to fulfill its role in the

ecosystem, thus making the whole ecosystem weaker and more vulnerable to destruction. It can be described as a piece taken out of a jigsaw puzzle. It may not be noticed, although the puzzle is no longer complete. The more pieces that are taken out, the more species that are forever lost, make the puzzle less complete and more fragmentary.

It is estimated that there are approximately 142,000 species in Canada, half of which have not yet even been identified. Of this number, 112 are considered vulnerable to extinction, 53 threatened, 53 endangered, 11 extirpated (extinct nearly everywhere except for a small location), and 9 extinct in 1993. This includes animals with bones (no insects, etc), and leafy plants, not the plants of seemingly lesser importance like bacteria, etc. (Committee on the Status of Endangered Wildlife in Canada, 1993).

Biodiversity can be felt in even a seemingly healthy animal population. For example, if most wood buffalo were purposely killed off, the remaining would only be able to mate amongst themselves. This reduced genetic pool would not have enough variety to make the wood buffalo pass on characteristics which would make the next generation healthier, such as more resistance to disease, better eyesight, or whatever else may help it as part of the survival of the fittest. Inbreeding can cause undesirable characteristics to come out, leading to reproductive and genetic problems in the stock of future generations, and even causing animals to no longer reproduce at all.

Importance of Biodiversity

A natural resources agreement may, for all intents and purposes, focus on one species like moose, or one kind of resource, like trees. However, management of the resource will be easier and the resource will stand a better chance of survival when biodiversity is emphasized. This is where overall environmental protection comes in, as well as understanding what kind and how the different types of soils, climate, water movement, and other animals and plants live together. This is called integrated management or ecosystem or watershed

management, among other recent terminology.

3.6.6 Using Resources for Subsistence Purposes

Depending on the resource, the first priority will mostly likely be basic human needs: food, warmth, shelter. This includes household basics, whether they are plants and animals for nutrition, wood for heat, and water for drinking. The success of an agreement will be encouraged by a community's having improved access to resources for subsistence, since they can realize the benefits immediately and directly.

3.6.7 Using Resources for Commercial Purposes

Although federal and provincial laws forbid the sale of fish and wildlife, or require purchasing their permits to sell fish, timber, or recreational access to those resources, among others, several Native communities are challenging this. The argument rests on the fact that trade and barter were a fact of life before colonists came to this continent and has continued to be a staple of business relations between the two until as recently as a generation ago. It should not be unilaterally decided by an outside government to push out indigenous people once the economic benefits of natural resource extraction have become too lucrative to share any longer.

The ability to set up sustainable commercial industries from either raw natural resources or value-added natural resource products can provide the stability for developing an aboriginal government, and therefore lessen a dependence on outside finances. This government has a chance to become self-sustaining again by virtue of its economy being derived from natural resources that had perhaps been used traditionally, or a new market found for previously non-commercially viable resources within its territory. In simplistic terms, economic ventures can provide the financial resources for self-government and in doing so, strengthen Native culture. This symbiotic relationship can only be driven by an aboriginal government freed to ideally direct the time and resources to protect its cultural identity from outside forces. The resulting change is from a welfare-driven economy to a resource economy.

3.6.8 Using Resources for Cultural Purposes

Care needs to be taken that cultural use of natural resources is defined legitimately by respected elders and other leaders, so that if need be, it is accepted as such by other governments. Native people have been charged for collecting natural resources for genuine cultural and spiritual activities because it was not seen as legitimate by the courts.

Conversely, abuses by one's own people can unfortunately occur. The disrespect and dishonor arising from the abuse can have far reaching consequences. Repercussions can range from legal decisions against the best interests of Native people collectively. In tightknit communities with strong cultures, retaliation in response to actions offending both human and spiritual sensibilities is not unknown. Abuse such as overharvesting may also lead to a reduction in natural resources, which in turn would limit its availability to Native harvesters. Defining what is and is not acceptable should be done before that situation occurs.

3.6.9 Minimal Impact to Resources and Environment

A basic tenet of conservation is that whatever measures are taken, even in the process of carrying out other conservation objectives, that they be done to have minimal impact to the resources and their environment. Culturally, it is expressed as *touching the earth lightly.*

A rule of thumb is that the more machinery, and the more money involved, leaves less time to carefully harvest individual things, or concern oneself with the overall effect. The result is greater impact on resources and environment. A Native community's desire to harvest materials may be the same as that of a potential buyer or government, however, the method of harvesting may differ profoundly.

Environmentally and culturally sensitive methods can be required in an agreement. There may be very strong

resistance because money is not made as quickly and environmental protection guarantees are not so iron-clad nor of high quality. The community may be put in the position of having to look for alternative ways to manage the resource without encouragement or assistance from other governments or potential markets. The way to look at it culturally is that future generations will either inherit an environmental bombshell that is not of their own making yet they will suffer the consequences of it. Or they can inherit a sustainable resource that is as protective of the land as that inherited by this present generation from our forefathers.

3.6.10 Principles and Laws for Harvesting

A First Nation government has the challenge of developing and enforcing its own laws as an exercise in governance. The rules do not have to be recognized by the other governments, although it is more conducive to good relations if they are.

The development of laws to enforce the cultural traditions handed down take much time for building community consensus. The principles can cover acceptable methods of:

- fishing
- hunting
- gathering
- sharing
- transportation
- geographic locations
- seasons
- licenses
- allocations
- use of other products
- who can harvest.

3.6.11 Compliance Authority

An exciting component of self-government is the development of a compliance authority for proper conservation of natural resources as part of an overall Native justice system. The goal is to make the system acceptable within the community, and to co-operate with outside enforcement agencies.

An often used method of deciding on the guilt of a person is to establish a rotating council of elders to listen, debate, and come up with solutions. The basis is that if something was taken from the land, something should be put back to replace it. If something was done to harm a person, then it should be balanced by compensating that person through services, financial restitution, and public or family apology. Since the Canadian justice system is based on penal institutions, which include a proportionately higher percentage of indigenous people being incarcerated in comparison to non-Native people, another objective is to keep Native people out of jail.

Compliance includes training and employing conservation officers who are accountable to the leadership. The curriculum can be either a copy of the other government curriculum or customized courses, though usually they are a hybrid of the two. They may be cross-deputized so that they have equitable enforcement powers as other government enforcement officers.

3.6.12 Assessment of Natural Resources

An assessment is a status report on what is available and what condition it is in. The collection and analysis of data may include the relative animal population estimate, ages, sex, location, health, and habitat condition.

3.6.13 Harvest Records And Land Use Mapping

The importance of documenting all resources harvested and where they were harvested is becoming increasingly critical as evidence in land claims, court cases and natural resource management. Harvest record information is necessary in order to determine the current and projected amount of resources taken by people in relation to the amount that is actually available. Mapping of harvesting areas demonstrates where people

have traditionally hunted, where and why they may have changed locations, and where the best locations will be in the future. Past harvesting knowledge and practises can be compared with today's information providing managers with trends in fish and wildlife populations and movement. Information collected can include:

- location
- type and amount of resource located
- type and amount of resource harvested
- members in the harvesting group
- method of harvest
- time of harvest
- effort required per unit of resource harvested
- unusual sightings
- trends in harvesting activity (long term study).

Treaty Boundaries

Since many treaty boundaries do not necessarily match up to a particular harvesting territory, it is important to document this is as evidence since non-Native treaty negotiators may not have been fully aware of the extent so did not include the territories described by the signatories at the turn of the century. Often, harvesting has occurred outside of a treaty boundaries, areas that were not part of a particular treaty at that time. In many cases, such lands end up becoming part of a treaty, that territory shifting over to a completely different Native group. The result is that the original users are excluded in the use of that land. So the test of a treaty should not be used as the sole source of defining traditional territory.

Methodology

There are a number of methods available to capture harvester and land use information from Native people. Personal interviews appear to work best, especially when this type of information has never been collected in a community before. Personal interviews provides an opportunity to explain the need for the information collection and answer any questions. Information gathered can be recorded by a number of methods including

questionnaires, recording interviews either on voice cassette which can be transcribed onto paper later, or on video. This information can also be recorded more graphically by plotting harvest data and locations on rudimentary maps or plotting the data on sophisticated, computerized geographic information systems.

Collecting information to be plotted onto maps is perhaps the most significant source of information because it is customized to that particular Native community and their priorities. Not only are the basic harvest locations marked and outlined, more importantly for the Native community's management, the extra information collected is invaluable. Information gathered from those who spend time on the land on a continuous basis can reveal environmental hot spots, clear cutting areas, illegal settlements, forest fires, as well as other bits of information which may not exist on regular maps and if so, may be out of date. The cost of each methodology must also be taken into account when a community wants to collect this information. Copies of paper maps can add up quickly. Computerized mapping systems can be even more exorbitant.

The collection method also depends heavily on the patience of the harvester. If the method chosen involves interviews, questions should be short, simple and solicit the minimum amount of information, enough to satisfy the researcher's purposes. There should be some kind of protection for the confidential kind of information volunteered by the (harvester) respondent so that it is not inadvertently released to either the community or government.

To make sure data provided by each harvester is indeed accurate, a check and balance system is needed to confirm information gathered. Cases have been noted where extremely successful harvesters tend to "under brag" while not so successful hunters "over brag". This information should be confirmed with that person's family and harvesting companions.

Harvest information should also be gathered at a time that is as close to the actual time of harvesting activity as possible to ensure greater accuracy. This is extremely critical for small game as numbers harvested can

be large and memory may fail over time. The method used should fit the information being collected as well. While it may be necessary to gather small game data on a weekly to a monthly basis, large game should be collected over longer time spans such as once a year as most hunters remember all large game killed over a few years.

Lastly, while a harvest survey may seem easy to the novice, it can easily become overwhelming. Before going all out on a survey, it cannot be emphasized enough to do a sample survey. Even if the test survey involves filling a small number of questionnaires with imaginary information, the test is to see whether the interviewer is consistent in asking the questions, that the right information is being sought, and the information collected adds up correctly. A common error is to double count. Harvesters need to be reminded to include only those animals they themselves have shot and killed, and not the animals killed by groups they were party to nor animals wounded and not retrieved. It has to be made clear that, for example, each moose was killed by one particular hunter even though "two to three guys all shot at the same time". If each hunter reported the same moose, two or three moose would be recorded as killed when actually only one moose was brought into the village. The goal is to gather data that is correct and will provide good results.

3.6.14 Monitoring

Monitoring is the compilation and analysis of regularly accumulated information on harvesting, natural resource availability and conditions, and environmental conditions. The analysis can reveal or predict a trend so that conservation measures can be taken to either maintain the trend if it is acceptable, or prevent its worsening.

The observations of harvesters and multi-generational accumulation of information will contribute to good monitoring.

3.7 Communication

Public relations or communication has become an increasingly important aspect of all Native activities today. It is viewed as a vital component serving to increase the awareness of the benefits resulting from the outcome of negotiations to both Natives and non-Natives, thereby gaining their support. In negotiations involving natural resources, since it is seen as directly affecting neighbouring communities, it has been elevated to equal stature with other components of a negotiation.

First Nations have made it clear that they want some control as to what happens not only in their respective communities, but in the rest of their traditional territory as well. It is not difficult to realize that any decision made regarding the resources will have an effect on their access and rights one way or the other. They are not prepared to leave it to only government or academic experts.

Caution should be taken in that the communications program serves the propers function of meaningful dialogue. The other party can follow the communication strategy, yet have the deliberate intention of ultimately wasting the public's time and effort by manipulating the communication requirements. For example, a uranium mining company published notices in southern city newspapers, thereby fulfilling the public notice requirements. However, the Native communities affected are situated in the north, and do not read these papers, but rather, get their news through a network of radio broadcasts in their language, and the community newsletter. Another example, is that a person might be asked to comment on a massive number of highly technical documents within a limited number of days when these documents were generated from years of research.

3.7.1 Public Information for Native and Non-Native Audiences

When it comes to negotiating agreements on natural resources, the parties should take advantage of the local Native communities and interest groups who can provide valuable information about the social and environmental values of the region, information that is otherwise unattainable. Public information sessions held in Native communities also contribute to the credibility of the negotiations by demonstrating that the

parties are attempting to be sensitive to the needs of that community.

Some groups may choose to open up the information sessions to third parties. However, it must be clearly understood to those third parties that consultation does not mean the general public is negotiating aboriginal rights to natural resources, nor for that matter is the government negotiating rights. How the rights are to be implemented is the purpose, not whether they exist or not. It must be made clear to public interest groups that they have no real decision-making powers but are only there at the discretion of both First Nations and government, since their interests are already accommodated by the provincial and federal government. Rather, this serves to advise them of the negotiations taking place.

