Submission to:

Royal Commission on Aboriginal Peoples

SELF-GOVERNMENT AND COMANAGEMENT IN ONTARIO

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TABLE OF CONTENTS

1.0 THE ONTARIO FEDERATION OF ANGLERS AND HUNTERS

The Ontario Federation of Anglers and Hunters (O.F.A.H.) is a nongovernment, non-profit conservation organization, dedicated to the conservation and wise use of natural resources.

The Federation exists to maintain and enhance fish and wildlife populations and habitats on a local, regional and provincial basis and to promote the conservation and sustainable use of these natural resources by all members of society.

The Federation began in 1928 as a coalition of Ontario's fish and game clubs in order to provide a strong, unified voice for conservation. The O.F.A.H. now has over 480 member clubs and 70,000 individual members across the Province of Ontario.

The Federation's members have many varied interests, including hunting, fishing, bird watching, hiking, canoeing, dog training, and nature photography. Roughly one-third of our members reside in Northern Ontario. The one common and binding interest is the dedication and commitment to the conservation and fair sharing of natural resources.

Our dedication to conservation has led the Federation in many directions over the years. The Federation was one of the first to recognize the dangers of acid rain and to give it a high public profile. Wetland conservation is a major focus of our activities and the Federation has lobbied for and participated in the development of wetland protection policies at both the Federal and Provincial levels.

The O.F.A.H. is a major participant and intervenor in the Province of Ontario's Class Environmental Assessment of Timber Management on Crown Lands in Ontario, a process that has been ongoing for nine years. In these Hearings, the Federation has advocated the integrated planning of the entire forest ecosystem to ensure that all aspects of the environment, not just timber production, are accounted for and incorporated.

The Federation's work also extends to the field. The O.F.A.H. has initiated hands-on programs to fight the spread of exotic and damaging flora and fauna. Our "Project Purple" campaign to battle the spread of Purple Loosestrife has gained national attention and praise. To combat the spread of Zebra Mussels, the Federation has pioneered a mobile boat wash station, a toll-free hotline to report sightings, and an aggressive public education campaign. These programs were recently recognized by the Canadian Wildlife Federation in its award to the O.F.A.H. of the Doug Clark Memorial Award for Outstanding Conservation Achievement.

The Federation has initiated an extremely successful Travelling Teacher program to educate elementary students about the importance of wildlife habitat and the methods that they themselves can employ to play an active role in habitat protection and enhancement.

At the local level, affiliated clubs are active in habitat restoration and protection. Activities range from stream bank habitat creation to winter deer browse provision to the outright purchase of important habitat that is threatened with destruction. At all levels of the Federation's organization, we have been willing to expend our money and our time to ensure the ongoing conservation and protection of fish and wildlife habitat and populations.

The O.F.A.H. has worked cooperatively with the Ontario Ministry of Natural Resources to re-introduce species once common in Ontario. We have had notable successes with the Wild Turkey, and are currently active in working toward the reintroduction of Bobwhite Quail and Trumpeter Swans in Ontario.

The strength of the Federation comes from our members: their commitment to conserve natural resources, their willingness to devote time and money to habitat restoration and preservation, and their undying love for the outdoors. These aspects of the Federation's members transcend all barriers of culture, economics, gender and physical ability. The Federation has members from all cultural groups, economic classes, both sexes, and the Federation works actively to promote and facilitate the participation of the physically

challenged in outdoor activities.

The Federation's work over the years has concentrated on the management of Crown land and resources by government agencies, ministries, and departments. Since our founding in 1928, we have served as both the watchdog and major supporter for those who manage Crown land and resources for the optimal benefit of all the people of Ontario and Canada.

Our efforts over the years have been extremely successful. Ontario boasts healthy fish and wildlife populations at levels which have not been experienced in generations; all due to cooperative and environmentally sustainable use and management. The Federation is justifiably proud of our efforts and successes, and those of others with whom we have worked.

2.0 THE IMPORTANCE OF FISH AND WILDLIFE IN ONTARIO

Ontario generally supports healthy populations of fish and all species of wildlife. Recreational use, subsistence use, and commercial use of these renewable natural resources are tremendously important to both the economy and the social fabric of this province; for aboriginal and non-aboriginal residents alike. All of these uses must be carefully balanced with the reproductive capability of the species in relation to its habitat. The carefully crafted fish and game laws have allowed the sustainable use of the resource by literally millions of people in Ontario annually.

Subsistence use of fish and wildlife resources, particularly in the northern portions of the province, fulfills a significant portion of the residents' food requirements. Commercially, the province's fisheries resources support, on a sustainable basis, an annual harvest of a variety of species with a retail value of $178 million annually. Over 11 thousand person years of employment are supported by the commercial fishery on the Great Lakes alone.

Well over 1.4 million people purchase licences to fish recreationally in Ontario. They fish an average of more than twenty days per year. An additional 600 thousand people under the age

of 18 fish recreationally as well. The economic impact of this recreation is enormous. Substantial revenue accrues to the province in the form of licence fees, but this is dwarfed by the contribution from the angling public through taxes and other indirect economic spin-offs to local economies. The economic impact of recreational fishing activity in Ontario is worth well over two billion dollars annually to the Ontario economy. Beyond the impact on the Ontario economy of recreational fishing through licenses, taxes and spin-offs, fish caught by Ontario anglers are kept for food: each angler keeps, on average, 22 fish per year. Excluding smelt, over 43 million fish are harvested annually for food by recreational angling.

Similarly, hunting in the province of Ontario is vital to the economy. Over 630,000 provincial hunting licences are sold annually and direct expenditures by hunters is reaching $350 million annually. The economic impact of these expenditures reaches all sectors of the economy and supports all regions of Ontario. The economic impact of wildlife related expenditure resulted in $3.4 billion in gross business production, 61 thousand person years of employment and $365 million in government revenues.

