COCKBURN ISLAND • SHEGUIANDAH • SHESHEGWANING • SUCKER CREEK • WEST BAY • WHITEFISH RIVER

UNITED CHIEFS and COUNCIL

MANITOULIN

UCCM FISH & WILDLIFE PROJECT

SUBMISSION TO

THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

JUNE 30, 1993

P.O. Box 275, West Bay, Ontario P0P 1G0 Telephone (705) 377-5307 Fax No. (705) 377-5309

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Acknowledgements:

This document is dedicated to the leadership of the United Chiefs and Councils of Manitoulin, especially the elders and harvesters themselves, who have provided the guidance and vision which made this process possible.

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* Chief Irene Sagon Kells and Council members, Cockburn Island First Nation

  Chief Richard Shawanda and Council members, Sheguiandah First Nation

  Chief Joe Endanawas and Council members, Sheshegwaning First Nation

  Chief Pat Madahbee and Council members, Ojibways of Sucker Creek

  Chief Joe Hare and Council members, West Bay First Nation

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30 June 1993

EXECUTIVE SUMMARY

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ROYAL COMMISSION ON ABORIGINAL PEOPLES

UCCM FISH AND WILDLIFE PROJECT

PURPOSE

The purpose of the grant from the Royal Commission on Aboriginal Peoples was to enable UCCM to develop hunting and fishing laws, and an approach to management, as aspects of self government. The long term goal is to allow for greater control and greater access to the natural resources upon which UCCM communities have traditionally depended. The work of the past six months has accomplished this through a series of community meetings, research and analysis, and discussions with other First Nations and governments.

OUTLINE

The report chronicles the systematic reduction of aboriginal control over fish and wildlife which occurred as a result of interference by other governments and users.

Part One reviews the past. This section describes Anishinabek governmental and economic institutions and practise, before and after non-Native settlement. We conducted Nation to nation relations and had developed complex trade networks with other First Nations prior to the arrival of the Europeans. We managed our resources responsibly and sustainably. Formal relations with the Crown were established through the Treaty making process, which recognized Anishinabek authority and proprietary rights. The Treaties were based on the principles of sharing and coexistence for mutual benefit. We saw them as a framework for our relations with the Crown, and they included terms which were to guarantee our political, economic and social prosperity into the future.

As settlement and competition for resources increased, Treaty commitments were abrogated by the Crown. Our lands and resources were appropriated and our economic base was shattered. Non-Methods for determining the "value" of the resource, and the relative "costs" and "benefits" of management decisions did not include any consideration of our costs and our benefits. Native commercial and "sports" harvesters were favoured in the allocation of resources and in the development of management plans, but the resources themselves were not managed

responsibly and the quality and quantity of stocks declined, creating even more competition. By the end of the 19th century our once thriving commercial fishery had been destroyed, and harvesters were being prosecuted even when hunting or fishing for food. In contrast, "sports" harvesters, who hunted for pleasure and not for food, had their privilege entrenched through Provincial legislation.

Part Two reviews today's situation. With the coming into effect of the Constitution Act, 1982, a new era of law began. Subsequent court decisions have made it clear that our constitutional rights and our Treaties are valid and enforceable, and these are summarized. The courts have also determined that the Crown has a fiduciary duty to the First Nations, which means that they must
act in our best interests - as a trustee, not as an adversary.

The report demonstrates that Crown conduct does not often conform to the rule of law. No concrete steps have been taken to reallocate fish and wildlife resources to take into account the priority assigned to our use. The Province has proceeded with adversarial measures and prosecutions. The federal Crown has for the most part been absent and inactive and has not complied with its duty to protect us in the exercise of our rights.

An analysis of the way in which the "costs", "benefits" and "values" associated with wildlife management are calculated demonstrates that there is still no consideration of our losses or our costs. Therefore, existing statistics are not an accurate reflection of the true costs and benefits or the real situation. The nature and extent of losses borne by the Anishinabek are outlined and compared with the relative "benefits" accruing to others.

The current state of fish & wildlife use in our communities is reviewed. A profile of the average "sports" harvester is drawn from available statistics. After an analysis of current Provincial management and allocation policies, the report concludes that it is non-Natives who get priority in allocations, and the Anishinabek who feel the brunt of enforcement measures.