3.7.2 Involvement of the Native Community

As much as there have been references to an individual First Nation as "the community", involvement with any community proves that there are many different groups of people that make up a Native community. Information needs to be targeted to these various groups that make up a community which may include harvesters, leaders, mothers, children and teenagers, health personnel, social services personnel, research personnel, seniors, business owners and council office employees. One person may fit into several categories.

Additionally members of the community may chose to be involved in various ways. Some may just be passive receivers of information, while others participate in studies or discussion groups, some becoming decision-makers, speakers providing feedback on initiatives, and even spokespersons for their category or family.

To get the required information across to the various groups that make up a community, a communications plan is a good idea. A good communications plan does not need to be complex. The language used should be plain and clear. It must also be understood that words only do so much. Pictures, graphs, and other forms of graphics that catch the eye and raise an idea or emotion should be part of the package. The

communications person should be comfortable with tools of the trade as well. Such tools include a slide and overhead projector, public speaking equipment, the required language whether it is the Native language or other. This person should also be sensitive to the values and norms of community members.

In attempting to get substantial involvement, the following are some of the suggested methods of communication that can be used:

- information campaigns
- community newsletter, flyers, tribal council newsletter, radio station
- individual contact
- presentations
- public discussion meetings
- information centres or open houses
- workshops
- technical expert committees
- special category committees, ie., "hunting and trapping association".

The information to be given out and received should cover the scope of the project, the needs and wants of the community, and if the information session is opened to the general public, comments from non-Native neighbours or interest groups.

3.7.3 Feedback

At each stage of negotiations and implementation of an agreement, it is imperative that activities and findings are communicated clearly and concisely to a variety of audiences. This keeps community members interested and in turn they are able to provide timely responses and questions. Failure to seriously respond to concerns can make the audience wonder how others value their time, and can lead to a frustrated backlash directed against the negotiating or implementation of an agreement, not because it is inherently bad, but because people are not being treated with the respect anticipated nor their comments given due consideration. Public consultation can bring to the surface potential issues that can be resolved before they become problems. This

is a crucial part of resource management, perhaps only realized after something goes wrong. Any public involvement program should have the following guidelines:

- create formal and informal opportunities for public consultation at every step of the negotiations;
- the nature and extent of consultations are designed to fit the situation;
- provide opportunities that allow for a timely, and meaningful exchange of ideas;
- evaluate regularly and make changes as necessary to increase effectiveness.

3.7.4 Results

The main objective of a good communications plan is to end up with information and solutions to problems that reflect the concerns and values of the potentially affected individuals and the community as a whole.

In summary, a good communications plan is simple, as long as it includes the following elements:

- the use of plain clear language
- use of tools that are easy to use by the person doing the communications, and easily understood by the audience
- the tools used should be appropriate for the audience
- a sympathetic personality able to generate a comfortable discussion
- opportunities for exchange of ideas.

Getting the message out in an understandable manner, and responding to community concerns in a constructive manner is the backbone of communication. It is a crucial part of working towards a resource agreement, which can make or break it. In the end, the ideal community participation process should include the following ingredients to achieve satisfactory community contribution to decision-making:

- access to all information
- resources to carry out independent research
- community information programs
- adequate time for assessment of and response to information
- consultation with those most directly affected by the project
- opportunity for all interested or affected to participate
- participation and consultation before decisions are made
- opportunity to identify, examine, and debate fundamental issues, policy

implications, and alternative proposals
- access to decision makers.

3.7.5 Record Keeping of Discussions

The task of keeping records involving any discussions should be taken seriously at the onset of discussions. Consideration may be given in finding a person to devote part of their duties to this position. The importance of leaving an orderly paper trail cannot be emphasized enough. Crucial facts and evidence are forgotten in time, or get lost, or disappear in the departure of negotiators and other employees.

3.8 Building First Nation Governments

Political self-sufficiency means, at its most basic level, having the ability to set goals and act upon them without seeking permission from others.[23] Indians' interest in their own lands is a pre-existing legal right not created by Royal Proclamation, nor by S.18(1) of the Indian Act, nor by any other executive order or legislation provision.[24] Governance includes not only making decisions for the good of the people, but for the land upon which the people depend. Without putting too fine a point on it, jurisdiction is the lawful right to exercise authority to use and protect that land and natural resources.

A government depends on the resources within its territories to provide for a significant part of its economy. Thus the reassertion of Native governments is dependent on access to resources for revenue generation.

[23]Asch. 1992. Political Self-Sufficiency. Nation to Nation: Aboriginal Sovereignty and the Future of Canada. 1992. Anansi Press.

[24]Guerin v. R., (1984)6 W.W.R. 481 at 497 (Fed.).

For example, sustainable use of the resources can not only provide for subsistence, but for commercial development too. The nutritional, cultural, and spiritual aspects are commonly recognized. The peace found from being out on the land, to hunt as one's forefathers have hunted for generations and provide for the family, may not be as apparent. Yet it is intrinsic to a strong, healthy sense of identity to an individual, and on a collective scale, to the community.

There are four key tests which indicate whether a government is self-governing: real decision-making authority; legitimacy in the form of recognition from its constituency, recognition from external governments; and sufficient resources to govern (Wolfe, 1991).

Overlaying aboriginal title to land is the federal, territorial and provincial division of powers for natural resources. There is no consistency for governmental jurisdiction. Individual resources may officially be under the jurisdiction of either the federal or provincial government, yet management can be delegated to the other government. On the one hand, for example, the federal government currently has jurisdiction over migratory birds through the aptly named Migratory Birds Convention Act. However, provincial enforcement authorities (as well as the R.C.M.P.) enforce the Act, sometimes with more vigour than the federal government would like. On the other hand, coastal fisheries are under the federal Department of Fisheries and Oceans, with the provinces relegated to managing inland, freshwater fisheries. This type of shared management is clearly defined within the Constitution Act, 1982 and Natural Resource Transfer Agreements with the prairie provinces for the division of powers.

Jurisdiction is even less clear cut with emerging Native governments. Shared management agreements are not an end in itself, but merely a means to achieving a greater degree of self-determination. The very concept of co-management, or shared management is only temporary, since the ultimate goal is whole management jurisdiction based on the fundamental principle of aboriginal title to the land and resources. The confidence in the ability to do this originates from even a cursory examination of healthy ecosystems in Canada - they tend to be within ancestral or reserve lands that still have a strong Native involvement.

This should be no surprise if one compares the health of the continent's lands under the management of aboriginal peoples for thousands of years with the current health of it under the management of relatively new colonial governments over the past century or two. Limited budgets and a national debt leave much to be desired for substantive environmental protection on a national level. To include aboriginal people formally in natural resource management since it is they who occupy the land and have already a proven track record of management is a natural response to a growing need in Canada.

Co-management as advocated by the federal government, whereby it has ultimate authority over wildlife matters, is not acceptable to those Native groups in Canada who hold that their inherent authority to govern themselves comes from their relationship with the land and all creation. This is much more than what the other governments have in mind. Their vision is a form of authority delegated to the Native group in question by them. There is no recognition of a natural authority flowing from use and occupancy of the land by the original peoples, despite this being the basis for treaty making in the first place - the requisite nation to nation relationship.

Furthermore, Sparrow argued that a right cannot be whittled away through regulation, but rather that a clear and plain intention must be evident only by the federal government. Since the intent of negotiators for turn of the century treaties was to lay out a format for sharing the land, it follows that total or any jurisdiction was not intentionally given away, but rather shared. Thus, the term co-jurisdiction is more appropriate in discussing shared management of resources. Why the other governments continue to promote co-management begs the question as to why any Native group would settle for something less than what they already have, in effect, co-management in place of co-jurisdiction.

4.0 Conclusions

The following eight points summarize the findings of the agreements. They were chosen because they were commonly found amongst the most contentious or ambiguous of issues in the development and implementation of agreements. The combined experiences can be weighed by future negotiators who are

uncertain of what to expect, or who may want to push the invisible limits of indigenous natural resource management.

4.1 Recognition of Rights

Firstly, recognition of the First Nation peoples' rights, culture, or traditional knowledge in actual management and decision-making is a good beginning. Yet it is uncertain how this is actually going to be done. There is no single definitive way, although thorough community consultation and attainment of their support emerges as an element in the success of an agreement. Acting as a government by exercising rights to utilize land is a sure way of keeping the recognition of rights alive.

Many Native communities continue to use and occupy traditional territories rich in plants, animals, minerals or as elemental as water. Yet despite Native people having signed centuries-old treaties, recent land claims, or none at all within their aboriginal territory, resource agreements are quickly being signed by other governments and third party interests for remaining resources. This is occurring in every province and territory. It can deal with a single resource, such as the fines from deer hunting violations on Manitoulin Island going to a non-Native conservation group in contravention of an earlier agreement with United Chiefs and Councils of Manitoulin. Or it can deal with a wide expanse of land and resources crossing several provinces and territories under the auspices of the McKenzie River Basin Transboundary Waters Agreement, where Native concerns are pointedly ignored.

First Nations continually argue that they did not relinquish title to most if not all of the natural resources, so therefore continue to have a proprietary interest in them, regardless of what the laws state. Furthermore, the other governments' unilateral decision to allow extraction of resources by others has profound implications on aboriginal and treaty rights to harvest and use the land for survival. The interpretation of what constitutes Indian lands, plus the jurisdictional capacity to manage them, needs to be expanded by other governments. Increasingly, Native communities want a piece of the action. Peripheral involvement is no longer acceptable.

4.2 Decision-making

Secondly, evaluations of co-management by Native groups has lead to a reluctance to enter into one where final decisions are made by an outside government authority. While perhaps once a necessary evil, the lack of recognition of an inherent jurisdiction over one's ancestral lands is unacceptable.

Agreements are more acceptable where there is joint decision-making for certain matters of mutual interest. Other decisions dealing exclusively with the community are best left to their discretion. However, there is still the issue of who determines exclusive or combined decision-making.

4.3 Origin of Agreements

Thirdly, management agreements are signed only after much acrimony. Nearly all agreements began out of an adversarial stance. The aboriginal government defied other governmental laws by purposely going out to exercise their inherent rights to partake of natural resources. Many had been involved in court proceedings prior to a negotiated settlement. Often, winning the court decision forced the government to deal equitably with the Native community.

A beleaguered community may find out that the agreement is only so much paper. Their frustration level is bound to increase if there is insufficient recourse built into the agreement. Outside governments do not always comply with their own agreements because they usually have a financial and jurisdictional upper hand. Further discussions and forewarnings are sometimes necessary to insist on maintaining the spirit and intent of the agreement. It is becoming more commonplace now to avoid the extended costs and acrimony, and put energies into co-operatively protecting the resources instead.

4.4 Recognition of Native Skills

Fourthly, Native people have gained considerable negotiating and scientific skills out of necessity in the past few years. In addition, each year an increasing number of Native people are attaining higher levels of

education. This education in all fields of resource management is often obtained through technical programs and from universities. While it is the aspiration of both the community and the individual to eventually educate and employ their own in resource management, there are certain ingrained obstacles which make it difficult to do so.[25]

Unfortunately, there is still a tendency by outside professionals to differentiate those who have traditional and those with scientific skills, without admitting that both can be part of the same person. Many Native people involved in resource management have experienced and continue to feel a double restriction by non-Native people in their own field: either by the insistence of an academic approach as the only acceptable means of reporting, so that traditional knowledge or alternative methods of reporting are implied as not as acceptable; and that the relative shorter years of experience do not make a Native person as valued within the small circle of those involved in Native resource management.

At the same time, there is not always encouragement nor even communication to Native people so that they could benefit from the growing amount of literature on the subject in which they are intimately involved.

4.5 Instability

Agreements are tenuous. For the most part, they must be renewed annually, and are dependent for their continued existence according to the political goodwill of the other government(s). Some, like the Zuni, have relatively more independence to fund and carry out their priorities, while others have to substantiate their plans for continued funding and existence.

[25]Merckle Smith. 1993. Aboriginal Forestry Training and Employment Review- Phase One. National Aboriginal Forestry Association. Ottawa

The instability of agreements also contributes to uncertain employment, which could discourage bright individuals from committing their career to their own community or other Native communities.

Long term planning for natural resources can be difficult to follow through also if there is the threat or consummation of unstable conditions, despite the best intentions.

A commitment for stable funding and continuation of an agreement can provide confidence in the sincerity of the parties.

4.6 Compensation

Compensation for past, present and future extraction of resources and damage to habitat is rarely addressed, with the exception of the Zuni Land Conservation Project. The same can be said for the destruction to culture and community from the loss of the link to the land. Yet the same dependence on those very resources for financial and other benefits by provincial, territorial and federal governments is denied or extremely limited to aboriginal governments. First Nation leaders are taking a proactive step in resolving past grievances by seeking ways to develop their economies, provide for the community, and strengthen their government. Compensation needs to be better addressed during negotiations of agreements.