Hunting also provides an alternative to store-bought meat and fowl, and the protein provided is free from chemicals and growth hormones, and is naturally low in fats and cholesterol.

Tourism, especially in Northern Ontario is largely based on hunting and fishing and supports over 478 thousand person years of employment for both aboriginal and non-Aboriginal residents. Direct expenditures and related indirect impact of tourism on the Ontario economy are worth well over $22 billion dollars annually.

All these economic impacts and recreational activities depend on healthy fish and wildlife populations and access to the habitat that supports the populations. With the recent Constitutional discussions, our concerns are heightened in that the tacit or implied recognition of the right of aboriginal self-government may result in major changes in the ongoing management of renewal natural resources. Moreover, our members may not be able to effectively voice our concerns and take part in the decision-making process affecting land and

natural resources.

3.0 HISTORY OF CONSERVATION IN ONTARIO

For centuries before man's arrival to this Continent, fish and game were plentiful. Practically, even with the arrival and dispersal of aboriginals across the continent, their few numbers, lack of modern technology and transportation methods, led to some form of co-existence between man and nature; in some areas a comfortable existence was found, in others only a bare subsistence was gained. When the more stationary groups locally extirpated fish and wildlife resources, their camps were simply moved to alternate or new locations where fish and game were plentiful. On a provincial or country-wide basis, there was simply not enough people to have much of an impact on natural resources.

Immediately following first contact between Europeans and aboriginals, a burgeoning trade developed: first in furs and secondly with fish and game. **This history is now part of <u>both</u> aboriginal and non-aboriginal culture**. Historians consider the Iroquois' over harvest and the resulting population crash of furbearers in the New England area of the United States as the major cause for their migration into Southern Ontario in the late Seventeenth Century. Following population increases in the Eighteenth and Nineteenth centuries in southern Ontario, trade developed in some areas for fish and game, locally harvested by both aboriginals and non-aboriginals.

But things changed. Human numbers have increased significantly, methods of harvest have become much more efficient, and access to all corners of Canada is now possible. By the turn of the Twentieth century, fish and wildlife stocks in Canada were in serious trouble, especially in less remote areas. Furbearers, particularly beaver, were at dangerously low levels, even in remote areas. White-tailed deer were scarce, moose were gone from many areas of former abundance, Wild Turkeys and Giant Canada Geese were gone from Ontario, and many fish stocks were showing signs of over fishing. Both natives and non-natives contributed to these declines. Why did this happen? Very simply, it was because Canada's

human population has grown beyond the point at which fish and wildlife populations could support peoples' food needs or be used as sources of income.

It was about this time that many of Ontario's hunters and anglers began to demand that Government do something to prevent further losses of species and to restore fish and wildlife populations. At both the federal and provincial levels, Commissions were established to investigate and report on the status of fish and game and to make recommendations. Governments responded and commercial hunting was quickly made illegal, restrictive hunting seasons and bag limits were introduced, and attempts were made to regulate commercial fishing.

3.1 Ongoing Need for Conservation Initiatives in Ontario

The organized conservation movement, begun in the early 1900's, has grown stronger over the years and has been highly successful. At present, White tailed deer are abundant in southern Ontario, moose populations are increasing in many areas, Giant Canada Geese have been reintroduced and are thriving, Wild Turkeys have been restored and are increasing in numbers and range, and beaver are once again common throughout Ontario. Fish populations remain healthy in many areas due to habitat rehabilitation, pollution control, stocking and other techniques, especially closed seasons and harvest restrictions designed to prevent over fishing.

This all happened because non-native residents of Ontario and Canada willingly gave up their right to use fish and wildlife as a primary food source. Why did they do that? Because they wished to preserve a more important right - the right to harvest fish and wildlife for spiritual, cultural and ceremonial purposes. These are the primary reasons humans love to hunt and fish. It has been said that non-natives hunt and fish for sport and natives hunt and fish for food. This is not true. One hundred years ago, members of both groups hunted and fished for food (or profit). Today, neither non-natives nor natives **must** hunt and fish for food, except in some very remote areas where a full subsistence economy still operates.

However, many of us, native and non-native alike still must hunt and fish. Why? Because it is part of our cultural heritage. Because we would be spiritually much poorer if we didn't. And because for many of us, our lives would be incomplete if we could not hunt and fish and enjoy eating the fish and game our Creator has provided for us. The spiritual renovation from hunting and fishing is especially important to those of us, who, for employment reasons, must live in urban areas.

4.0 CONCERNS OF THE ONTARIO FEDERATION OF ANGLERS AND HUNTERS

As the largest organized group of outdoor recreation enthusiasts and conservationists in Ontario, our concerns focus on the wise use and conservation of Crown land and resources. In specific relation to the Royal Commission on Aboriginal Peoples Mandate and Terms of Reference, our concerns relate to achieving an equitable and appropriate balance of resource use, within the bounds of conservation while aboriginal self-government arrangements are being developed and implemented, while aboriginal rights are being defined and exercised, and while existing treaties are being interpreted and clarified.

The Constitution currently recognizes and affirms existing aboriginal and treaty rights in Section 35(1). A comprehensive definition of aboriginal rights has not been made to date, although gradual definition is developing through the courts.