Part Three anticipates what the future could look like. Despite the current governments' sluggish progress, we cannot wait until there is nothing left to negotiate, whether they be rights or resources. Therefore steps are being taken to resume our formal authority over the use and management of the resources that we harvest, as part of our overall approach to the development of Anishinabek government. Draft

harvesting regulations, based on the principles of conservation and safety, were developed through community consultations and a survey of existing models. These are now in the final stages of refinement and approval, and will be put into place over the next few months.

These steps are being taken unilaterally in the absence of any effective forum in which these matters can be discussed with other governments. However, when other governments are ready, we are agreeable to entering into discussions with a view toward reaching agreement on a new approach to the management and use of natural resources within our territory. A blueprint for future intergovernmental relations is laid out, including an analysis of the interests and roles of third parties.

A consensus was built through community meetings to document traditional harvest management practises as the foundation for Anishinabek hunting and fishing laws. Eight other projects evolved from the discussions, including 1 & 2) a harvesting and land use survey to find out how much fish and game is taken, and where; 3) a dietary survey to compare the nutritional and economic value of wild meat vs. market meat; 4) the set-up and operation of conservation officers under the direction of UCCM; 5) a judicial system to handle violations in a productive manner approved by the community; 6) an environmental monitoring system to guard air, soil and water from pollutants so that living things can survive; 7) a safety course for hunting and fishing as a prerequisite before harvesting; 8) building relations with other governments, including First Nations.

RECOMMENDATIONS:

A total of nine recommendations are made, laid out under four headings. These are summarized below:

A. The Political Relationship:

We have never given up, and still possess, our right of self government. A realignment of jurisdictional arrangements and responsibilities are required to accommodate our rights. The constitution and the law require the Crown to comply with its obligations and to implement the Treaties. The Supreme Court has said clearly that the Constitution Act, 1982 provides a solid basis for the negotiation of these issues. The division of responsibilities between the federal and provincial governments are matters internal to the Crown and cannot be held up as an excuse for

inaction or non-performance. Remedies need to be found to enforce Treaty and constitutional provisions and to provide for compensation when it is due.

B. The Economic Relationship:

An economic realignment must also occur, taking into account the guarantees made by the Crown, and the Treaty principles of sharing and coexistence for mutual benefit. Greater Anishinabek access to, and control over, lands and resources are required. Techniques to evaluate the costs and benefits related to resource management and use need to be changed to reflect the rights and interests of the First Nations, including compensation for prior losses.

C. The Social Relationship:

Public education is a priority. Since lack of awareness can be the biggest barrier to public support, both First Nations and the Crown have a responsibility to explain the historical, constitutional and legal facts so that it can be understood why the Anishinabek are in the situation that they are today. As well, public institutions and the Royal Commission on Aboriginal Peoples have a similar responsibility. Cooperative efforts between peoples and governments are required to ensure the long term health of our societies and our environment.

D. Relationship with the Natural World:

A totally new approach to our collective stewardship of the natural world is required. It must accurately account for the benefits the earth provides, and the costs of maintaining healthy ecosystems or repairing damaged ones. This new approach must integrate both traditional Native knowledge and scientific techniques to make the best decisions for protection of the land.