4.7 Temporary Nature

Most agreements are characterized as "interim", with a non-prejudicial clause for the exercise of treaty and aboriginal rights. This assertion recognizes that the agreement in itself, is insufficient in addressing overall rights. Thus, the agreements should not be viewed as the be-all and end-all of aboriginal resource management, but rather just a step in the right direction. The positive side is that Native communities are able to get involved in technical management; decision-making; policy and law; and most importantly, greater access to resources.

4.8 Differences in American and Canadian Approaches

Canada's natural resource laws rarely mention Native access. Nor have they been seriously challenged for a decision on whether they do indeed infringe upon Constitutionally protected treaty and aboriginal rights to either those primary resources defined by the legislation or secondary resources which are effected by impacts on the first. Comprehensive claims are the exception, where they are seen as enforceable treaties, but only for a specific geographic location.

The American side is just the opposite. Not only has there been a recognition of Indian sovereignty by the American government for over a decade, there are numerous pieces of federal legislation and programs, with more on the way, to assist Native Americans in resource management. Other pieces of legislation treat communities as states, thereby recognizing them as governments, although not everybody is happy with that connotation because there is no acknowledgement of the unique distinctiveness of an indigenous government. However, Native American communities have been able to develop highly technical and highly respected environmental protection and resource management programs within those parameters.

MAS~ER MEMORANDUM OF UNDER~~ANDING
BETWEEN THE

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AND

NATIVE AMERICAN FISH AND WILDLIFE SOCIETY
93-SMU-117

This Master Memorandum of Understanding (MOU) is made and entered into and between the United States Department of Agriculture Forest Service, hereinafter referred to as FS, and the Native American Fish and Wildlife Society, hereinafter referred as NAFWS.

I. PURPOSE

The purpose of this MOU is to establish a general framework for cooperation between the FS and NAFWS to accomplish mutually beneficial projects and activities in order to achieve the common goal of advancement of wildlife and fish habitat knowledge and the skills and stewardship of wildlife and fish resources. This cooperation will serve both parties' mutual interests.

II. INTRODUCTION

The FS is a multiple use natural resource agency managing national forests and national grasslands, cooperating with the states to help private landowners apply effective forest and rangeland practices on their lands, providing natural resource stewardship assistance, developing relations with foreign resource agencies and international organizations to facilitate cooperative resource management efforts, and conducting research to find better ways to manage and utilize our natural resources. The FS is responsible for increasing the public's knowledge, awareness, involvement, and appreciation of natural resources.

NAFWS is a non-profit organization established to support the development of Indian tribal government fish and wildlife management capabilities within a professional framework. The society is comprised of over 1000 professional biologists, mangers, and technicians representing all aspects of tribal fish and wildlife management and conservation enforcement as well as 70 tribal governments and 8 tribal organization memberships. Tribal wildlife and fish programs manage enumerable animal and plant species on over 52 million acres, including projects designed to help implement the North American Waterfowl Management Plan.

In consideration of the above premises, the parties agree as follows:

III. THE FS WILL

1. Encourage FS employees to communicate with NAFWS members to jointly enhance wildlife, fish, and ecological technical knowledge and managerial skills.

2. Encourage NAFWS members to consider FS employment

3. Provide advice on the development of joint projects between the FS and the Native American youth

4. Consider providing educational materials and information to NAFWS for training Society members and Native American youth in wildlife and fish habitat management, leadership, and multiple use management.

IV. THE NAFWS WILL

1. Share the scientific, technical, and cultural wildlife and fish expertise of their membership regarding how all people and their cultures are integral parts of ecosystems.

2. Consider joint projects and other cooperative efforts with the FS.

3. Provide information regarding the communication and partnerships with Native Americans regarding wildlife and fish habitat management and rural and community development.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE SAID PARTIES THAT

1. As appropriate, the parties will cooperate in the development of; technical workshops; continuing education programs and conferences; research and management documents for wildlife and fish professionals; and increasing public awareness and understanding of, and professional commitment to, the conservation and proper management of fish and wildlife cultural values.

2. Consider providing forums, workshops, and other means to encourage comprehensive habitat management and species conservation planning by federal and state agencies, tribal governments and entities, and private land owners.

3. This MOU is neither a fiscal nor a funds obligation document. Any endeavour involving reimbursement or contribution of funds between the Parties of this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Governing procurement and printing. Such endeavours will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to NAFWS of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

4. No member of, or delegation to Congress shall be admitted to any share or part of this MOU, or any benefits that may arise therefrom; but this provision shall not be construed to extend to this MOU if made with cooperation for its general benefit.

5. This MOU in no way restricts the FS or NAFWS from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

6. Nothing in this MOU shall obligate the FS or NAFWS to expend appropriations or to enter into any contract or other obligations.

7. This MOU may be modified or amended upon written consent of both parties or may be terminated with 30-day written notice of either party.

8. Unless terminated under the terms of V7 above, this MOU will remain in full force and effect until March 31, 1997, at which time it will be subject to review and renewal.

9. The principal contacts for this agreement are:

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USDA Forest Service
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Native American Fish and
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INTERIM MEASURE AGREEMENT

Between

the Province of British Columbia

And

The Hawiih of the Tla-o-qui-aht First Nations, the Ahousat First Nation, the Hesquiaht First Nation, the Toquaht First Nation and the Ucluelet Fist Nation.

Introduction

Throughout the summer and fall of 1993, tens of thousands of anti-clear cutting demonstrators and over 800 arrestees blockaded access to Clayoquot Sound logging operations on Vancouver Island. The international attention thus generated enabled the Nuu-chah-nulth of Clayoquot Sound to coerce the B.C. government to negotiate an agreement with them. its purpose was to force the B.C. government to include affected aboriginal communities in decision-making processes on natural resource management issues in Clayoquot Sound. It was also an attempt to rectify a prior B.C. government announcement that "the Clayoquot Sound Land Use Decision (CSLUD) of April 1993 had been made with the approval of the First Nations."

The objectives of the Interim Measures Agreement range from the wish to conserve the region's ancient rainforest ecosystems to the need for sustainable economic development initiatives. The aboriginal community constitutes over 43% of the population base yet has over 70% unemployment.

Empowering Aspects

The 'agreement in principle' was understood by First Nations negotiators to incorporate real decision making and veto powers. HOWEVER, prior to ratification, B.C. Premier Harcourt publicly interpreted the role of the First Nations to be merely consultative in nature. This rather upset the aboriginal negotiators (Francis Frank), members of the aboriginal communities like the Aboriginal Tourism Association as well as environmental groups including the Sierra Legal Defense Fund and Natural Resources Defense Council. Subsequent negotiations refined the wording so that as it is written now, the roles of First Nations representatives range from advisory in nature to joint management.

In a nutshell, this Agreement is a bridging tool meant to:

- conserve resources for future generations;

- promote sustainable resource use;
- incorporate aboriginal values in planning processes;
- fund regional, culturally appropriate training and education initiatives; and
- enhance economic diversification.

History

The Agreement was initiated by the First Nations negotiators who "holed themselves up" in a Victoria hotel for over 40 days. Their aim was to prepare for the treaty making process (as required by the B.C. Treaty Claims Task Force) and simultaneously address as many of their peoples, neglected economic needs as possible.

It is an interim measure involving several communities of the Nuu-chah-nulth Tribal Council. It affects those peoples whose traditional territories are in Clayoquot Sound, as well as the Ucluelet First Nation, in adjacent Barkley Sound; both located on the west coast of Vancouver Island, B.C.. It is designed to be effective for the next two years or longer if the parties so desire.

The agreement was ratified by all parties on march 19th, 1994. The signatories were the Premier of British Columbia, Mike Harcourt; the Minister of Aboriginal Affairs, the Honourable John Cashore; Hereditary Chief Earl George for the Ahousat First Nation; Chief Councillor Richard Lucas for the Hesquiaht First Nation; Hereditary Chief Bert Mack for the Toquaht First Nation; Chief Councillor Francis Frank for the Tla-o-qui-aht First Nations; and Chief Councillor Larry Baird for the Ucluelet First Nation. The negotiators involved the above mentioned people or their designates, as well as other representatives of the First Nations.

Important Achievements of the Agreement

Recognition of Traditional Authorities

It is the first time since the Douglas Treaties were signed a century ago with the Federal government that the precedent setting situation has arisen in that the province recognizes the authority and responsibilities of the HAWIIH, or hereditary chiefs "who are the highest authority in the traditional system of government" (Clifford Atleo, lawyer and Central Region Coordinator of Clayoquot issues, B.C. government news release, March 19, 1994, p1).

Moreover, representatives of the Nuu-chah-nulth Tribal Council (NTNTC) are hoping that recognition of the First Nations as GOVERNMENTS during the negotiation process, within the test of the agreement, as well as in its execution, will be precedent setting for other B.C. First Nations (Chief Francis Frank of the Tla-o-qui-aht First Nations and spokesperson for the Central Region First Nations Meares Island, Dec. 16th, 1993).

Environmental Protection

Another aspect of the agreement is that is an attempt by the First Nations to stall further resource extraction processes in Clayoquot Sound (Chief Francis Frank) until the Treaty process is

complete. Clayoquot Sound is one of the last areas on Vancouver Island with a viable aboriginal marine fishery (Joe Martin, Tla-o-qui-aht) and has five of the nine remaining intact old growth rainforest valleys on the Island (David Weston, Nanaimo Free Press march 25, 1994).

Political Gains for Provincial Government

The B.C. government had hoped to defray aboriginal, regional, national and international criticism of the 1993 CSLUD by participating in the negotiations initiated by the First Nations, and subsequently by ratifying the agreement with them. Some media analysts have remarked that the image of the Harcourt government has been bolstered by virtue of associating with the moral authority of the First Nations (Helen Maserati, Bureau of National Affairs).

Mechanisms

The agreement calls for the establishment of a joint management board whose functions will be:

- overseeing other groups created by the Agreement to ensure their compliance with its objectives;
- reviewing resource plans and policy decision;
- initiating new work;
- realizing fiduciary responsibilities;
- hearing public complaints;
- developing terms of reference and staffing a forest inventory of Clayoquot Sound including plant and animal species and culturally modified trees.

The Board's decisions must be ratified by a majority of aboriginal representatives. If a recommendation of the Board is not followed within 30 days, and a Board member so requests it, Cabinet can be invoked. If Cabinet disagrees with the board upon the referred matter, a special council composed of the Hawiih, provincial ministers, and, if appropriate, a federal minister shall meet to consider solutions. What will happen if this Council can not resolve outstanding issues within given timeliness is not specified.

Implementation

Legal Matters

The agreement is designed to be without prejudice to the issues and processes involved in treaty making, or outstanding related court cases. Where a court of law may find any part of the agreement to be illegal, it is not to affect the remainder of the agreement, which may or may not alter the spirit of the intent, depending on what goes missing.

To circumvent possible future implementation problems, the Agreement recommends exploring ways to amend existing legislation before legal problems arise.

Making Goals A Reality

Economically Viable Alternatives

When asked about the B.c.government's and the logging industries' relentless push to practice 'forestry' in Clayoquot Sound, Francis Frank replied that the Nuu-chah-nulth have led a marine based life style for the past 5000 years, and that this is not about to change to logging. He expressed the wish to make tourism the mainstay of his peoples' future and hopes that this agreement will conserve pristine landscapes and resources long enough to obtain permanent protection by treaty.

Achievements include a list of general economic intentions such as to "increase local ownership within the forest industry". Another is the creation of a joint working Group to consider a land- and water- based list of sustainable economic enterprises in the region:

- exploring the concept of a tribal park
- foreshore management and shellfish harvesting
- value added component of the forest industry
- the whale watching industry
- Tofino Airport and Pacific Rim National Park
- completing and implementing "Living Hesquiaht Harbour Plan".

An alternative to intrusive resource extraction in Clayoquot Sound is ecotourism (Francis Frank, December 1993: Western Canada Wilderness Committee, summer, 1993). For example Joe Martin and his brother (from Tla-o-qui-aht) took the initiative several years ago to set up a whale watching business in Tofino, as well as prevent the degradation of Clayoquot Sound's natural resources until the treaties are actually signed. Similarly, the Hesquiaht have built a lodge next to a popular coastal hot spring destination on their territory.

Through their 3 year old "living Hesquiaht harbour study" and the support of this agreement, they are hoping to rehabilitate and conserve marine resources (Nelson Keitlah, chairperson, NCNTC Central Region) that were destroyed by International Forest Products (Interfor) through landslides and siltation caused by previous logging (Sam Miki, Hesquiaht research coordinator and Hereditary Chief Simon Lucas, Aboriginal Fisheries Commission).