The O.F.A.H. has always agreed that legitimate aboriginal and treaty rights, where they exist and are documented, must be recognized. Definition of, and the method of exercising these rights should be the topic of discussion and negotiation. The current Constitution, and the established processes for review and amendment of the Constitution, have failed to accomplish this. As a result, or perhaps as an alternative, aboriginal people are turning to the courts.
Most notably, the May 1990 Supreme Court decision in Sparrow confirms that members of the Musqueam Band have an aboriginal right to fish for food, social and ceremonial purposes. The Court did state that their aboriginal right to fish could be regulated by the government in

the interests of conservation and resource management. Lacking any definition of conservation and resource management, however, the provincial and federal agencies have still little or no guidance.

In the Sparrow decision, the Supreme Court of Canada recognized and affirmed that Ronald Sparrow, while not having any adherent treaty rights, had an aboriginal right to fish for food, ceremonial and community purposes. Since that decision, it is held by many jurisdictions in Canada that the recognized and affirmed aboriginal right to fish as defined in Sparrow extend to most aboriginal people in Canada. It must not be ignored, however, that the Sparrow decision is the result of litigation where no treaty or agreement existed.

Mr. Sparrow was fishing for salmon in the Canoe Passage of the Fraser River; a fishery that specifically targets spawning fish. This long term targeting of spawning fish has resulted in the development of an important economic base for both aboriginal and non-aboriginal societies. It has also resulted in the advancement and refinement of biological sciences as it relates to the continued sustainable harvest of salmon.

The current level of management of the B.C. salmon fishery is much greater than that of management elsewhere in the country. For each of the salmon runs, and there may be several every year for each tributary to the Fraser and other rivers, a quantity of these spawning fish are allocated for conservation, or in other words, remain unallocated for harvest to ensure adequate spawning success to perpetuate the fishery. The quantity of harvestable fish are scrutinized scientifically and are completely allocated to both native and non-native fishermen.

Elsewhere in Canada, the level of knowledge and the intensity of the related management regime for fish and wildlife populations has reached nowhere near this level. In Ontario, fish and wildlife populations are managed on a wider, ecosystem basis. Vast areas of ecosystems and the associated biological productivity are balanced against wide societal demands for resource products, such as fish and wildlife. The O.F.A.H. is concerned and believes that the current Federal and Ontario Provincial government, as well as other jurisdictions across

Canada, have gone far beyond the intent of the Supreme Court in the Sparrow decision. Saying it wants to avoid provoking additional constitutional/legal challenges, the current Ontario government has ignored what Ontario treaties state, and instituted the Interim Enforcement Policy, which recognizes and affirms an aboriginal right to fish and hunt, for food, community and ceremonial purposes and indeed has even extended this to allow "barter", for all Status Indians.

It is important, however, to recognize that both the Constitution and the Sparrow decision expressly qualify any such aboriginal rights in various ways. For instance, the Constitution expressly qualifies such rights to mean existing aboriginal and treaty rights. The Supreme Court in Sparrow said that, "Section 35(1) applies (to rights) that were in existence when the Constitution Act, 1982 came into effect." This means that extinguished rights are not revived by the Constitution Act. Some treaties in Ontario extinguish aboriginal hunting, fishing and trapping rights while others allow for limitations to be placed on the exercise of these rights.

The Supreme Court in Sparrow determined that, "Fishing Rights are not traditional property rights," and that the first priority allocation is to conservation. In addition, the Supreme Court in Sparrow said that when a fishery regulation is put in place, the onus of proving that such would be an infringement on aboriginal rights would be up to the aboriginal individual or group affected. Sparrow also said that Section 35(l) "affords aboriginal peoples constitutional protection against provincial legislative power." Sparrow also says, however, "Section 35(1) does not promise immunity from government regulation in contemporary society."

The Supreme Court of Canada was clear on the point that aboriginal rights may be infringed upon if there are valid government objectives, such as conservation. Most importantly, the Court stated that in each instance where an aboriginal right has been allegedly infringed upon, the aboriginals must first prove the infringement. Onus then shifts to the Crown to justify the infringement. This must occur in every instance.

The crux of the matter is the definition of conservation. It is a widely used term but there is

very little agreement on the actual words used to define it. If conservation is to be achieved by the Federal and Provincial Governments in managing fish and wildlife, then it must be defined.

The Ontario Federation of Anglers and Hunters has thoroughly researched this concept and would like to offer a definition of conservation as follows:

CONSISTENT WITH THE PRINCIPLES THAT FOLLOW, CONSERVATION EMBRACES THE PROTECTION, MAINTENANCE, USE AND REHABILITATION OF THE NATURAL ENVIRONMENT IN A MANNER THAT ENSURES ITS SUSTAINABILITY FOR THE BENEFIT OF ALL CANADIANS:

1) The fundamental principle of conservation is resource sustainability at optimal levels.

2) There is a limit to the amount of use that can occur if the resource is to be sustainable.

3) Rare, threatened and endangered species require protection if they are to be sustained.

4) Use of fish and wildlife stocks undergoing rehabilitation may delay or preclude full rehabilitation.

5) Use of breeding fish and wildlife increases the risk to sustainability of those stocks.

6) The sustainability of fish and wildlife requires protection of their habitat.

7) The method by which harvest occurs can significantly affect sustainability by its impact on reproductive success or survival of remaining unharvested individuals.

The above definition must be used in the conservation and management of our natural resources. Definitions that do not include the above principles will be subject to ambiguity,

misinterpretation, and worst of all, could threaten resource sustainability.

4.1 Aboriginal Rights in Ontario

In contrast to the situation in British Columbia, the aboriginal title to the entirety of the Province of Ontario has been ceded, with exception to a portion of Manitoulin Island and the beds of the Great Lakes. Following the requirements of the Royal Proclamation of 1763, aboriginal title was ceded through 27 major and several minor land purchases.