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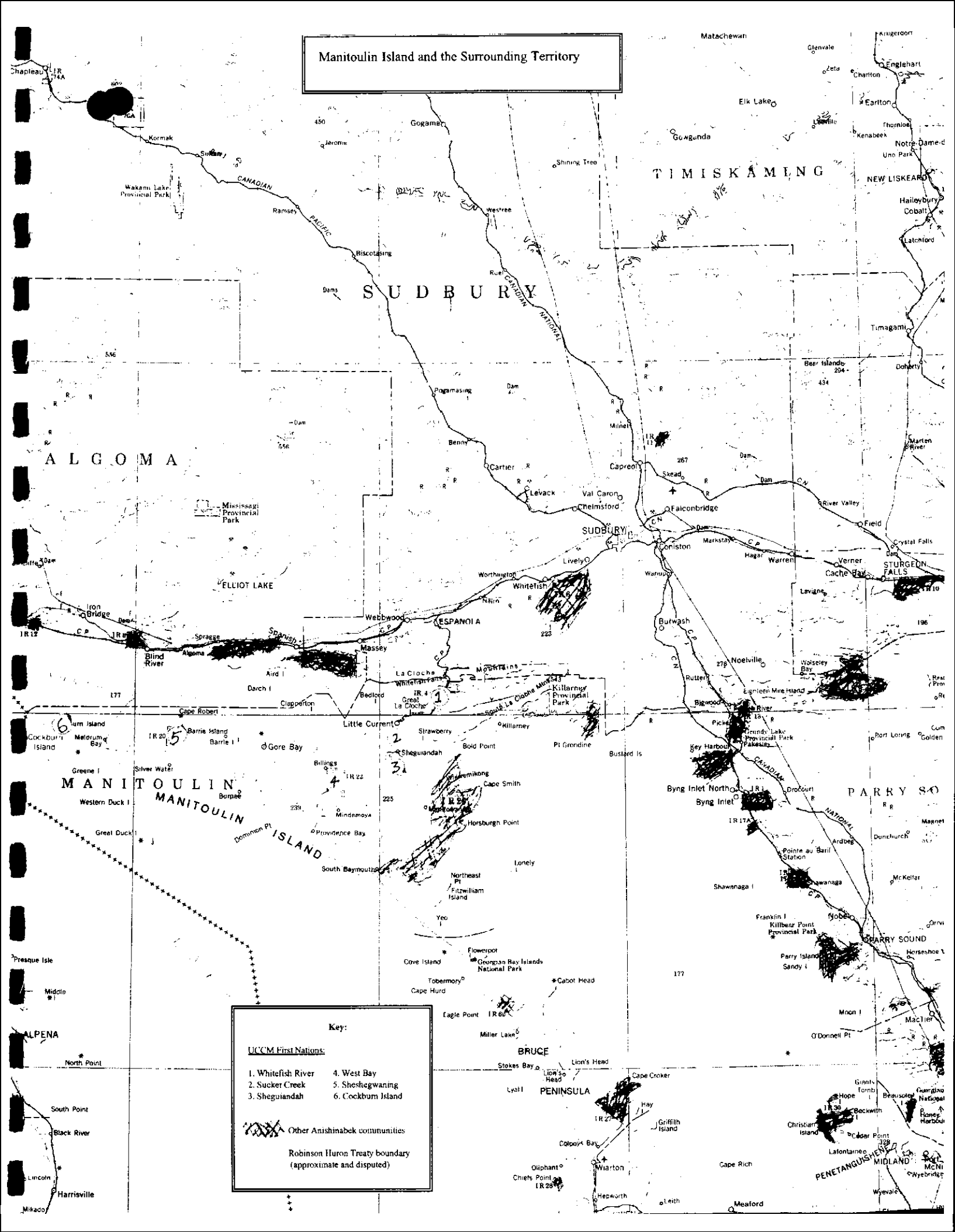
PART ONE: PAST


Manitoulin Island and the Surrounding Territory
Key:
UCCM First Nations:
1. Whitefish River
2. Sucker Creek
3. Sheguiandah
4. West Bay
5. Sheshegwaning
6. Cockburn Island
Other Anishinabek communities
Robinson Huron Treaty boundary (approximate and disputed)
MANITOULIN
MANITOULIN ISLAND
SUDBURY
TIMISKAMING
ALGOMA
PARRY SOUND
MIDLAND
BRUCE
PENINSULA
PENETANGUISHENE
Chapleau
Kormak
Sultan
Gogama
Jerome
Shining Tree
Gowganda
Elk Lake
Englehart
Earlton
Kenabeek
Notre-Dame-d
Uno Park
NEW LISKEARD
Haileybury
Cobalt
Latchford
Timagami
Bear Island
Doherty
Matachewan
Krugerdorp
Glenvale
Zeta
Charlton
Thornloe
Wakami Lake Provincial Park
Ramsey
Westree
Riscotasing
Dams
Rue
Pogamasing
Dam
Benny
Cartier
Capreol
Milnet
Skead
Falconbridge
River Valley
Field
Marten River
Levack
Val Caron
Chelmsford
SUDBURY
Coniston
Markstay
Hagar
Warren
Verner
Cache Bay
STURGEON FALLS
Crystal Falls
Lively
Worthington
Whitefish
Naiin
Lavigne
Wanup
Mississagi Provincial Park
ELLIOT LAKE
Iron Bridge
Webbwood
ESPANOLA
Sprague
Algoma
Spanish
Massey
Blind River
Aird I
Darch I
Butwash
Noelville
Wolseley Bay
Eighteen Mile Island
Rutter
Killarney Provincial Park
La Cloche Mountains
Whitefish Falls
Great La Cloche
Bedford
Clapperton
Cape Robert
Little Current
Killarney
Strawberry
Sheguiandah
Bold Point
Pt Grondine
Bustard Is
Gore Bay
Barrie Island
Barrie I
Cockburn Island
Melorum Bay
Billings
Silver Water
Greene I
Western Duck I
Great Duck I
Borpee
Mindemoya
Providence Bay
Dominion Pt
Cape Smith
Horsburgh Point
South Baymouth
Northeast Pt
Fitzwilliam Island
Lonely
Yeo
Key Harbour
Grundy Lake Provincial Park
Parkesley
Port Loring
Golden
Byng Inlet North
Byng Inlet
Droccourt
CANADIAN NATIONAL
Dunchurch
Ardbeg
Pointe au Baril Station
Shawanaga
Shawanaga I
McKellar
Magnet
Franklin I
Killbear Point Provincial Park
Nobel
PARRY SOUND
Parry Island
Sandy I
Horseshoe I
Moon I
MacTier
O'Donnell Pt
Presque Isle
Middle I
ALPENA
North Point
South Point
Black River
Lincoln
Harrisville
Mikado
Flowerpot
Cove Island
Georgian Bay Islands National Park
Tobermory
Cape Hurd
Cabot Head
Eagle Point
Miller Lake
Stokes Bay
Lion's Head
Lyal I
Cape Croker
Hay
Griffith Island
Colpoys Bay
Wiarton
Oliphant
Chiefs Point
Hepworth
Leith
Meaford
Cape Rich
Hope
Beckwith
Christian Island
Cedar Point
Lafontaine
Wyebridge
Wyevale
Honey Harbour
Guardian National
Beausoleil
Giants Tomb