Funding, Training and Employment

Funds to implement the economic initiatives consist of $250,000 initially and $500,000 per fiscal year thereafter for as long as the agreement stands. A rough calculation to help understand what this kind of money can accomplish follows:

The Agreement envisions aboriginal people to be funded for training:

- to become foresters;
- to work in silviculture;
    - stream rehabilitation;
    - salmon enhancement;
    - road reclamation
    - recreation site and trail construction and maintenance;

- to become part and forest wardens and managers;
- to develop skills in tourism and other businesses
- to realize community and infrastructure opportunities.

According to Christoph Danninger, a licensed European forester presently studying forestry in B.C., sustainable forestry techniques are not presently taught in British Columbia. In Europe, training even an ordinary forest worker to become familiar with sustainable forestry techniques takes from 2 to 3 years. Hence, for the sake of simplicity all potential training costs have been estimated for two years. A minimum of four expert instructors would be necessary, namely in the areas of forestry, aquatic ecosystem rehabilitation and management, business development, and engineering. At $60,000 per annum for two years this would subtract $480,000 from the total $1,250,000 endowment, leaving $770,000 to be spent on student wages of, say, $30,000 per annum over two years, i.e., 12.8 students.

Thus calculated, the number of potential skilled jobs created as a result of the agreement is no more than 12 over a two year period. This neglects infrastructure and other costs associated with such a training program, which would have to be factored into a more realistic 'job generation through training scheme' than the simplistic model presented here.

The stated economic goal of the agreement is to reduce aboriginal unemployment levels to those comparable in the local non-aboriginal population. The funding levels envisioned in this agreement or this level of employment generation will not be able to comply with this intent (Valerie Langer, Friends of Clayoquot Sound).

To put the amount of funding provided for this agreement's implementation into perspective, the B.C. government invested in $50 million worth of shares in MacMillan Bloedel just a few days before the Clayoquot Sound Land Use decision in April 1993. It has been argued by members of the media (Hume, Vancouver Sun, April 1993) that this money could have been more appropriately spent. Once example of a more beneficial to invest this money has been submitted to the provincial government and to the NCNTC for consideration. It involved establishing a regional educational facility based on the Renewable Resource Technology Program of Arctic College in Fort Smith, N.W.T. (Correspondence between Silvaine Zimmermann, the office of John Cashore (then Minister of the Environment, now Minister of Aboriginal Affairs); Francis Frank, and Nelson Keitlah).

Resource Use In Clayoquot Sound

The Forests

Background

About 23% of Clayoquot Sound has been logged within the last 30 years (Satellite Map, Sierra Club of Western Canada). The remaining landscape includes two major watersheds (Megan and Clayoquot) containing 2 of the last 6 of an original 97 primary watersheds for more than 50,000 hectares on Vancouver Island, as well as 3 smaller secondary watersheds.

Non-consumpt ve Users

These ecosystems also harbour old growth dependent species such as the endangered Marbled Murrelet (Schwaegerl, Wulff; Western Canada Wilderness Committee 1993); hitherto undescribed species of tree-substrate dependent lichens (Wulff, Freihe Universitaet Berlin, 1994), unusually high densities of bear dens in hollowed out tress, and it is the least fragmented of the remaining old growth left on Vancouver Island. The biodiversity of such ancient rainforest watershed is incomparable with second growth forests. Neither government nor industry has ever undertaken detailed ecosystem-wide research efforts oriented at documenting and studying this diversity of life forms and habitat structures in Clayoquot Sound. However, such initiatives were undertaken by the Hesquiaht First Nation just over 3 years ago, and the Biosphere Project 2 years ago, along with volunteer researchers of the Western Canada Wilderness Committee and Conservation International.

The forest is also becoming an important recreational resource for wilderness tourists (Hot Springs Cove Trail Meares island Trail, Clayoquot Valley Witness Trail).

Furthermore, these ancient forests are of important cultural and spiritual significance (Francis Frank, Joe Martin) - both anthropologically and currently.

User Conflicts

Timber and Fibre Extraction

Prior to the signing of this agreement, the above described values whether scientific, cultural, or recreational were not assigned any significance by the B.C. government nor the logging industry. The B.C. government was not concerned about the opinions of stakeholders other than the forest industry. To get the government's attention, environmentalists staged the most numerous and continuous mass demonstrations and acts of non-violent civil disobedience in Canadian history during the summer of 1993.

International powerbrokers became concerned over poor forestry practices by the trans national forest companies operating in Clayoquot Sound, as well as the B.C. government's disregard for aboriginal peoples' rights. This led to fibre contract cancellations and finally to the threat of international economic sanctions against B.C./Canadian Forest products.

Economic Importance of Forest Resource

The only users of the forest resource presently drawing a direct monetary benefit are the logging companies and their employees including 27 direct jobs for Clayoquot residents, none of whom are aboriginal. Quantifying and qualifying indirect and other uses such as cultural, educational, spiritual, and recreational must still be done. The South East portion of Clayoquot River Valley is an important are for the traditional use of living cedars, as evidenced by the density of culturally modified trees (CMTs) (Francis Frank, Dec. 1993). The agreement strongly protects such trees from being disturbed in any way.

The agreement does not include any specific agreements with any private companies to date. What the agreement does spell out in greater detail is how much timber can be cut, where, and by what date without any commitment to transferring land use rights from the trans national logging companies to the First Nations on whose traditional territories they operate. However, the various decision making and advisory bodies mentioned in the Agreement may be able to delay such activities if management plans put forward by the logging companies are not deemed satisfactory by the joint management bodies.

Conflict Resolution Strategies

Prior to the mass demonstrations of 1993, the Harcourt government responded to environmentalists' concerns by financing a pro-logging industry propaganda campaign, and undertaking several trips to speak with customers, politicians and media in Europe to attempt to undermine the credibility of the environmentalists and their message. Only when the provincial government admitted to poor logging practices, committed itself to improve forestry practices, and entered into serious negotiations with the First Nations, did the government's credibility improve among European members of Parliament (personal communication with members of the Canada Delegation of the European Parliament).

Potential or Existing Conflicts

Presently, the forests of Clayoquot Sound are still covered by tree farm licenses which cover most of the valuable valley bottom timber stands except those of the Megan Valley, which has been designated as Parkland since April 193. Logging in Clayoquot Sound is dominated by two trans national logging companies, MacMillan Bloedel and Interfor. As long as these stakeholders 'handle' the resource, the distinctions between the users and managers of the past will continue to be blurred. Both trans nationals have immensely powerful lobbies in the government and an abysmal environmental track record. MacMillan Bloedel alone has 22 convictions under the Fisheries Act, the Environmental Protection Act, Ontario Water Resources Act, Pesticide Act, and the Waste Management Act between 1969 and 1990 as compiled for Sierra Club of Western Canada. Interfor logging practices have caused landslides and erosion in the Escalante area of Clayoquot Sound (verbal communication by Chief Simon Lucas and 1993 videotape documentation by Western Canada Wilderness Committee).

Lack of Confidence

It has been noticed by various environmentalist (Adriane Carr, Western Canada Wilderness Committee) that most of the chief aboriginal negotiators are strongly opposed to clear cutting in Clayoquot Sound. Nevertheless, the First Nations were unable to incorporate any direct wording against clear cutting into the Agreement (Silvaine Zimmermann, Ecologic Consulting). This worries some groups like the National Resources Defense Council about the real power First Nations will have when attempting to implement their positions in joint-management bodies.

As long as the Agreement fails to outlaw clear cutting and these trans national forest giants are allowed to harvest in Clayoquot Sound, the environmental community will lack confidence in B.C.'s commitment to changing forest practices. Greenpeace and Friends of Clayoquot Sound

are now focus ng on t ese compan es' trac recor s n t e r oycott ng campa gns.

Polarization

Intransigence can be expected to continue among forest workers' mass rallies on Vancouver Island in opposition to CORE report during March 1994. Forest giants have led a very effective scapegoating campaign against environmentalists to divert attention away from the results of past over cutting and efficiency management mechanization schemes. Under-educated forestry workers fear loosing very high paying blue collar jobs which undermine their willingness to accept change, or to accept the rights of other resource users.

Conclusion

It is too early to tell whether the hopes and aspirations of the First Nations and environmental groups will be met as the Agreement was only signed a few weeks before the writing of this analysis. If it manages to delay further logging in Clayoquot Sound until Treaties are signed, the somewhat tenuous partnership between the Nuu-chah-nulth Tribal Council Central Regional, and B.C.'s largest and most active environmental groups may be strengthened, benefitting the long term priorities of both groups. If implementing the spirit of the Agreement fails, the provincial government will loose face in the international community, which may result in trade sanctions, reduce options for everyone, and hurt forest workers as well as their employers.

Memorandum of Understanding
of

Wildlife Management

This Memorandum of Agreement and Understanding

Made This 17 th Day Of May, 1993

BETWEEN: The Federation of Saskatchewan Indians, Inc., a body corporate pursuant to the laws of Saskatchewan, otherwise known as the Federation of Saskatchewan Indians, representing the Chiefs of Saskatchewan in Assembly, hereinafter referred to as:

"The FSIN"

AND The Government of Saskatchewan as represented by the Minister of Environment and Resource Management, and the Minister of Indian and Métis Affairs, hereinafter referred to as:

"Saskatchewan"

AND The Canadian Wildlife Federation Inc., a body corporate pursuant to the laws of Canada hereinafter referred to as:

"CWF"

AND The Saskatchewan Wildlife Federation Inc., a body corporate pursuant to the laws of Saskatchewan, hereinafter referred to as:

"SWF"

WHEREAS the Parties agree that, in addition to existing governmental activity in wildlife management, a common, practical, developmental approach is desirable in respect of wildlife and habitat development and management.

AND WHEREAS common approaches to wildlife and wildlife habitat development and management may need to be developed and pursued which respect the Constitutional and Treaty rights of Indian people while at the same time satisfying the long-term interests of all people of Saskatchewan;

AND WHEREAS the Parties have a common interest in protection, preserving, conserving and developing wildlife and their habitats;

AND WHEREAS the "FSIN Wildlife Development and conservation Strategy", as it pertains to wildlife, contains practical avenues for both Indian developments and co-management

systems:

AND WHEREAS the Parties respect the traditional Indian viewpoint that the earth is the foundation which provides nourishment, shelter, medicine and comfort for people, and that man must harmonize his actions with nature;

AND WHEREAS there is a mutual understanding of the current threats confronting wildlife and their habitats, furthermore, the Parties acknowledge that more information is required in order to determine effective responses and monitoring systems in respect t of such threats; and in order to address these issues there is need for long-term planning, close cooperation, and the coordination of some wildlife and wildlife habitat management activities by the Parties;

AND WHEREAS this document is a record of the Parties' intentions and is not intended to create legally enforceable regulations;

AND WHEREAS this document is to be considered in context with the memorandum of Understanding on wildlife matters whose signatories are the FSIN and Canada (Indian Affairs and Northern Development)

Now Therefore it is Hereby Agreed as Follows:

1. **THAT** the intention of this document is to state general principles and to provide a broad framework for future agreements. It is a record of the parties' intentions, and is not intended to be a treaty or to create legally enforceable obligations.

2. **THAT** the Parties will base their joint wildlife conservation and development activities on the following principles:

   a) Conservation is integral to the survival of Indian and non-Indian people.

   b) Indian people are entitled to define and exercise their culture and to blend their culture with contemporary wildlife management practices. In this regard, Indian Elders have a valuable role to play.

   c) In managing wildlife species, priority should be given to the protection, development and perpetuation of wildlife species and their supporting habitats.

   d) It is desirable for the parties to engage in co-management activities to promote wildlife population levels, and to attempt to ensure that traditional, subsistence, and recreational uses of wildlife resources can be blended and coordinated.

   e) The sharing of wildlife population data and information will result in common wildlife database to assist the Parties in their common goal of preserving and managing wildlife and wildlife habitats.

f) Immediate and ongoing measures are required to foster inter-cultural exchange and the sharing and the sharing of information respecting wildlife conservation and management.

g) It is desirable to involve Indian Firsts and Indian people in base-line studies and research activities involving wildlife conservation and development.

h) It is desirable to employ Indian people in the area of wildlife management, and to train Indian people as "wildlife officers", as they are defined in the Wildlife Act R.S.S. 1978, c.W-13.1.

i) Where wildlife population data indicates that harvesting of a species of wildlife would endanger that species (or a sub-population thereof), then Saskatchewan Indian First Nations, where their interests are concerned, should be involved in plans, policies of measures designed for the protection, development, and management of the wildlife species concerned, and participate in joint activities designed to promote wildlife population levels.

j) To promote the employment of Indian people in the area of natural resources management, and the training of Indian people as "wildlife officers" as defined in the Wildlife Act, R.S.S. 1978, c. W-13.1.;

k) To develop guidelines regarding conservation and utilization of wildlife resources.