After the Royal Proclamation, aboriginals bargained from a position of strength and were important military allies of the British Crown. With the first few negotiations and surrenders of land, a process was established that allowed aboriginals to make sophisticated demands to be satisfied in turn for the ceding of aboriginal title. This process continued as aboriginals ceased to make up the majority of inhabitants, and has continued into the Twentieth century.

As a result, some Treaty Indians in Ontario had certain non-resource related privileges conveyed to them at the time when their occupied territory was ceded to the Crown through the signing of a purchase and surrender.

In some of the first purchases and surrenders following The Royal Proclamation, the aboriginal signatories did "give, grant, sell, dispose of and confirm for ever onto His Majesty King George the Third, all that tract or space containing land and water, or parcel of ground covered with water, be the same land or water or both lying and being near…..to have and to hold the said parcel or tract of land, together with all the Woods and Waters therein lying and being unto His Majesty King George the Third, His Heirs and successors forever, free and clear of all claims, rights, privileges and emoluments which we, the said Chiefs, Warriors, etc., and people of the said Chippewa tribe or nation might have before the execution of these presents: And free and clear of any pretended which our children, descendants or posterity may hereafter make to the same: Hereby renouncing and forever absolving ourselves and our children, descendants and posterity of all title to the soil, woods and waters of the above

described parcel or tract of land in favour of His said Majesty, His heirs and successors forever."

Similar wording is written in the Robinson-Huron and Robinson-Superior Treaties of 1850: "…do freely, fully and voluntarily surrender, cede, grant and convey unto Her Majesty, Her heirs and successors forever, all their right, title, interest in the whole of the territory…"

In one form or another, the Numbered Treaties in Ontario state the same, "…the Indians do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada for her Majesty the Queen and Her successors forever, all their right, title and privilege whatsoever to the lands…" These Treaties also state "the said Indians, shall have right to pursue their avocations of hunting and fishing throughout the tract surrendered as hereinbefore described, **subject to such regulations as may from time to time be made by Her Government of Her Dominion of Canada**, and saving and excepting such tracts as may, from time to time, be taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized by the said Government."

The Williams Treaty of 1923, which was completed to extinguish not only aboriginal title but hunting, fishing, and trapping rights in south-central Ontario, states largely the same: "…(the Indians) do hereby cede, release, surrender and yield up to the Government of the Dominion of Canada for His Majesty the King and His successors forever, all their right, title, interest, claim, demand and privilege whatsoever in, to, upon, or in respect of the lands…"

In recent times, many aboriginals have objected to these treaty's formal, clear and written extinguishment of aboriginal title in the surrendered area, relying instead on an "oral history" that today holds an entirely different view of the intent, understanding and effect of these purchases and surrenders. Scholarly and unbiased review, such as the work of Dr. Robert Surtees, indicates otherwise.

In other areas of Ontario, aboriginal settlement occurred as a result of immigration from the United States of America. Following the American Civil War, a great influx of both aboriginals and non-aboriginals arrived in Canada. In return for military assistance, Mohawks and others of the Six Nations "who have either lost their settlements within the Territory of the American States or wish to retire from them to the British" were granted lands in southern Ontario. Their current claims to the exercise of aboriginal rights on a wider land base cannot be supported.

4.2 Aboriginal Self-Government

The O.F.A.H. believes that the Royal Commission on Aboriginal Peoples can have significant input and impact on the future discussions and negotiations of aboriginal self-government arrangements. Since the Royal Commission has a mandate to develop a definition and implementation strategy for aboriginal self-government, and since aboriginal groups across the province and country will be making submissions, the Royal Commission's final report and recommendations could receive wide implementation and may have great impact on the Canadian society. Quite possibly, the greatest impact on Canadian society will be felt if land bases are established or confirmed for those aboriginal groups seeking full self-government arrangements.

There is great uncertainty in Ontario what aboriginal self-government means or entails. This uncertainty was bolstered by aboriginal peoples and others rejection of the Charlottetown Accord. One wonders what aboriginal leaders hoped to gain and why the Accord was rejected by aboriginal peoples across the country.

But what is the status of aboriginal self-government? Is it an inherent, unextinguished right that has constitutional protection as a result of Section 35(1)? Or is it a right that has yet to receive constitutional protection as a result of the failed Charlottetown Accord of 1992? Or further, is it a right that has yet to be conferred? These questions are beyond the scope of this paper but it appears likely that regardless of the failure of the Charlottetown Accord to be

accepted by both aboriginal and non-aboriginal society, aboriginal self-government will eventually occur in some form or another. For example, the current Ontario Provincial Government has recognized the right of aboriginal self-government within the Canadian constitutional framework in the 1991 Statement of Political Relationship.

What then is aboriginal self-government? The scope and range of self-government has never been satisfactorily defined; and has been and will continue to be the subject of much discussion. In Ontario, most current self-government initiatives are an attempt by aboriginals to gain control and authority over the management of their affairs, primarily from a social and economic perspective. With the previous ceding of aboriginal title, the potential for renegotiation of treaties, and therefore the land base set aside as reserves for sole aboriginal use is practically nonexistent.

As a result of this situation, and notwithstanding the purchases of land and the surrender of all rights, title and interest in the surrendered territory as detailed above, both the Federal and Provincial governments, individually and in concert, have been discussing and entering into agreements with aboriginals to afford them increased control over the ceded territory in addition to enhanced decision-making powers in matters relating to social concerns. Social services and concerns such as education, and health care, which may form part of developing self-government agreements are beyond the mandate of this Federation, and as such, this paper will not discuss them.

The self-government agreements that consist of comanagement arrangements for land and natural resources often include agreements on hunting and fishing and access to Crown lands in ceded territory by aboriginal groups. These agreements can have significant impacts on conservation and on the uses of the land for all people.