1. THE ANISHINABEK:

Manitoulin Island is the largest fresh water island in the world, at the top of Lake Huron, in the Great Lakes. It is at the southernmost edge of the Canadian Shield, with rock outcrops jutting out from deep, ancient earth. The United Chiefs and Councils of Manitoulin (UCCM) is a Tribal Council that represents the rights and interests of its six member communities and their citizens: Whitefish River, Sucker Creek, Sheguiandah, West Bay, Sheshegwaning, and Cockburn Island. Our people are from the Odawa, Potowatomi and Ojibway Nations, part of the larger Anishinabek Nation, and we have resided in the Great Lakes region for many thousands of years. Today our population amounts to about 4,000 people - along with the 5,000 people of the other Anishinabek community on the Island, Wikwemikong, we make up about half of the total population of the Island (see map, Figure 1).

The lakes, rivers and forests within our territory contain abundant resources which have provided the basis for our economy and our way of life, just as they have for our Anishinabek neighbours - there are over twenty other Anishinabek communities located within a 100 mile radius of the Island, scattered around the shores of Georgian Bay and the North Shore of Lake Huron. This is no coincidence. The location of our communities reflects the fact that for many centuries the lands and waters of our territory have given us what we needed to survive, and direct access was a necessity.

For thousands of years before contact with the Europeans we took care of our internal affairs, managed our people and our territories, and entered into formal arrangements with other First Nations through the Treaty making process. We exercised our right of self determination freely and responsibly.

When the Europeans arrived, we conducted our relations with them on the same basis - they recognized our authority over our citizens and our land and resources, and we responded to their requests for coexistence positively. At least as far back as the Revolutionary War and during the War of 1812 our people fought as allies with the British Crown. But the nature of our relations were not only political and military - they were also economic. We have traded game and fish, corn and maple sugar, canoes and furs with European people since the first Jesuit missionaries arrived in the mid-1600's.[1]

2. THE TREATIES:

The Supreme Court of Canada has recognized that *"...the Indian nations were regarded in their relations with the European nations which occupied North America as independent nations"*, and admitted that Great Britain realized *"that nation-to-nation relations had to be conducted with the North American Indians"*.[2] These relations were established and conducted through the Treaty process. The Anishinabek have maintained Treaty relations with the Crown for over two centuries. At the Niagara Treaty of 1764 the Anishinabek, along with many other First Nations, gathered to hear Sir William Johnson announce the terms of the Royal Proclamation of 1763, and we were assured that justice and equity would remain the keystones of British Indian policy.