4. **THAT** the parties agree that the Province is not responsible for any expenses associated with this document other than the expenses of the Province's representatives.

5. **THAT** all reports, summaries or other documents created jointly by the Parties pursuant to this document shall become the joint properly of all Parties hereto and may be used in their respective endeavour and pursuits.

This Represents Our Mutual Covenants and Understandings
Arrived

At This 17th Day Of May A.D.,
1993

THE GOVERNMENT OF SASKATCHEWAN

per _____

Minister of Environment and
Resource Management

per _____

Minister of Indian
and Métis Affairs

Federation of Saskatchewan Indians, Inc.

per Chief Roland Crowe

per _____
(affix corporate seal)

Canadian Wildlife Federation

per Colin Maxwell

per _____
(affix corporate seal)

Saskatchewan Wildlife Federation

per Richard Stieb

per _____
(affix corporate seal)

INTERIM AGREEMENT ON HUNTING

BETWEEN

ALGONQUINS OF GOLDEN LAKE AND ONTARIO

OCTOBER 13, 1992

THE ALGONQUINS OF GOLDEN LAKE

(hereinafter referred to as "the Algonquins)

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

(herein referred to as "Ontario")

WHEREAS the Algonquins and Ontario agree that wildlife and fish must be preserved and protected for the benefit of future generations, and that conservation takes priority over all human consumption of fish and wildlife;

AND WHEREAS the Algonquins and Ontario recognize the need to preserve the wilderness values of Algonquin Park and agree to ensure that an Algonquin harvest within the Park is consistent with those values and with public safety;

AND WHEREAS it is in the interest of both the Algonquins and Ontario to ensure the maintenance and enforcement of applicable conservation and safety laws in the territory;

AND WHEREAS the Algonquins and Ontario have agreed on the desirability of their understandings in the form of this Interim Agreement;

AND WHEREAS the Algonquins and Ontario are committed to respecting the rights of other Algonquin people in the area affected by this Agreement;

AND WHEREAS the Algonquins and Ontario acknowledge that, during the term of this Agreement, game hunting by non-Algonquins is occurring in Algonquin Park in the townships of Clyde and Bruton, which hunting shall continue to be regulated by Ontario;

NOW THEREFORE IT IS AGREED THAT:

1. The area to which this Agreement applies is described on the map attached hereto as Schedule"A" (hereinafter referred to as "the area"). For the purposes only of this Interim Agreement, and without prejudice to the respective positions of the Algonquins and Ontario, the parties have agreed that the Algonquins will hunt within the area in accordance with the following terms. Accordingly, it is understood that, for the purposes of this Agreement, Algonquin law shall provide:

   a) In the portion of the area outside of the boundaries of Algonquin Park, the hunting seasons shall be established by Algonquin law and the 1992-93 moose and deer hunting

season shall be from September 15, 1992 to January 15, 1993;

b) In the portion of the area inside the boundaries of Algonquin Park, the only area for the hunt for the 1992-93 hunting season shall be as shown on the map attached hereto as Schedule "B". Algonquin law will, within the area described in Schedule "B", restrict hunting insofar as possible within existing nature reserves, wilderness zones, historic zones and areas posted for logging. For its part, Ontario confirms that there will be no addition or creation of any new nature reserves, wilderness zones, or historic zones during the term of this Agreement.

c) In the portion of the area inside the boundaries of Algonquin Park as indicated in Schedule "B", only moose and deer shall be hunted, and the 1992-93 hunting season shall be from October 13, 1992 to January 14, 1993, with the exception that mature female moose shall not be harvested beyond December 6, 1992;

d) In the portion of the area inside the boundaries of Algonquin Park as indicated in Schedule "B",

   1) Algonquins using cars or trucks for access for hunting purposes shall, while inside the area, not use those vehicles off roads except when retrieving and loading game;

   2) Algonquin use of motor boats shall be restricted in the same manner and to the same extent as is the use of motor boats by other persons under provincial law;

   3) Algonquin use of all-terrain vehicles and snowmobiles for hunting shall be prohibited.

e) Subject to the provisions of Paragraph 2 of this Agreement, nothing herein shall restrict the existing arrangements between the parties with respect the existing arrangements between the parties with respect to trapping.

2. It is understood by the parties that, for the purposes of this Agreement, the Algonquins will hunt only moose and deer in the area indicated on Schedule "B" although during the course of such moose and deer hunt other wildlife species may be taken ancillary to such hunt. For greater certainty, such wildlife species shall be limited to those game species normally taken for food and, without limiting the generality of the foregoing, shall exclude rare, threatened and endangered species, and shall also exclude wolves and loons.

3. The Parties agrees that, for the purposes of this Agreement, the Algonquins shall set the limit of their harvest of moose and deer. For the 1992-93 hunting season, the Algonquins have set the limit at no more than 100 moose and no more than 175 deer taken from the area described in Schedule "A". Such limit shall include insofar as possible those moose and deer which may be taken pursuant to the special permits issued under paragraph 10.

4. The Algonquins will seek to implement a management system that would promote a moose and deer harvest that will reflect a balance between male and female animals harvested, and between mature and immature animals. This management system will encourage hunting over a wider area within the area set out in this Agreement (Schedule "A"). The Algonquins will also investigate a tagging system as a means to accomplish these ends.

5. Ontario shall continue to provide funding to the Algonquins to provide for an Algonquin official and one-half the expenses of a support staff person together with support costs for the period ending March 31, 1993. The parties will enter into discussions, commencing no later than February 15, 1993 for the purposes for extending this funding arrangement for the duration of the agreement. Ontario agrees to use its best efforts to ensure that such funding is made available.

   a) The Algonquin official and the support staff person shall work under the direction of the Algonquins of Golden Lake.

   b) The Algonquin official shall be responsible for ensuring the observance of this Agreement and for undertaking such community consultations and surveys as the Algonquins consider appropriate.

   c) The Algonquin official shall work in cooperation with Ontario Conservation Officers who shall also have responsibility for ensuring the observance of this Agreement and for working in cooperation with the Algonquin official and shall advise one another as soon as possible about possible or potential violations of this Agreement.

   d) The Algonquins and Ontario agree to continue discussions concerning the terms of reference and funding for an Algonquin Nature Department.

6. The Parties agree to continue the existing Co-ordinating Committee. Each party shall appoint three members to the said Committee who shall serve for the duration of this Agreement. The parties may, however, as necessary, change the members on

the Co-ordinating Committee during the term of the agreement. The Co-ordinating Committee:

a) shall participate in the proper planning, reporting and monitoring by the parties, of hunting in the area;

b) may receive, maintain and distribute information necessary for the proper management of hunting in the area which may include information such as game inventories, kill records, harvesting reports and biological reports;

c) may receive and analyze information relating to research studies, surveys and the data obtained therefrom, related to hunting in the territory;

d) may recommend to the parties conservation measures to be implemented into law.

7. The parties agree to provide to the Co-ordinating Committee for its review and recommendations any proposed new laws or amendments to existing laws concerning hunting in the area.

8. By March 15, 1993, the Algonquins shall report to the Co-ordinating Committee on the taking of moose and deer by Algonquins during the season immediately preceding. This report shall state the number of animals taken, their sex and approximate age, and the date and location of taking. By March 15, 1993, the Ontario Ministry of Natural Resources (hereinafter referred to as "MNR") shall report to the Co-ordinating Committee on the total taking of moose and deer in the territory, with such other biological data as is available to MNR concerning the population of moose and deer in the territory and shall include any available statistics which it has or is able to obtain from other Ministries concerning road kill.

9. Ontario and the Algonquins agree to continue to pursue discussions toward an Interim Agreement on fisheries management.

10. Where an individual Algonquin is in actual need of food, the Council of the Algonquins of Golden Lake may issue a special permit to authorize such individuals to take one moose or one deer at a time other than described in Algonquin laws. The Council may also issue special permits for such takings of moose and deer for community or ceremonial purposes.

11. The Council shall where possible avoid issuing special permits under Paragraph 10 for provincial parks, and shall consult with MNR before a special permit is issued for an area within a provincial park. Such a permit shall not allow hunting in

locations or by methods prohibited by Algonquin law and shall insofar as possible not result in the limits set out in paragraph 3 being exceeded unless the parties specifically agree otherwise.

12. It is understood that for the purposes of this Agreement, laws ordinarily in force in Ontario and which are intended to ensure of promote public safety which includes matters relating to hunting within areas adequately posted for logging may be enforced by Ontario within the territory described in Schedule "A". Without limiting the generality of the foregoing, this includes laws relating to hunting within areas adequately posted for logging in circumstances where such hunting represents a threat to public safety.

13. The parties recognize that this Agreement is only intended to address on an interim basis issues related to hunting within the area described in Appendix "A" and does not seek to address issues related to the exercise of jurisdiction. The parties recognize that the Algonquins have established laws which are intended, amongst other things, to regulate the hunting activity of the Algonquins and, in particular, to address issues related to the conservation of natural resources under this agreement. In addition, the parties will, as necessary, address any issues related to the implementation of any findings of the tribunal.

14. Except as specifically provided in this Agreement, and subject to the provisions of paragraphs 12 and 13 relating to conservation and safety, Algonquin people harvesting wildlife inside Algonquin Park in accordance with this Agreement or hunting wildlife or fish outside the boundaries of Algonquin Park in accordance with this Agreement or transporting wildlife, or fish for food for personal consumption or for social or ceremonial purposes, shall not be subject to such enforcement procedures by Ontario, as are outlined in Ontario's Interim Enforcement Policy.

15. Reference to any geographical area in this Agreement shall not be construed by either party as an admission or acknowledgement of the jurisdiction, rights or claims of either party.

15. The parties acknowledge that, at the time it is signed, this Agreement shall apply only to the Algonquins of Golden Lake and the term "Algonquin" where used in this Agreement shall refer only to the Algonquins of Golden Lake. It is acknowledged that there are Algonquin people in the area other than the Algonquins of Golden Lake, and that this Agreement may be amended to provide for and regulate hunting and fishing by such people.

17. The parties acknowledge that Algonquin Laws shall not apply to persons in the area other than Algonquins.

18. This Agreement is without prejudice to the rights of any Algonquin people other than the Algonquins of Golden Lake.

19. This Agreement is without prejudice to the position of the parties with respect to Algonquin aboriginal and treaty hunting and fishing rights.

20. The terms of this Agreement shall not be construed so as to alter any aboriginal or other rights of the Algonquins or any other aboriginal people.

21. This Agreement shall remain in effect until August 31, 1993, unless extended or amended by the parties hereto. Nothing herein shall preclude the parties from agreeing to amend this Agreement during its term. In addition, either party may, upon thirty days' notice, terminate this Agreement if, in its opinion, the other party has acted in a manner fundamentally contrary to the language and intent of this Agreement.

22. The parties acknowledge that the application and operation of this Agreement shall not be inconsistent with Canada's Canadian Charter or Rights and Freedoms.

DATED THIS 13TH DAY OF OCTOBER, 1992.