When discussing aboriginal self-government, one must necessarily address the question: who is an aboriginal? The Royal Commission, in its recent publication Partners in Confederation, maintains that aboriginal citizenship can turn on a variety of factors including parentage,

continuing affiliation, self-identification, adoptive status, residence and so forth. Aboriginal groups did become associated with the Crown at definite historical periods but these groups were based on **race** and the benefits, privileges and recognition of rights were similarly based on **race**. The transference and application of newly recognized rights and privileges to those to "self-identify" themselves as aboriginals or those non-aboriginals whose social activities have endeared them to aboriginals cannot continue without limits. Aboriginal citizenship **must** depend on and be limited by genetic characteristics.

5.0 COMANAGEMENT

5.1 Fundamentals of Comanagement

Comanagement is human interaction in problem solving. As the word implies, it is a balanced interaction precluding dominance and exclusivity. This is an age-old concept and is likely the root from which democracy has evolved. It can be driven by free will or necessity, but in all cases should be designed to manage resources equitably and with conservation foremost.

The fundamentals of comanagement of natural resources must:

1) Recognize all existing legal uses of a given area; and

2) Ensure that all partners with similar principles and goals combine spiritual, financial or physical resources for a common purpose, which in this context would be to attain and share mutually beneficial results.

Crown lands, and the indigenous natural resources they harbor, are held in trust by the Crown for the continued economic benefits, and social and cultural well-being of all the people of Ontario (i.e. society as a whole). Thus, together they are <u>public common property resources</u>. Concerning free-living fish and wildlife, the protection against proprietary, possessionary claims extends even onto patented lands. <u>No one person or group owns them</u>! In effect, no

individual, group of individuals, enterprise, or political entity can claim proprietary rights over them. Possessory rights to Crown lands are usually conveyed through tenure agreements and licenses at fair market value, issued by the Crown for payment of fees/royalties.

The O.F.A.H. and its affiliated clubs have a long history of comanaging resources. Some examples of these are cited throughout this paper and include, but are not limited to, education, enhancement and reintroduction. While these were not necessarily formal arrangements, they do involve interested users and demonstrate true comanagement. One commonality consistent in all such arrangements is that the federal or provincial governments continued to have the management authority, and that the groups operated in advisory capacity while carrying out much of the actual work necessary to implement the project at hand.

The O.F.A.H. and its clubs, because of our long participation in such efforts, have become leaders in comanagement and have learned to appreciate and understand a true comanagement effort between nongovernment organizations and the Crown.

In recent times, however, a different form of comanagement is being promoted by the current Ontario government in its negotiations with aboriginal leaders across Ontario. That concept is "comanagement" in name only.

This so-called "comanagement" is being used to settle territorial claims by aboriginal communities, and claims to priority use of resources by aborigina-ls. Such claims have moved natural resources and Crown land into the politi-cal arena as bargaining chips, leading toward aboriginal self-government; the supposed solution of social-economic problems of aboriginals; and, as a method to right past wrongs, be they real or perceived. This results in unscientifically-based and arbitrary political decisions, rather than modern, sound scientific decisions. It also ignores the vast majority of Ontario's citizens who have a stake in what is a public resource. That majority is called "third-party interests," which implies that their interest is somewhat less than "first" and "second" parties. These so-called "third-party interests" make up approximately 97% of the population, however.

By adopting these "comanagement" models, the current Ontario government is relinquishing its mandated management and decision-making authority over public, common property resources including fish and wildlife and Crown lands to non-elected, non-accountable groups. This will mean that the vast majority of Ontario's citizens will be subjected to controls and regulations established and enforced by boards dominated by many diverse segments of one culture group, i.e. aboriginal peoples. There will be no uniform management philosophy and natural resources will be subject to a vast uncoordinated, often inconsistent, array of management concepts and systems. Moreover, controls and regulations to implement these concepts will be administered by people who have no accountability to the majority of Ontario's citizens, because such citizens will have no say in the election or appointment of those responsible for the management and administration of these publicly-owned resources. In a democratic society, this is unacceptable. In fact, this will turn Ontario into something other than a democracy.

The Crown must maintain final decision-making authority. According to commonly accepted principles of administrative law, Ministers cannot delegate their responsibility for executing legislation to other governmental agencies or non-governmental organizations. In addition, if this control was delegated to an autonomous body, it would have significant implications for all resource users yet the decision-makers would not be responsible to a wider constituency. In a society fundamentally premised upon responsible government, such a development would be politically unacceptable. Also, an overall, political,integrative mechanism is necessary to prevent the development of a mixed bag of management systems created by individual agreements.

It can be argued the establishment of autonomous decision-making bodies, whether they have an element of political legitimacy or not, would work against the achievement of broader conservation objectives, thereby, undermining the ultimate goal of conservation agreements.

The public is pressing more than ever for a say in the management of resources. Virtually

every citizen from every culture group in Ontario and across Canada is demanding a say in conservation and environmental protection. They want and expect the government to ensure that a healthy environment is the norm, and not the exception. They want a say in how this is accomplished, and are adamant that politicians and managers be held accountable. Exclusive use or control by any unaccountable group will not satisfy these concerns. The public's ability to access Crown land, so that they can enjoy and use its resources, is being placed in jeopardy. With some exceptions, free and unrestricted access to publicly-owned Crown land has been a traditional right, enjoyed by Ontario's citizens since before Confederation. The ability to obstruct public access and use will be greatly increased if control is moved to anyone but the Crown. While areas exist where regulated access, for conservation reasons, military installations, parklands, etc., is required or desirable, it must be administered by the Crown, aided by public input, and fairly applied to all people. Anything less than that is to deny the concept of democracy.