The Royal Proclamation of 1763, issued by King George in the aftermath of the conquest of the French and the Pontiac rebellion, was intended to prevent "frauds and abuses" against the First Nations by laying out a procedure and set of principles to guide Crown agents in their relations with us. It recognized our authority over our people and our territories, and bound the Crown to deal with us honourably. The Crown pledged to stand between the self interest of the colonial governments and our people to ensure that we were dealt with equitably and with justice. It adopted the doctrine of consent: arrangements relating to the use of indigenous lands or indigenous relations with the Crown required the consent of the First Nations. This consent was to be reached through negotiations, and formalized through the conclusion of Treaties.[3]

More recently, in 1836, 1850 and again in 1862 Treaties were made between our people and the Crown which established a framework for sharing and coexistence with the newcomers.[4] By this time the Crown had a long established policy related to Treaty making with First Nations. Although the Crown had adopted clear policy and principles on how its relations with the First Nations were to be conducted, these were not always applied consistently by officials in the field. Despite the fact that breaches occurred in practise, the Courts have found that these commitments and obligations still remain (see #6.1 & #6.2).

2.1. 1836 Manitoulin Treaty:

In 1836, Lieutenant-Governor Francis Bond Head of Upper Canada declared that Manitoulin Island would make an ideal refuge for Indian people - "as it affords fishing, hunting, bird shooting and fruit, and yet [is] in no way adapted to the white population".[5] His scheme was to relocate all of the First Nations of southern and central Ontario onto Manitoulin Island to make room for settlement. During the month of August, he met with over 1500 Odawa and Ojibwa people at Manitoulin and after discussion it was agreed that all of Manitoulin and the surrounding islands would be reserved by the Crown for the exclusive use of any members of the various First Nations of the area who chose to settle there.[6] The promise of continued use of the fishery resource and other harvesting rights were central to the successful conclusion of this Treaty.

2.2. The Robinson Huron Treaty:

Throughout the 1840's, mining and timber concessions had been granted by the Crown along the North Shore of Lakes Huron and Superior in the absence of a Treaty and without the consent of the resident First Nations. Numerous petitions came from the Chiefs requesting that these activities be stopped, at least until a Treaty had been concluded.

Two Commissioners, T.G. Anderson and Alexander Vidal, were sent by the Crown to "investigate the claims of the Indians" in 1849. Their conclusion was that the Anishinabek indeed held title to the lands in question, and also that the granting of mining and timber licences had violated their rights. However, no effort was made to halt existing development, and as a result, a number of Anishinabek from the North Shore shut down a mining operation at Mica Bay. This impressed officials with the gravity of the situation, and the following year, William Robinson was appointed as a Commissioner to conclude Treaties with the Anishinabek of Lakes Huron and Superior.[7]

The Treaty Councils were dominated by discussion related to lands and resources. Many of the leadership knew that a strong economy would be key to the prosperity of future generations, and guarantees were sought which are reflected in the terms of the agreement that was reached. The Robinson-Huron Treaty of 1850 guaranteed that we could continue to hunt and fish as we had always done. Several Chiefs from West Bay, Manitowaning, Sheguiandah and Wikwemikong were among those who

participated in the agreement, which was signed at Sault Ste Marie in September of that year:

> *"And the said William Benjamin Robinson of the first part, on behalf of Her Majesty and the Government of this Province, hereby promises and agrees [...] to allow the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said territory as may from time to time be sold or leased to individuals, or companies of individuals, and occupied by them with the consent of the Provincial Government.*[8]

Beyond the guarantee of continued harvesting rights however, commitments were sought to the effect that the Anishinabek signatories would also receive an equitable portion of Crown revenues from development on ceded lands. Our leaders knew that the economy was changing and they understood the fact that their lands held valuable mineral and other resources. Annuity payments were to be tied to Crown revenues from the territory, and were to escalate as revenues grew:

> *"The said William Benjamin Robinson, on behalf of Her Majesty, who desires to deal liberally and justly with all her subjects, 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, then and in that case the same shall be augmented from time to time..."*[9]

Robinson was aware of the economic significance of the territory, as well as the fact that British policy required the Crown's agents to deal honourably with the First Nations. He explained the inclusion of this provision in his report:

> *"Believing that His Excellency and the Government were desirous of leaving the Indians no just cause of complaint.... I inserted a clause securing to them certain prospective advantages should the lands in question prove sufficiently productive at any future period to enable the Government without loss to increase the annuity"*[10]

From the perspective of the Anishinabek, this Treaty provided a solid framework for our relations with the Crown, and guaranteed our economic prosperity into the future.

It was a recognition on the Crown's part that we were self governing, and did nothing to impair our continued right to govern our affairs.