ORIGINALLY SIGNED BY
BUD WILDMAN

THE MINISTER OF NATURAL RESOURCES AND MINISTER RESPONSIBLE FOR NATIVE AFFAIRS ON BEHALF OF THE CROWN IN RIGHT OF ONTARIO

ORIGINALLY SIGNED BY
CLIFFORD MENESS

CHIEF
ALGONQUINS OF GOLDEN LAKE

ORIGINAL SIGNED BY
MIRSH PODLEY
WITNESS

ORIGINAL SIGNED BY
DAN KOBSHK
WITNESS

INTERIM AGREEMENT ON HUNTING

BETWEEN

ALGONQUINS OF GOLDEN LAKE AND ONTARIO

SEPTEMBER, 1993

THE ALGONQUINS OF GOLDEN LAKE

(hereinafter referred to as "the Algonquins)

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

(herein referred to as "Ontario")

WHEREAS the Algonquins and Ontario agree that wildlife and fish must be preserved and protected for the benefit of future generations, and that conservation takes priority over all human consumption of fish and wildlife;

AND WHEREAS the Algonquins and Ontario recognize the need to preserve the wilderness values of Algonquin Park and agree to ensure that an Algonquin harvest within the Park is consistent with those values and with public safety;

AND WHEREAS it is in the interest of both the Algonquins and Ontario to ensure the maintenance and enforcement of applicable conservation and safety laws in the territory;

AND WHEREAS the Algonquins and Ontario have agreed on the desirability of their understandings in the form of this Interim Agreement;

AND WHEREAS the Algonquins and Ontario are committed to respecting the rights of other Algonquin people in the area affected by this Agreement;

AND WHEREAS the Algonquins and Ontario acknowledge that, during the term of this Agreement, game hunting by non-Algonquins is occurring in Algonquin Park in the townships of Clyde and Bruton, which hunting shall continue to be regulated by Ontario;

NOW THEREFORE IT IS AGREED THAT:

1. The area to which this Agreement applies is described on the map attached hereto as Schedule"A" (hereinafter referred to as "the area"). For the purposes only of this Interim Agreement, and without prejudice to the respective positions of the Algonquins and Ontario, the parties have agreed that the Algonquins will hunt within the area in accordance with the following terms. Accordingly, it is understood that, for the purposes of this Agreement, Algonquin law shall provide:

a) In the portion of the area outside of the boundaries of Algonquin Park, the hunting seasons shall be established by Algonquin law and the 1993-94 moose and deer hunting season

shall be from September 15, 1993 to January 15, 1994. Notwithstanding the foregoing, the algonquins shall, insofar as possible,provide that the hunting of moose along the Achray Road will not take place prior to the comencement of the moose sport hunting season in that area.

b) In the portion of the area inside the boundaries of Algonquin Park, the only area for the hunt for the 1993-94 hunting season shall be as shown on the map attached hereto as Schedule "B". Algonquin law will, within the area described in Schedule "B", restrict hunting insofar as possible within existing nature reserves, wilderness zones, historic zones and areas posted for logging. For its part, Ontario confirms that there will be no enlargement of the existing nature reserves, wilderness zones, or historic zones within the area described in schedule "B" during the term of this Agreement.

c) In the portion of the area inside the boundaries of Algonquin Park as indicated in Schedule "B", only moose and deer shall be hunted, and the 1993-94 hunting season shall be from October 12, 1993 to January 15, 1994, with the exception that mature female moose shall not be harvested beyond December 6, 1993;

d) In the portion of the area inside the boundaries of Algonquin Park as indicated in Schedule "B",

   1) Algonquins using cars or trucks for access for hunting purposes shall, while inside the area, not use those vehicles off roads except when retrieving and loading game;

   2) Algonquin use of motor boats shall be restricted in the same manner and to the same extent as is the use of motor boats by other persons under provincial law;

   3) Algonquin use of all-terrain vehicles and snowmobiles for hunting shall be prohibited.

e) Subject to the provisions of Paragraph 2 of this Agreement, nothing herein shall restrict the existing arrangements between the parties with respect the existing arrangements between the parties with respect to trapping.

f) This agreement shall not apply to an Algonquin who hunts in a party with any person who is not an Algonquin.

g) Without restricting the application of paragraph 12 herein, and subject to the provisions of paragraph e), an Algonquin travelling within Algonquin Park for the purposes of entering the area described in Scheduled "B" for the purposes of entering the area described in Schedule "B" for the purposes

of engaging in hunting activity under this Agreement must ensure that all firearms are properly stored and transported and encased.

2. It is understood by the parties that, for the purposes of this Agreement, the Algonquins will hunt only moose and deer in the area indicated on Schedule "B" although during the course of such moose and deer hunt other wildlife species may be taken ancillary to such hunt. For greater certainty, such wildlife species shall be limited to those game species normally taken for food and, without limiting the generality of the foregoing, shall exclude rare, threatened and endangered species, and shall also exclude wolves and loons.

3. The Parties agrees that, for the purposes of this Agreement, the Algonquins shall set the limit of their harvest of moose and deer. For the 1993-94 hunting season, the Algonquins have set the limit at no more than 100 moose and no more than 175 deer taken from the area described in Schedule "A". Such limit shall include insofar as possible those moose and deer which may be taken pursuant to the special permits issued under paragraph 10.

4. The Algonquins will continue the development of a management system that will promote a moose and deer harvest that will reflect a balance between male and female animals harvested, and between mature and immature animals. This management system will encourage hunting over a wider area within the area set out in this Agreement (Schedule "A"). The Algonquins will also continue the development a the tagging system as a means to accomplish these ends.

5. Ontario shall continue to provide funding to the Algonquins to provide for an Algonquin official and one-half the expenses of a support staff person together with support costs for the period ending March 31, 1992. The parties will enter into discussions, commencing no later than February 15, 1994 for the purposes for extending this funding arrangement for the duration of the agreement. Ontario agrees to use its best efforts to ensure that such funding is made available.

   a) The Algonquin official and the support staff person shall work under the direction of the Algonquins of Golden Lake.

   b) The Algonquin official shall be responsible for ensuring the observance of this Agreement and for undertaking such community consultations and surveys as the Algonquins consider appropriate.

   c) The Algonquin official shall work in cooperation with Ontario Conservation Officers who shall also have

responsibility for ensuring the observance of this Agreement and for working in cooperation with the Algonquin official and shall advise one another as soon as possible about possible or potential violations of this Agreement.

d) The Algonquins and Ontario agree to continue discussions concerning the terms of reference and funding for an Algonquin Nature Department.

6. The Parties agree to continue the existing Co-ordinating Committee. Each party shall appoint three members to the said Committee who shall serve for the duration of this Agreement. The parties may, however, as necessary, change the members on the Co-ordinating Committee during the term of the agreement. The Co-ordinating Committee:

a) shall participate in the proper planning, reporting and monitoring by the parties, of hunting in the area;

b) may receive, maintain and distribute information necessary for the proper management of hunting in the area which may include information such as game inventories, kill records, harvesting reports and biological reports;

c) may receive and analyze information relating to research studies, surveys and the data obtained therefrom, related to hunting in the territory;

d) may recommend to the parties conservation measures to be implemented into law.

7. The parties agree to provide to the Co-ordinating Committee for its review and recommendations any proposed new laws or amendments to existing laws concerning hunting in the area.

8. By March 15, 1994, the Algonquins shall report to the Co-ordinating Committee on the taking of moose and deer by Algonquins during the season immediately preceding. This report shall state the number of animals taken, their sex and approximate age, and the date and location of taking. By March 15, 1994, the Ontario Ministry of Natural Resources (hereinafter referred to as "MNR") shall report to the Co-ordinating Committee on the total taking of moose and deer in the territory, with such other biological data as is available to MNR concerning the population of moose and deer in the territory and shall include any available statistics which it has or is able to obtain from other Ministries concerning road kill.

9. Ontario and the Algonquins agree to continue to pursue

discussions toward an Interim Agreement on fisheries management.

10. Where an individual Algonquin is in actual need of food, the Council of the Algonquins of Golden Lake may issue a special permit to authorize such individuals to take one moose or one deer at a time other than described in Algonquin laws. The Council may also issue special permits for such takings of moose and deer for community or ceremonial purposes.

11. The Council shall where possible avoid issuing special permits under Paragraph 10 for provincial parks, and shall consult with MNR before a special permit is issued for an area within a provincial park. Such a permit shall not allow hunting in locations or by methods prohibited by Algonquin law and shall insofar as possible not result in the limits set out in paragraph 3 being exceeded unless the parties specifically agree otherwise.

12. It is understood that for the purposes of this Agreement, laws ordinarily in force in Ontario and which are intended to ensure of promote public safety which includes matters relating to hunting within areas adequately posted for logging may be enforced by Ontario within the territory described in Schedule "A". Without limiting the generality of the foregoing, this includes laws relating to hunting within areas adequately posted for logging in circumstances where such hunting represents a threat to public safety.

13. The parties recognize that this Agreement is only intended to address on an interim basis issues related to hunting within the area described in Appendix "A" and does not seek to address issues related to the exercise of jurisdiction. The parties recognize that the Algonquins have established laws which are intended, amongst other things, to regulate the hunting activity of the Algonquins and, in particular, to address issues related to the conservation of natural resources under this agreement. To the extent possible, these laws will be applied by a tribunal established by the Algonquins in administering those aspects of the agreement intended to ensure or promote conservation of natural resources.

14. The parties agree to discuss, as necessary, any general issues pertaining to this Agreement which may arise from the decisions of the Algonquin Tribunal or Ontario Courts. It is understood that such discussions are not intended to interfere with due process or with the discretion of any algonquin or Ontario officials to deal with specific cases on their facts and merits.

15. Except as specifically provided in this Agreement, and subject

to the provisions of paragraphs 12 and 13 relating to conservation and safety, Algonquin people harvesting wildlife inside Algonquin Park in accordance with this Agreement or hunting wildlife or fish outside the boundaries of Algonquin Park in accordance with this Agreement or transporting wildlife, or fish for food for personal consumption or for social or ceremonial purposes, shall not be subject to such enforcement procedures by Ontario, as are outlined in Ontario's Interim Enforcement Policy.

16. Reference to any geographical area in this Agreement shall not be construed by either party as an admission or acknowledgement of the jurisdiction, rights or claims of either party.

17. The parties acknowledge that, at the time it is signed, this Agreement shall apply only to the Algonquins of Golden Lake and the term "Algonquin" where used in this Agreement shall refer only to the Algonquins of Golden Lake. It is acknowledged that there are Algonquin people in the area other than the Algonquins of Golden Lake, and that this Agreement may be amended to provide for and regulate hunting and fishing by such people.

18. The parties acknowledge that Algonquin Laws shall not apply to persons in the area other than Algonquins.

19. This Agreement is without prejudice to the rights of any Algonquin people other than the Algonquins of Golden Lake.

20. This Agreement is without prejudice to the position of the parties with respect to Algonquin aboriginal and treaty hunting and fishing rights.

21. The terms of this Agreement shall not be construed so as to alter any aboriginal or other rights of the Algonquins or any other aboriginal people.

22. This Agreement shall remain in effect until August 31, 1994, unless extended or amended by the parties hereto. Nothing herein shall preclude the parties from agreeing to amend this Agreement during its term. In addition, either party may, upon thirty days' notice, terminate this Agreement if, in its opinion, the other party has acted in a manner fundamentally contrary to the language and intent of this Agreement.

23. The parties acknowledge that the application and operation of this Agreement shall not be inconsistent with Canada's Canadian Charter or Rights and Freedoms.

DATED THIS 13 DAY OF September, 1993.

ORIGINALLY SIGNED BY
Howard Hampton
THE MINISTER OF NATURAL RESOURCES

ORIGINALLY SIGNED BY
Shirley Kohoko
COUNCILLOR
ALGONQUINS OF GOLDEN LAKE

ORIGINAL SIGNED BY
Rosemary H
WITNESS

ORIGINAL SIGNED BY
DAN Kohoko
WITNESS

MASTER MEMORANDUM OF UNDERSTANDING
BETWEEN THE

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
AND

NATIVE AMERICAN FISH AND WILDLIFE SOCIETY
93-SMU-117

This Master Memorandum of Understanding (MOU) is made and entered into and between the United States Department of Agriculture Forest Service, hereinafter referred to as FS, and the Native American Fish and Wildlife Society, hereinafter referred as NAFWS.

I. PURPOSE

The purpose of this MOU is to establish a general framework for cooperation between the FS and NAFWS to accomplish mutually beneficial projects and activities in order to achieve the common goal of advancement of wildlife and fish habitat knowledge and the skills and stewardship of wildlife and fish resources. This cooperation will serve both parties' mutual interests.

II. INTRODUCTION

The FS is a multiple use natural resource agency managing national forests and national grasslands, cooperating with the states to help private landowners apply effective forest and rangeland practices on their lands, providing natural resource stewardship assistance, developing relations with foreign resource agencies and international organizations to facilitate cooperative resource management efforts, and conducting research to find better ways to manage and utilize our natural resources. The FS is responsible for increasing the public's knowledge, awareness, involvement, and appreciation of natural resources.

NAFWS is a non-profit organization established to support the development of Indian tribal government fish and wildlife management capabilities within a professional framework. The society is comprised of over 1000 professional biologists, mangers, and technicians representing all aspects of tribal fish and wildlife management and conservation enforcement as well as 70 tribal governments and 8 tribal organization memberships. Tribal wildlife and fish programs manage enumerable animal and plant species on over 52 million acres, including projects designed to help implement the North American Waterfowl Management Plan.

In consideration of the above premises, the parties agree as follows:

III. THE FS WILL

1. Encourage FS employees to communicate with NAFWS members to jointly enhance wildlife, fish, and ecological technical knowledge and managerial skills.

2. Encourage NAFWS members to consider FS employment

3. Provide advice on the development of joint projects between the FS and the Native American youth

4. Consider providing educational materials and information to NAFWS for training Society members and Native American youth in wildlife and fish habitat management, leadership, and multiple use management.

IV. THE NAFWS WILL

1. Share the scientific, technical, and cultural wildlife and fish expertise of their membership regarding how all people and their cultures are integral parts of ecosystems.

2. Consider joint projects and other cooperative efforts with the FS.

3. Provide information regarding the communication and partnerships with Native Americans regarding wildlife and fish habitat management and rural and community development.