An examination of the fundamentals of true comanagement arrangements follows. It addresses the unacceptable, so-called "comanagement" concept presently being promoted through aboriginal agreements, and makes corrective recommendations. Our goal is to achieve true democratic comanagement agreements which recognize the rights and obligations of all resource users and allow for their full participation and sharing.

The comanagement issues in this paper are the conservation of fish and wildlife, their habitats, and access to Crown lands and waters.

For the purposes of this paper, Crown lands shall mean all lands held in *fee simple* ownership by the provincial or federal government or its agencies, as well as all unpatented land in Ontario, whether subject to existing comanagement arrangements or not.

5.2 Authority and Accountability

The Crown, as the ultimate administrative, managing and regulatory authority, is represented

through the democratically-elected Government of Ontario. The Government of Ontario is elected by eligible voters residing within the current boundaries of Ontario, regardless of race, ethnic background or cultural affiliation. In Canada, it can be safely assumed that only a democratically-elected government has the authority to govern, and is accountable to its electorate and society as a whole.

Concerning the administration, management and regulation of access to the enjoyment and use of natural resources and Crown lands, the Ontario government, through its mandated Ministry of Natural Resources, **must** at all times have the ultimate decision-making and supervisory authority and responsibility.

5.3 Comanagement of Natural Resources and Crown Lands

In Ontario, the comanagement of natural resources and Crown lands is usually facilitated in partnership with nongovernment organizations and the Crown and, at times, also involves every willing, interested member of society who participates by:

1. Reaching consensus on management strategy and programs through the solicitation of public input (e.g. open houses, public meetings, consultation briefs and other public responses).

2. Agreements between government and nongovernment organizations (eg. hunter education, conservation publications, wild turkey and bobwhite quail reintroduction, zebra mussel and purple loosestrife control initiatives, Long Point Waterfowl Management Unit, etc.).

3. Hands-on projects with volunteer labor to rehabilitate, manage and enhance fish, wildlife and their habitats (e.g. Community Wildlife Involvement Programs and Community Fisheries Involvement Programs that involve fish stocking, water-fowl nesting boxes, deer wintering habitat improvement, anti-poaching patrols, Pitch-In

projects, etc.).

The comanagement efforts described in 1) through 3) preceding are driven by the nonpartisan, non-political interests of the participants. There is no political agenda driving them, just a voluntary desire to improve habitat and its management, and to get the job done. Participants in all of these comanagement efforts derive fulfilment and satisfaction from being a pivotal part in sound resource management. To our knowledge, none of the non-government participants have ever claimed proprietary or possessionary rights to any of the natural resources on Crown lands they have comanaged.

5.4 Comanagement Presently Promoted in Aboriginal Agreements

"Comanagement" is presently being promoted by the current Ontario government in various forms of aboriginal agreements (e.g. land claims, self-government agreements, comanagement agreements, joint stewardship councils/authorities, etc.).

This process is not motivated through inclusion of all interested partners with common principles and goals who combine their resources for a common purpose, which is to attain and share mutually beneficial results. Instead, the process is motivated by demands for possessionary, if not proprietary rights to public common property resources and Crown lands.

There are legitimate fears, and they are growing, that the future conservation and welfare and/or sustainable use of fish, wildlife and ecosystems can be seriously placed in peril; particularly through exclusive harvest rights or priority use claimed or promoted in these "comanagement" agreements.

In addition, non-aboriginal society's fundamental right to access natural resources and Crown lands within these "comanagement" areas is being threatened and/or diminished. There exists certain elements which substantiate such fears:

1. Uncertainty as to the ownership and management of lands under comanagement agreements/jurisdictions.

2. The possibility of controls and rules for use of resources within such areas being enforced by personnel responsible only to an undemocratic and unaccountable decision-making body.

3. The likely potential that some or all of these comanagement institutions will be classified as self-government institutions through a Statement of Political Relationship and eventually receive irrevocable protection under Section 35 of the Constitution.

4. The composition of the governing bodies of so-called "comanagement" institu-tions. For example, the Wabaseemoong Band (formerly known as Islington) located near Kenora, signed a Memorandum of Understanding with the Ontario Minister of Natural Resources.

   Under this Memorandum, a "Whitedog Area Resources Committee" (W.A.R.C.) was established. It will govern all activities within the 900,000-acre (3,600-square kilometres) area; an area two-thirds the size of the Province of Prince Edward Island. The membership of this committee is as follows: two M.N.R. representatives (the province), three band representatives, and one representative from the community-at-large. All six were appointed by the Minister and an independent Chair was selected by the committee. This is one example of the present Ontario government's concept of a "comanagement" arrangement.

Without prejudice, let's look at this committee. The three Aboriginal representatives follow

their own political agenda and solely represent the interests of the aboriginal community they serve. The two Ministry of Natural Resources Representatives must uphold the honor of the Crown; represent policy of the government of the day; represent distinct, specific interests of the Crown; and represent all the people of Ontario, including aboriginals. (This puts these employees in a difficult position when the government's policy is to favor one group.) The third party representative is chosen by the government, and not by the people he/she is to represent. When considering the composition of this group representing different interests and often opposing loyalties, it is apparent that the general public is grossly underrepresented. The O.F.A.H. finds the make-up of this commit-tee to be unbalanced, undemocratic, unaccountable and, therefore, unacceptable.

A second example of the Ontario government's "comanagement" is the Wendaban Stewardship Authority (W.S.A.) in the Temagami area. The W.S.A. was established through an amendment to a Memorandum of Under-standing between the Province of Ontario and the Teme-Augama Anishnabai in May of 1991.

The W.S.A. has been assigned responsibility to plan, decide, implement, regulate and enforce all uses and activities on the land within its jurisdiction. At this point, four townships are under its control.