2.3. The 1862 Manitoulin Treaty:

It was the Manitoulin Treaty of 1862 which opened the western two-thirds of the Island to settlement.[11] Bond Head's scheme to relocate other First Nations onto Manitoulin had failed, and there was increasing pressure to open up the Island for non-Indians. Although most of the Chiefs and people from Wikwemikong refused to take part in the agreement, other Anishinabek residents of the Island felt that under the appropriate circumstances, the arrival of settlers could be a positive benefit.[12] The Crown made use of the divisions among our people in its approach to the negotiations. Elements of duress were applied in its attempts to obtain our "consent". In the end, there was no meeting of minds on the ultimate effect and purpose of this Treaty: none of us would have participated if we thought that government would ban us from hunting and fishing, or unilaterally change the way we carried out those activities; we did not contemplate that our use and management of resources on the Island would be suppressed so drastically; and we did not expect that the proceeds from the land sales would dissipate without any long term benefit (see #8.1.1.).

2.4. The Meaning and Effect of the Treaties:

The Crown recognized our authority and right of self government by the very act of entering into Treaty with us. There was no question of our ability or our right to govern ourselves - it was not something to be granted, but rather something that was so self evident it was assumed. Flowing from this recognition, the Crown admitted to our proprietary interest in the lands and resources within our territory, and negotiated an arrangement for the shared use of these lands and resources. To us, the Treaties acted to:

* Recognize and affirm our Nationhood and our right of self government.

* Formalize political relations between ourselves and the Crown. Canadians have a relationship with their governments through parliament, provincial legislatures and municipal councils. We have a relationship with the Crown and with Canada through our Treaties.

* Provide for our economic and social security into the future: To do this we obtained guarantees with respect to our continued rights to manage and harvest fish and wildlife; a share of natural resource revenues derived by the Crown from activity on ceded lands; proceeds from the sale of specific tracts of land; and the retention of certain lands exclusively for our community and economic needs.

* Share our lands and resources with the Crown's citizens so that they could prosper and coexist along with us for mutual benefit: both parties came out with Treaty rights and Treaty obligations.

The view of our leadership was that these guarantees were sufficient to provide for our political, economic and social self determination into the future. They felt that they had the Crown's understanding and commitment by virtue of the fact that the Crown agreed to enter into the Treaties.

Since then, however, there have been disputes with the Crown as to the meaning and effect of these Treaties. Certainly our objectives and expectations were not met when it came time for implementation and enforcement of the agreements that were reached. Many provisions have not been implemented fully, and the Crown in practise has interpreted the terms and spirit of these agreements unilaterally. In this respect there remains much unfinished business between us. We will return to these issues as appropriate in the course of this document.

One example of ongoing disputes with respect to the Treaties has to do with territory. Traditionally, our citizens have used and occupied lands throughout the Great Lakes and north past the height of land. Our interest in some of these lands and resources was exclusive in some cases, shared with neighbouring Anishinabek communities in other cases. Each of the Treaties discussed here only applied to specific parts of our territory. For instance, the Robinson Huron Treaty only covered territory up to the height of land, where the waters begin to flow north toward James Bay. It was not to apply to our continued use of lands to the north, but in the years after the Treaty we were often prosecuted for harvesting "outside of the Treaty territory". Even today, these prosecutions continue, despite the fact that we have maintained our use of these areas throughout the intervening years.

3. SETTLEMENT AND THE VIOLATION OF RIGHTS:

Early settlers on Manitoulin Island were grateful for the help they received from our people because without it, they would have had trouble surviving. When Willard Hall, the first homesteader west of Little Current, arrived at Lake Wolsey in the fall of 1869, he didn't know how to hunt. So the Obidgewong people showed him how to snare rabbits and partridge. They also brought him corn, fish, wild geese and wild pigeons.[13]

When the settlers came, there were no deer on Manitoulin Island, since the bush was too dense for them. But there were plenty of woodland caribou as well as the occasional moose - particularly along the north and west sides of the Island.[14] Caribou bone has been found on archaeological sites at Sheguiandah and Providence Bay. This shows that our people have been hunting on Manitoulin for many hundreds, if not thousands of years. We did not usually hunt caribou and other big game in the fall. It was much more efficient to follow the animals in mid-winter, when there was ice on the lakes and a crust on the snow.[15] For their first few decades together on Manitoulin, pioneer settlers and the Anishinabek were willing to live and let live.