V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE SAID PARTIES THAT

1. As appropriate, the parties will cooperate in the development of; technical workshops; continuing education programs and conferences; research and management documents for wildlife and fish professionals; and increasing public awareness and understanding of, and professional commitment to, the conservation and proper management of fish and wildlife cultural values.

2. Consider providing forums, workshops, and other means to encourage comprehensive habitat management and species conservation planning by federal and state agencies, tribal governments and entities, and private land owners.

3. This MOU is neither a fiscal nor a funds obligation document. any endeavour involving reimbursement or contribution of funds between the Parties of this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Governing procurement and printing. Such endeavours will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to NAFWS of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

4. No member of, or delegation to Congress shall be admitted to any share or part of this MOU, or any benefits that may arise therefrom; but this provision shall not be construed to extend to this MOU if made with cooperation for its general benefit.

5. This MOU in no way restricts the FS or NAFWS from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

6. Nothing in this MOU shall obligate the FS or NAFWS to expend appropriations or to enter into any contract or to enter into any contract or other obligations.

7. This MOU may be modified or amended upon written consent of both parties or may be terminated with 30-day written notice of either party.

8. Unless terminated under the terms of V7 above, this MOU will remain in full force and effect until March 31, 1997, at which time it will be subject to review and renewal.

9. The principal contacts for this agreement are:

Robert D. Nelson
Director, Wildlife & Fisheries
USDA Forest Service
Wildlife and Fisheries Staff
P.O. Box 96090
Washington, DC 20090-6090
(202) 205-1205

Ken Poynter
Executive Director
Native American Fish and
Wildlife Society
Broomfield, CO 80020
(303) 466-1725

FIRST NATIONS' ACCORD
RESPECTING PRINCIPLES FOR NEGOTIATING
RESOURCE MANAGEMENT AGREEMENTS

WE, THE FIRST NATION IN ONTARIO, engaged in efforts to advance our resource rights in the interests of conservation and our economic well-being, who gathered at Cape Croker Reserve on January 27 and 28, 1992 and at Rankin Reserve on February 27 and 28, 1992, wish to express our common resolve to work together and furthermore consider it in our common interest to state the principles upon which we shall pursue the negotiation of resource management agreement in Ontario.

STATEMENT OF PHILOSOPHY

WE, THE ORIGINAL PEOPLE OF OUR RESPECTIVE TERRITORIES, IN THE NORTHERN HEMISPHERE, were vested by the creator with sacred responsibility for stewardship of land, waters, and all living beings. We have the duty to protect, conserve and respect all the life which Mother Earth supports. Within our territories, we have the inherent right to exercise the jurisdiction necessary to fulfil our aboriginal title, is recognized by the Royal Proclamation of 1763, is protested by treaties entered into with Crown, and entrenched in the Constitution of Canada and consistent with Declaration of First Nations of 1980.

FIRST NATIONS' JURISDICTION encompasses the authority to utilize our natural resources for domestic purposes, ceremony, trade and commerce.

IN EXERCISING THIS RIGHT, WE ARE COMMITTED TO THE RESPONSIBLE MANAGEMENT of our natural resources and the promotion of harmonious co-existence.

PART 1
STATEMENT OF PRINCIPLES FOR FISHING NEGOTIATIONS

WE, the said First nations, express our adherence to the following principles which shall serve as a basis for all negotiations respecting fisheries resource management agreements:

1.0 Aboriginal and Treaty Rights

1.1. First Nations have an aboriginal and treaty right to fish. This right is proprietary in nature and derives from original use and occupancy.

1.2 The aboriginal and treaty right to fish is for food and ceremonial purposes as well as trade and commerce.

1.3 All fisheries management agreements negotiated should be based upon respect for the aboriginal and treaty right to fish and to manage the resource. Such agreements must not compromise or unjustifiably restrict the exercise of our fishing rights.

2.0 Inherent R ght of Se f-Government

2.1 First Nations have the inherent right to self-government. This may include exclusive jurisdiction to manage fisheries within our traditional territories including setting allocations, a right which First Nations have never surrendered.

2.2 All fisheries management agreements should respect the inherent right of self-government and seek to implement the exercise of First Nation jurisdiction over fisheries management.

3.0 Conservation and Management

3.1 Conservation has been an ongoing concern of First Nations since time immemorial. This, as well as fisheries resource enhancement, should be addressed in all fisheries resource management agreements.

3,2 Fish habitat and the implications of environmental degradation should also be addressed in fisheries resource management agreements.

4.0 First Nation Uses

4.1 Fishing has always been important for the economic livelihood, culture and social well-being of First Nations' peoples who were traditionally dependent on fishery. Fisheries resource management agreements should seek to revitalize fishing as an economic base for those First Nations.

4.2 The allocation of fisheries resources shall be according to the following priorities:

1st: Conservation;
2nd: First Nation domestic and ceremonial use and trade & commerce;
3rd: Non-native Trade & Commerce;
4th: Non-native Sport.

4.3 All fisheries resource management agreements should have as their objective the allocation of fisheries resources according to the priorities outlines in section 4.2.

4.4 Because fisheries resources have been fully allocated for non-First Nation purposes, fisheries management agreements should contain the following measures to achieve the objective in section 4.3.

a) A formula and realistic schedule for the achievement of this objective;
b) No new increases to existing non-First Nation fishing interests;

c) Increases in sustainable yield should accrue to First Nation purposes; and
d) A commitment by Canada and Ontario to acquire existing non-First Nation Commercial fishing interests as required to achieve this objective.

5.0 Compensation, Royalties and Funding

5.1 First Nations should be compensated for their loss of use of fisheries resources within their traditional territories. There should also be compensation paid for the years of humiliation suffered as a result of economic degradation resulting from this loss of use. All negotiations with Ontario and Canada should address the matter of compensation.

5.2 A equitable portion of revenues from all sources deriving from fishing all be paid by way of royalty to First Nations responsible for fisheries resource management in the area; and the monies collected should be used for fisheries resource management and enhancement.

5.3 Funding for the negotiation and development of fisheries resource management agreements should be provided by Ontario and Canada.

6.0 Federal Fiduciary Duty

6.1 The Crown in Right of Canada owes a fiduciary duty to First Nations to act in their best interests with respect to their aboriginal and treaty rights.

6.2 All fisheries resource management agreements all include Canada as a party.

7.0 Government-to-Government Relations

7.1 Negotiations respecting fisheries resource management between First Nations, Ontario and Canada shall be on a government-to-government basis and all agreements concluded shall reflect this.

7.2 In accordance with the inherent right of self-government of First Nations, fisheries resource management agreements concluded with First Nation all take precedence over any general policies or agreements issued by or entered into by Ontario or Canada with respect to fishing by aboriginal peoples.

THE GRAND COUNCIL OF TREATY 8

FIRST NATIONS

AND

THE NORTHERN RIVER BASINS STUDY

PROTOCOL:

Procedural Guidelines for Cooperative Interaction Between the Northern River Basins Study and the First Nations of Treaty 8

Developed by the Grand Council of Treaty 8 First Nations
Environment Committee
for
The Northern River Basins Study

Third Draft

August 26, 1993

THE GRAND COUNCIL OF TREATY 8 FIRST NATIONS AND THE NORTHERN RIVER BASINS STUDY PROTOCOL

PREAMBLE

This PROTOCOL is based on the assertion of the Grand Council of Treaty 8 First Nations regarding:

- the several and common rights of First Nation peoples to follow their way-of-life and to practice traditional vocations on the lands and waters found within the Treaty 8 area;

- the sovereign right of First Nation governments, as created by these peoples, to manage use of the natural resources by First Nation peoples within this area in the commonweal interest of conservation, and protection of the ecological integrity of the area; and

- the collateral responsibility of the Crown, to First Nation peoples, to manage use of the natural resources within this area by other peoples in a manner that is protective of the interests of First Nation peoples, and in the commonweal interest of conservation and protection of the ecological integrity of the area.

INTRODUCTION

In light of a mutual recognition of the importance of combining scientific and traditional knowledge in the understanding of the ecological workings of the Northern river basin environments, and a desire by both parties to improve the quality of the information acquired through the Northern River Basins Study, an agreement for the Grand Council Environment Committee to development a PROTOCOL was made on October 19, 1992.

The Environment Committee hereby sets out, on behalf of the member First Nations of the Grand Council of Treaty 8 First Nations, a PROTOCOL to guide and inform relations between the Grand Council, its respective member First Nations, their peoples, and the Northern River Basin Study Board, Board members and employees, and the several Board committees, Study Groups and professional contractors acting within the mandate and authority of the Board.

OBJECTIVES

As outlined in the original proposal, this Protocol has been

assembled to address several main objectives. These include:

(1) the need to ensure that the parties can proceed with collaborative consultation and study processes within a framework of mutual trust and cooperation;

(2) the need to ensure that study processes and procedures proceed in a manner that is culturally sensitive and relevant to Treaty 8 First Nations; and

(3) the need to ensure the development of a consensual decision making process that gives voice to Treaty 8 First Nation leaders and Elders; and

(4) the need to ensure the accurate collection and interpretation of all data.

DEFINITION

For the purpose of this Protocol document, the following term is defined in the manner indicated below.

consultation - shall be used to signify a formal process of dialogue and joint decision making, between the agents of the Northern River Basins Study, and the contacts at the First Nation, Tribal Council and Grand Council level, as deemed appropriate by the contents of this protocol.

THE NORTHERN RIVER STUDY BOARD

The Northern River Basin Study Board is established by the Crown, in its several forms, for the purpose of managing a process of collecting information to be used in assessment of the cumulative ecological effects of the industrial development on the ecosystems of the Peace, Athabasca and Slave Rivers, their tributaries and their deltas. Each of the several governments and stakeholders participating in the Northern River Basin Study Board have an interest in such assessment, and in collection of information through the study process capable of informing concerns peculiar to their interest.

The Northern River Basin Study Board is responsible to the Ministers signing the Northern River Basins Study Agreement and to the Board membership. The several members of the Board, who

represent individually and collectively the interests of their respective constituencies, are responsible to their constituencies and for the communication to and from those constituencies. First Nation interests are represented on the Board by the several First Nation leaders and members appointed to the Board. Their participation on the Board is seen as being in the interest of the First Nation peoples and governments that these members of the Board represent.

THE GRAND COUNCIL OF TREATY 8 FIRST NATIONS

The Grand Council of Treaty 8 First Nations; the Northwest Territories Treaty 8 Tribal Council, the Athabasca Tribal Corporation, the Lesser Slave Lake Indian Regional Council, the High Level Tribal Council and the Treaty 8 Tribal Association (B.C.) are viewed as BODIES CORPORATE created by the sovereign First Nations having corporate membership in these organizations for the purpose of furthering the interests of First Nation peoples.

As a BODY CORPORATE, each of these First Nation organizations is responsible to the members of its respective governing Board for acting in the interest of First Nation peoples. As such, each organization can only act in accordance within the express direction of its Board.

The Grand Council of Treaty 8 First Nations has been given express direction by the member First Nations, acting through resolution, to establish this PROTOCOL. Accordingly, the PROTOCOL outlines the following:

NORTHERN RIVER BASINS STUDY BOARD FIRST NATION COMMITTEE

1. The several First Nation representatives having membership on the Northern River Basin Study Board are constituted as a First Nation Committee. This First Nation Committee shall be authorized and resourced by the Board to examine and advise the study process from the perspective of First Nation interests.

2. All aspects of study processes that impact upon First Nation peoples, communities and interests shall be subject to review and comment by the First Nation Committee. Without limitation this includes:

- the need to establish a bridge between the cultures bases on mutual trust, respect, cooperations and appropriate consultation or involvement;

- ensuring that study processes and procedures are culturally sensitive and relevant;

- the special relationship between First Nation peoples and Canada;

- the need to share resources and work together for mutual benefit;

- the merit of employing local resources and talent to the extent possible;

- the merit of identifying contributions of local individuals by name in scientific reports;

- the right of aboriginal peoples to determine appropriate consultation or involvement'

- the right of aboriginal peoples to withhold certain private information (eg. spiritual) as an agreed to exception to the Data Release Protocol;

- the oral tradition of aboriginal cultures, information will normally be provided in English to aboriginal leaders for transmission to their peoples.

3. All study processes and organizational structures that are designed or intended to collect, use, or rely on information or perspective of First Nation Peoples, shall be subject to policy guidance recommendations developed by the First Nation Committee. Without limitation, the Traditional Knowledge group, the Human Food group, and the Other Uses group are seen as organizational structures that will be subject to such policy guidance.