The membership of the W.S.A. consists of six individuals appointed by the Band, six members appointed by the Province of Ontario, and a Chair jointly agreed to by the Province and the Band. While the make-up of this Authority is more proportional than the previous example, the Crown has relinquished its management responsibilities over the four townships in an area where the Supreme Court of Canada ruled that Band had no claim to aboriginal title. Further, the Province continues to negotiate a Treaty of Co-Existence with the Band which may involve expanding the area of jurisdiction of the W.S.A. It should be noted that the responsibility to meet any breaches of duty resulting from the Robinson-Huron Treaty lies with the Federal government, not the province.

In another example, the Whitefish Bay First Nations is entering into comanagement agreements with the Ontario Government as part of self-government negotiations. These agreements affect non-native interests on a 4,300 square kilometre area surrounding the reserve. The current plans are for the Government and First Nation to form committees that would play a large part in the management of the natural resources in this area. The committee consists only of aboriginals and government staff. Non aboriginals have been excluded from the committee and have only recently been told of the committee's roles and mandate. Under this system there is no opportunity for public involvement in decision-making and peoples' livelihood depend on the natural resources in this area.

This system is not acceptable to the Ontario Federation of Anglers and Hunters and a more open, honest and fair negotiating process and comanagement structure must be developed.

Even in remote northern areas of the Province where the primary resource users are aboriginals only, and the two main parties are the government and the local aboriginal communities, there has been very little success in implementing comanagement agreements. Much time and effort has gone into the development of the Pen Island Caribou Management Council, the Wabusk Comanagement Agreement and the Hudson-James Bay Tourist Camp Association. These agreements have never been ratified and the tourism association barely survives, and only by the injection of massive government funds. What was once thought as a means of aiding aboriginal communities in self-determination and improving economic conditions, has turned into political exercises without substance.

In the Pen Island Management strategy, the aboriginals did not trust the government motives of guaranteed subsistence harvest and refused to sign at the last moment. The Wabusk Comanagement Agreement was meant to provide more aboriginal input into the management of Polar Bear Provincial Park. The potential economic benefits to the Band were overshadowed by fears by the aboriginals that too many non-aboriginals would come and take control of the area. The tourism initiatives have failed. The Hudson-James Bay Tourism Association was meant to coordinate and stimulate the aboriginal tourist business for the

coastal communities. Lack of cooperation among the members, jealousies between tourist camps and fears of non-aboriginal control has led to another failed attempt.

These are only some examples to illustrate problems that continue today. These problems, as well as those of lack of education and training must be addressed, before future initiatives will be successful.

6.0 OTHER INITIATIVES

In 1992, the Federal government announced its Aboriginal Fishing Strategy, which is their attempt to deal with conflicting demands on a limited fishery resource while meeting the requirements of Sparrow. In June of 1992, an agreement was negotiated with some aboriginal groups on the Fraser River that specified for the first time the number of fish these communities were allowed to catch for food, social and ceremonial purposes. These agreements also allowed for the sale of the catch.

At the end of the 1992 fishing season, some 482,000 salmon had gone missing. The Federal Department of Fisheries and Oceans conducted a study and evidence was found that the agreement worked in some aboriginal fishing areas, didn't in others and invited abuse of aboriginal fishing rights outside of the agreement area. The inquiry did not term the season disastrous, but did note that the rebuilding of the salmon stocks suffered a setback and a reoccurrence would seriously threaten salmon resources.

The Federal Regulation allowing for these types of agreements was revoked and a new regulation was made in substitution in April of 1993. Despite substantial revisions to the regulation, there are reports of abuses of aboriginal community fishing licences and over harvests on the Miramichi, Restigouche and St. John Rivers in New Brunswick, as well as in British Columbia.

In spite of the well-publicized failure of aboriginal communal licensing initiatives, the present Ontario Government is devising systems to allow Williams Treaty people to fish outside the current regulatory regime. Williams Treaty Bands specifically extinguished their hunting, fishing and trapping rights in 1923, but the Province of Ontario is attempting to use the Federal Governments' Aboriginal Community Fishing Licence as a means to allow these Bands to fish outside of the open seasons. The Federal Government has stated that it would not support a system in Ontario for only one group of aboriginals. Ontario continues to try to develop new legislation, without public consultation, and seemingly without proper consideration for conservation.

Until such time that Aboriginal Self-Government is a workable reality, policies, such as Ontario's Interim Enforcement Policy, or the Federal Aboriginal Fishing Strategy should be abolished. Only when aboriginal self-government is operational and a conservation definition accepted by all will conservation be achieved. Until that time, inadequate and ineffective control of abusive harvesting practises, i.e. those that do not consider conservation; will result. We must remember that 70 percent of Canada's aboriginal population lives off the reserves and therefore is not effectively subject to aboriginal control.

It is for these reasons that aboriginals and non-aboriginals should abide by the same conservation rules and regulations. It is ironic that modern wildlife management appears to be once again suffering at the hands of politicians for the sake of purely short-term political gains. This must not be allowed to happen.

7.0 RECOMMENDATIONS BY THE ONTARIO FEDERATION OF ANGLERS AND HUNTERS

As aboriginal self-government moves forward in Canada, jurisdictional issues and use of our natural resources can seriously jeopardize conservation. The natural resources of Canada remain the most valuable in the world, and they cannot be allowed to be sacrificed on the political altar. The Ontario Federation of Anglers and Hunters recommends the following items to be considered in self-government discussions that pertain to the use of natural resources:

That the following definition of conservation be used in all comanagement agreements:

CONSISTENT WITH THE PRINCIPLES THAT FOLLOW, CONSERVATION EMBRACES THE PROTECTION, MAINTENANCE, USE AND REHABILITATION OF THE NATURAL ENVIRONMENT IN A MANNER THAT ENSURES ITS SUSTAINABILITY FOR THE BENEFIT OF ALL CANADIANS:

1) The fundamental principle of conservation is resource sustainability at optimal levels.