But with the Crown and a number of off-island interests, it was another matter - their views of the Anishinabek were not based on the knowledge and respect that comes from living side by side, and in any event, there were certain elements whose only priority was the appropriation of our economic and resource base. In response to pressure by commercial and sports interests for increased or exclusive access to natural resources, the Crown found it expedient to abrogate the Treaty commitments that had been made. Sharing the land and its resources was no longer enough - they wanted it all for themselves.

Policies and legislation were developed which tried to limit our governmental authority as well as the effect of the Crown's commitments. We were characterized as wards, not Nations. Attempts were made to restrict the application of our laws and governing institutions through legislation such as the Indian Act. Treaty commitments were re-characterized as being without legal effect. The next step was to undermine our economies by excluding our governments from resource management decisions and preventing our people from deriving benefit from the lands and resources within our territory.

Our people took great offence when government officials began prosecuting us for using spears and certain kinds of nets - and began licensing out our traditional fishing areas to non-Native commercial fishermen.[16] We never conceded that fisheries officials had the right to tell us, without our consent, where, when and how to fish. The combined effect of these measures was devastating. People's boats and nets were seized, and without the money to pay fines, family breadwinners were often incarcerated.

The excerpts which follow are from a petition that was sent to the Crown by the Chiefs of Wikwemikong in July 1894. They typify the circumstances that confronted all of our people in the years following Treaty:

> *"We ask you to please forward this our petition to the Department at Ottawa. The Chiefs and Councillors assembled to consider our miseries, how we are prevented to fish; how we are put in prison for fishing.*
>
> *"We Ottawas, the descendants of the Ottawas who were always the friends of the Great King of England. Our forefathers were the owners of the land, of the animals, of the fishes and the used them as their food. It was established by Treaty that here where we live only Indians should dwell and that the fisheries should be our fisheries all [illegible] this was agreed to on August 9th 1836 by F.B. Head....*
>
> *"But now although we petition the authorities to be allowed to fish in the surroundings of the unceded portion of Manitoulin Island we get no support. On the contrary we are only the more oppressed; our nets are taken from us, and so are our boats, and we are locked up in prison. [illegible]...we are treaty by the Great King whom our forefathers assisted during the War of 1812 - 1815. During those wars there were often 2,000 Indians to 50 English soldiers in the field; if the Indians had not helped the English then, how much of the country would be theirs now.*
>
> *"Our present position requires no such difficulties or hardship on the part of government, as those undergone by our forefathers when they were persuaded to fight for the English. They were then promised to be treated always well, their children and grandchildren likewise, then we are.*

> *"In view of all the hardships undergone by our forefathers for the English we trust in the justice of the government and do not hesitate again to renew our [illegible] position to be allowed - to have the right to fish all around our Reserve within 2 miles off shore to fish for food and for sale. It is not for the sake of anything the government it is because we want to eat we want to feed our children and we want means to clothe them."* [17]

This petition illustrates the hardship that faced our people as a result of the economic dispossession that was taking place, and also their consternation as it began to be apparent that the Crown was reneging on solemn commitments that had been made only a couple of generations earlier.

4. "SPORTS", COMMERCE and CROWN RESOURCE MANAGEMENT:

4.1. Emergence of the Sports Lobby:

It wasn't just Indian people who were the targets. By the 1890's, rural settlers - like those on Manitoulin Island - were also being attacked by wealthy sportsmen based in southern Ontario and the United States. These people accused both Indians and settlers of either wasting or exterminating game and fish. They had no scientific evidence for their charges, but because of their political clout - many were politicians themselves - they were able to have laws passed which reflected their interests.

Those sportsmen weren't opposed to hunting and fishing. But since their main interest was recreation, they had little sympathy for people who relied on country food for support. They believed that hunting and fishing should be limited to certain seasons of the year and to specific methods governed by their rules of "sport".