THE GRAND COUNCIL OF TREATY 8 FIRST NATIONS ENVIRONMENT COMMITTEE, TRIBAL COUNCIL AND FIRST NATION COMMUNICATION GRID

1. The Environment Committee of the Grand Council of Treaty 8 First Nations is the appropriate body for communication between the Northern River Basin Study Board and the Grand Council. All communications should be directed to the

Chairperson of the Environment Committee care of the Grand Council office. The Chairperson of the Environment Committee, or his designate will address all communication form the Environment Committee to the Chairperson of the Board.

2. In those instances where the Board, or any of its respective committees, employees, study groups or contractors need to communicate with the First Nations having membership in one of the Tribal Councils, Corporations or Associations (see Appendices C and D) found within the study area, the respective Chief of that Body Corporate having membership in one of the Tribal Councils, Corporations or Associations (see Appendices C and D) found within the study area, the respective Chief of that Body Corporate having membership on the Grand Council Environment Committee (Appendix B) shall be the appropriate contact.

3. In those instances where the Board or any of its respective committees, employees, study groups or contractors need to communicate with a specific First Nation or First Nation community, the Chief of that First Nation, or his designate as identified by the Chief, shall be the appropriate contact. Unless explicitly directed otherwise by the First Nation, all communications should be copied to the Chairperson of the Environment Committee, and the Chief of the Council, Association or Corporation having membership on the Environment Committee.

GENERAL EXPECTATIONS

1. All procedures and processes of the study that are likely to impact on First Nation peoples, communities and/or interests, shall be disclosed to the appropriate contacts; with the procedure and process, possible and probable impacts, as well as the peoples, community and interests affected being fully identified prior to implementation of the process or procedure.

2. All impacts so identified shall be communicated to the appropriate First Nation contact(s) identified in this protocol in a timely fashion, so as to allow sufficient time for the various contacts to review the information and to respond in an appropriate and timely manner.

3. At the request of the appropriate contact, following such notification, any such process, or aspect of a study process,

shall be the subject of a consultation process between the Board and the affected First Nations prior to implementation of the process. Full costs for such consultation are to be paid by the Study Board. Consultation costs are to be agreed to by the First Nation and the Board First Nation Committee.

4. Without limitation, any study process or procedure that requires collection of samples of natural resources, including: water, soils, fish, and aquatic, riparian, or terrestrial flora or fauna from the traditional land-use area of a First nation people shall require that the respective First Nation be advised of the activity prior to implementation of the process. Further, any process or procedure that requires; entry into a First Nation community, collection of information of any nature from First Nation people, or interference with activities of First Nation peoples, shall be subject to First Nation consultation prior to the implementation of the process.

5. Without limitation, the consultation process shall include: clear identification of the procedure and process; the possible and probable impacts; identification of suitable alternatives to the process; identification of appropriate levels of First Nation participation in the process; and mitigation of impacts of any other issues that have been identified by the affected First Nation peoples or community.

6. All consultation processes shall be documented and a report of the process, any agreements, unresolved issues and proposed follow-up action shall be prepared by the NRBS Board and submitted to all affected parties.

7. At the request of any of the identified First Nation parties, the First Nations Committee shall make a presentation to the Board concerning issues or concerns not resolved through the consultation process. Such presentation shall incorporate a motion seeking Board policy direction or interpretation relevant to resolution of the issue or concern.

8. Any such motion presented to the Board by the First Nation Committee shall be discussed and decided upon in a meeting of the Board which is open to the public.

9. The Board shall notify the Grand Council of Treaty 8 First Nations of any meeting at which such motions will be on the agenda.

10. The Board shall provide minutes of the discussion regarding such motions to all affected First Nation parties in a timely manner.

EXPECTATIONS REGARDING LOCAL FIRST NATION INVOLVEMENT IN STUDY PROCESSES

1. Any study process, or aspect of a study process that requires entry into a First Nation community, collection of information regarding First Nation use of a resource, collection of samples of natural resources, including: water, fish, aquatic wildlife or waterfowl, and/or riparian wildlife or fauna from the traditional land-use areas of specific First Nation peoples, groups or communities (see consultation).

2. The Board shall rely upon the advisement of the First Nation Committee regarding what processes of local involvement are believed to be appropriate.

3. The Board shall rely on the discretion of the First Nation Committee to specify that any process or procedure should undergo additional review by First nation peoples to assess the utility and appropriateness of such process or procedure.

4. The Study Board and the Grand Council of Treaty 8 are committed to receiving concerns, comments and suggestions from First Nation communities through regular community gatherings, meetings and other opportunities for First Nation participation, which are mutually agreed upon and arranged through the proper contacts as specified in this PROTOCOL. The Study Board is also committed to First Nation communities in a clear and timely manner.

5. At the request of a First Nation people, group or community, the Board, acting under advisement by the First Nation Committee, shall entertain modification of a study process, or aspect of a study process that will allow for the collection of information capable of informing First Nation concerns regarding the responsibility of the Crown to manage use of the aquatic resources within the Treaty 8 area in a manner that is protective of the interests of First Nation people.

CONCLUDING COMMENTS

While this document has been compiled with the intent to provide a thorough set guidelines for a positive working relationship between

the Northern River Basins Study and its agents, and the Grand Council of Treaty 8 First Nations, its agents, and its sovereign First Nation members, it is in no way comprehensive in its nature. Any additional practices that would serve to further the objectives for which this document is intended, and in an effort to further exemplary research management practises, would be highly favoured by Treaty 8 First Nations. The contents have been set out in a spirit of cooperation and collaboration, and should in no way be interpreted as an usurpation of the powers of the Board, or as a hinderance to the efficient operations of the Northern River Basins Study. To the converse the conscientious application of the above guidelines shall greatly assist in the development a broad and productive basis for the collection of good information for the Northern River Basins Study, and the development of a more sensitive and meaningful forum got participation of the First Nation peoples Treaty 8.

THE ZUNI SUSTAINABLE RESOURCE DEVELOPMENT PLAN:
A Program of Action for Sustainable Development

Zuni Declaration on Environment and Development (see draft)

Section 1: Zuni Cultural and Economic Dimensions

1. This section will be developed from interviews, research, and observations.

Section 2: Conservation and Management of Zuni Resources for Development

1. Integrated approach to the planning and management of land resources
2. Productive and restoration of waterbeds
3. Managing fragile ecosystem:
   Sustainable forest management
4. Managing fragile ecosystem:
   Sustainable grazing development
5. Promoting sustainable agriculture
6. Conservation of wildlife, fisheries, and biodiversity
7. Protection of the quality and supply of freshwater resources:
   Application of the intergraded approach to the development,
   management and the use of water resources
8. Development of a Zuni geographic information system
9. Protection of a Zuni cultural resources during development
10. Federal support and initiatives towards Zuni sustainable development
11. Environmentally sound management of solid wastes and sewage-related issues
12. Environmentally sound management of hazardous wastes, including prevention of illegal traffic in hazardous waste

Section 3: Strengthening the Role of Major Groups

1. Preamble
2. Zuni Irrigation Associations
3. Zuni Livestock Committees
4. Zuni Fish and Wildlife Committee
5. Zuni Cultural Resource Advisory Committee
6. Zuni Youth
7. Zuni Women's Groups (yet to be fully developed)
8. Zuni Seniors Citizens (yet to be fully developed)
9. Other Community Interest Groups

Section 4: Means of Implementation

1. Financial resources and mechanisms
2. Transfer of environmentally sound technology, cooperation and capacity-building
3. Science for sustainable development
4. Promoting education, public awareness and training
5. Regional, national and international arrangements
6. Zuni legal mechanisms
7. information for decision-making

Appendices

This section will present studies, reports, and other detailed information integrated into the Plan.

The Zuni Land Conservation Act of 1990

Through the Conservation Act, $25 million will be appropriated to the Zuni Tribe as settlement for damages to Zuni lands resulting from federal improprieties related to trust responsibility. In short, the settlement requires the Tribe to formulate a Zuni Sustainable Resource Development Plan which shall include but not be limited to:

(1) a methodology for sustained development of renewable resources; (2) a program of resource management and monitoring; (4) programs for funding and training Zunis to fill professional positions to implement the plan; (5) proposals for cooperative programs with public and private agencies; and (6) identification and acquisition of lands necessary to sustain Zuni resource development.

The Zuni Conservation Project

Established as a result of the Conservation Act, the Zuni Conservation Project involves a staff of over forty persons in the formulation of the Zuni Sustainable Resource Development Plan. Following the completion of the Plan in 1993, the Project will increase staffing according to the amount of interest generated by the $17 million trust fund.

Project Components

Project Leadership (management and advocacy)

Administration (management support services)

Watershed/Hydrology (evaluation, assessment, and planning)

Geographic Information Systems (databases and cartography)

Fish and Wildlife (inventories, monitoring, and protection)

Sustainable Agriculture (agricultural development based on Zuni cultural, ecological, and nutritional concepts)

Anthropology (assurance of Zuni cultural values in plan)

Socioeconomics (community economic analyses)

Forestry (sustainability based on Zuni needs)

Youth (intergenerational equity in planning for the future)

Community Input (Zuni tribal members

PUBLIC LAW 101-486

One Hundred First Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the Twenty-third day of January, one thousand nine hundred and ninety

AN ACT

to authorize appropriation of funds to the Zuni Indian Tribe for reservation land conservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1, This Act may be cited as the "Zuni Land Conservation Act of 1990".

ZUNI RESOURCE DEVELOPMENT PLAN

SEC. 2.(a) Before the first day of the third fiscal year beginning after the date of enactment of this Act, the Secretary of the Interior and the Zuni Indian Tribe shall jointly formulate a Zuni resource development plan for the Zuni Indian Reservation, which shall include (but not be limited to)-

(1) a methodology for sustained development of renewable resources;
(2) a program of watershed rehabilitation;
(3) a computerized system of resource management and monitoring;
(4) programs for funding and training of Zuni Indians to fill professional positions that implement the overall plan;
(5) proposal for cooperative programs with the Bureau of indian Affairs and other private or public agencies to provide technical assistance in carrying out the plan; and
(6) identification and acquisition of lands necessary to sustain Zuni resource development.

(b) The resource Development Plan shall be implemented in a manner that protects resources owned and controlled by the Zuni Tribe and promotes sustained yield development.

TRUST FUND

SEC. 3.(a) There is hereby established within the Treasury of the United States the Zuni Indian Resource Development Trust Fund (hereafter in this Act referred to as the "Trust Fund"). The Trust Fund shall consist of amounts appropriated to the Trust Fund and all interest and investment income that accrues on such amounts.

(b)(1) The Secretary of the Interior shall be the trustee of the Trust Fund and shall invest the funds in the Trust Fund with a financial institution.

(2) The Secretary of the Interior shall not deduct any amount from the Trust Fund for administrative expenses or charge the Zuni Indian Tribe for expenses incurred by the

Secretary in acting as trustee.

(1) The funds appropriated to the Trust Fund under the authority of section 4 shall constitute the corpus of the Trust Fund and may be expended, subject to paragraph (2), only for the following purposes;

(A) payment for nay loans, debts, or future expenses incurred by the Zuni Indian Tribe to any person for the purchase of land or obtaining or defending rights of access to the area described in public law 98-408;

(B) payment of up to $600,000 per year for two years for the formulation of the Zuni resource development plan described in section 2;

(C) payment of all costs, attorneys' fees, and expenses incurred prior to September 30, 1990, by the Zuni Indian Tribe in the prosecution of docket numbers 327-81L and 224-84L of the United States Claims Court; and

(D) payment of all invoices submitted by any person to the Zuni Indian Tribe for which proper vouchers have been received prior to September 30, 1990, and subsequently approved by the Secretary of the Interior.

(2) The total amount of the corpus of the Trust Fund that may be expended under paragraph (1) shall not exceed $8,000,000.

(3) The interest and investment income that accrues on the corpus of the Trust Fund may be expended by the Secretary of the Interior pursuant to the Zuni resource development plan described in section 2.

(4) No funds appropriated under the authority of this Act may be used to make capita payments to member of the Zuni Indian Tribe.

(5) All sums paid pursuant to this Act shall be offset against any judgement entered in favor of the Zuni Indian Tribe in docket number 161-79L, of the United States Claims Court.

(6) Nothing in this Act shall be construed to affect in any way the trust status of Zuni Indian Reservation land or resources.

AUTHORIZATION OF APPROPRIATIONS

SEC.4. There are authorized to be appropriated to the Zuni Indian Resource Development Trust Fund $25,000,000. Such funds shall remain available without fiscal year limitation.

ADDITIONAL LANDS

SEC.5. The first section of the Act entitled "An Act to convey certain lands to the Zuni Indian Tribe for religious purposes", approved August 28, 1994 (98 Stat. 1533), is amended by adding at the end thereof the following; "Also, all of sections 13 and 23, township 14 north, range 26 east, Gila and Salt River Meridian, such lands to be acquired and held in accordance with section 2 and 3 of this Act".

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