2) There is a limit to the amount of use that can occur if the resource is to be sustainable.

3) Rare, threatened and endangered species require protection if they are to be sustained.

4) Use of fish and wildlife stocks undergoing rehabilitation may delay or preclude full rehabilitation.

5) Use of breeding fish and wildlife increases the risk to sustainability of those stocks.

6) The sustainability of fish and wildlife requires protection of their habitat.

7) The method by which harvest occurs can significantly affect sustainability by its impact on reproductive success or survival of remaining unharvested individuals. That the following conditions be a prerequisite to all conservation agreements:

1) Retention of Crown management authority.

2) Mutual recognition and respect among parties.

3) Ability to implement agreements.

Minimal structural elements of comanagement agreements must include the following:

1) Careful consideration and definition of terms such as conservation.

2) An understanding of and commitment to basic principles such as Crown authority to ensure the primacy of conservation, the need for cooperation, management, etc.

3) Specific objectives of the agreement.

4) The scope of the agreement such as area, membership, issues, relationship to other management systems, etc.

5) The management structure including the decision-making process, roles and responsibilities of all parties, and public involvement.

6) Implementation of the agreement including enforcement, maintenance, funding, and review.

The development of specific conservation agreements for fish and wildlife must include the following principles:

1) That every comanagement agreement strive to promote fish, wild-life, and ecosystem management, and promote and be dedicated to scientifically-based, biological conservation principles.

2) That exclusive control, management or regulatory authority not be granted to any individual, group, or enterprise; and that all natural resources and Crown lands within comanagement areas remain perpetually within the public domain and under the control of the Crown.

3) That the Crown retain the sole final decision-making and enforcement authority in the management of the fish and wildlife resources, the habitat required to sustain them, and the control of access to Crown lands and waters.

4) Comanagement agreements should only be established where beneficial to resource management, and conform to the principles and recommendations of this paper.

5) That all comanagement boards, committees, stewardship councils, joint councils, etc., operate only under the ultimate authority of the Federal or Provincial government, pursuant to recommendation #3.

6) That all comanagement boards, committees, stewardship councils, etc. that are established strive for <u>proportional</u> representation based on level of use; with local user groups being given the opportunity to participate. This representation must recognize all existing uses and users. The groups involved must ensure that their appointees are familiar with the issue.

7) The O.F.A.H., and its provincial affiliates across Canada, are the largest

provincially-based conservation organizations across the country, and should be given the opportunity to appoint one or more members when the issue is of regional or provincial significance.

8) All government employees who are employed to deal directly in resource or aboriginal issues, and are appointed to such boards, will operate as nonvoting advisors only. While professional involvement and expertise is necessary, it is not reasonable to expect that Crown employees of this type can fairly represent the interests of non-aboriginal citizens.

9) If a recommendation from such a board is deemed by the Crown to be unacceptable, then a well-reasoned explanation must be given. An appeal mechanism must be put in place to allow impartial review of the explanation. In addition, such boards must have a process to monitor the implementation of their recommendations.

10) That all such boards, committees, etc. hold well-advertised public meetings at times and locations convenient to the public so that the public can be aware of the progress and recommendations and has sufficient opportunity to provide input.

11) That all such boards, committees, etc. be encouraged to perform or support cooperative fish and wildlife enhancement projects, and that such projects be done on a volunteer basis (at no or little cost to the Crown) and under the direct supervision of qualified fish and wildlife biologists.

12) That the establishment of comanagement boards, etc. never result in the abdication of the Crown's constitutional mandate, and that they act responsibly in the management of land and resources for the benefit of all its citizens. Likewise, the establishment of such boards must never be construed as giving any participant implied or actual proprietary interests in the lands and resources on which they are responsible for providing advice.

13) That all comanagement board appointees' terms of office should be for one year. There should be no limit on the number of terms an appointee may serve; this should be subject only to the pleasure of the appointing or nominating organization.

8.0 SUMMARY

The Ontario Federation of Anglers and Hunters strongly believes that comanagement committees and arrangements, that will likely form part of aboriginal self-government provisions, which are made up of all resource users, both aboriginal and non-aboriginal, have the potential to promote conservation, reduce conflicts, create fair sharing, and attain common goals accept-able to all Ontario citizens.

The direction being taken by the current Ontario and Canadian governments will (and has) created animosity between aboriginals and non-aboriginals. This is unfortunate but the relationship will only deteriorate further if Ontario and Canada implements additional "comanagement" arrangements that do not conform to the standards contained in this paper. Our natural resources are far too valuable to be treated as collateral or tradeable commodities to right past injustices.

All across Canada, governments and aboriginal peoples have or are planning several cooperative comanagement agreements. The cross-cultural nature dictates a need for new and innovative approaches for their successful negotiation and implementation. They incorporate biological, social, and economic dimensions and often pose unique legal and constitutional questions. These are new concepts in fish and wildlife management. The recommendations contained in this paper will move the yardsticks forward to ensure conservation and wise resource use from the point of view of all parties.

The conservation of our resources, the well-being of the Ontario economy, and the equality of all citizens, are commendable goals worthy of support. To these, the Ontario Federation of

Anglers and Hunters is committed. The O.F.A.H. hopes that the Royal Commission on Aboriginal Peoples will agree and make recommendations based on this paper, in order to ensure the ongoing conservation of Canada's renewable natural resources and all that depends on these resources.

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