Ontario's fish and game laws are a good example of this process. As revised and expanded in 1892, new game legislation set license fees, introduced fall seasons for game, and banned hunting techniques such as crusting - i.e. following animals through the snow, as Native people and others were in the habit of doing. Fisheries laws stipulated that certain favoured sport species (brook and speckled trout, bass, pickerel and maskinonge) could only be taken with hook and line. For other species such as lake trout, sturgeon and whitefish, seasons were set and specific licenses were required for the setting of all kinds of nets and night lines.[18]

Because of pressure from the federal government, Ontario did include a disclaimer in both acts which exempted Treaty and aboriginal rights:

> *And nothing herein contained shall be construed to affect any rights specially reserved or conferred upon Indians by any treaty or regulations in that behalf made by the Government of the Dominion of Canada with reference to hunting on their reserves or hunting-grounds or in any territory specially set apart for the purpose; nor shall anything in this Act contained apply to Indians hunting in any portion of the Provincial territory as to which their claims have not been surrendered or extinguished.*[19]

But when enforcing the acts, Ontario simply ignored that clause. Provincial officials insisted that neither the Robinson-Huron Treaty of 1850 nor any other agreement - despite their wording - recognized our right to hunt or fish on Crown land without Ontario's permission. As a result, many of our people were fined or went to jail for activities which we believed were protected by our Treaties. The federal government was unwilling or unable to defend us.[20]

Importantly, these Ontario laws completely banned the sale or barter of fish and game. This meant that the type of commercial exchange which had been going on since first contact with the Europeans generally, and since the 1860's between pioneer farmers and the Anishinabek on Manitoulin Island, was now illegal (at least in the eyes of the provincial government). They also illegitimized the traditional systems of trade and barter which we had developed over the centuries among our communities and with other First Nations. The one concession was that "settlers and Indians" could continue to hunt and fish for their own consumption.[21]

Thanks to these laws, provincial game and fish overseers treated our people as potential criminals. Because they needed the food, Native people were prepared to run the risk of arrest. Overseer William Hunter of Tehkummah reported in 1910 that Anishinabek people were shooting deer "in the winter when the snow is deep, but it is almost impossible to get evidence against them".[22] It must have been a bitter winter, since we know that deer need greens for their meat to taste good, and their winter diet of bark makes their meat too strong.[23]

In 1909-11, a Commission headed by Kelly Evans was established to investigate Ontario Game and Fisheries legislation. The Evans Commission was similar to the one which had led to the 1892 changes in Ontario laws. Kelly Evans himself, though a professional engineer, was head of the main Ontario organization of recreational hunters and anglers. As a result, he only consulted sportsmen, tourist outfitters and government officials when preparing his recommendations. All of these groups blamed Native people and rural settlers (who were not represented) for the supposed decline in wild game and fish populations. No contrary evidence - about the impact of sports hunting and fishing, for example, or about pollution of Ontario's lakes and waterways - was ever offered.[24]

Ontario's laws were changed in 1914 to reflect the Commission's recommendations. The clause exempting treaty and aboriginal rights from the operation of the statutes was dropped. From then on, Ontario would aggressively prosecute Indian people,

whatever the wording of their Treaties, for hunting, fishing and trapping *"at all seasons of the year on Crown lands or water without the limits of their reservations".*[25]

The laws which apply to hunting and fishing in Ontario were all made in the name of scientific conservation and the public interest. While some of their conservation goals are worthy ones, in reality the laws were drafted in the interest of sports hunters and anglers - and urban people. Commissioner Kelly Evans was very specific about this in his 1912 Report. *"The game constitutes a public asset"*, he wrote, *"and the fact that a man lives in the country instead of in a town cannot alone be held sufficient cause to warrant any exceptional claim or privilege on his behalf on the game in his vicinity".*[26] These conclusions ignored the facts of our history and the guarantees that had been made by the Crown.

4.2. Commercial Harvesting:

We have always been involved in the "commercial" use of our resources - our purpose in harvesting has been to provide for our livelihood, either through direct consumption or through sale or barter. In the 1820's, salted fish harvested by the Anishinabek served as the basis for a vigorous export business from the Sault to Detroit. Fur trade records for La Cloche post in the 1820's and 1830's record that local Anishinabek from Manitoulin and the North Shore netted or speared enormous quantities of trout both for themselves and for sale to the fur traders.[27] Fish traders sailed the North Shore and around the Island to buy fish from our people at their fishing grounds.[28]

Later, the early settlers on Manitoulin certainly didn't complain that we were selling fish and game. They bought caribou and moose meat, fresh or smoked fish from us whenever they could - and, since cash was scarce, they usually paid in tobacco and farm produce such as corn.[29] All sectors of Island society were involved. Before the turn of the century, we were even supplying lumber camps at Michaels Bay and elsewhere with wild meat and fish.[30]

As late as 1836, the waters around Manitoulin were still exclusively fished by our people, but by the 1840's some non-Native fishermen began to fish the same waters. In 1848 the Chiefs of *"Chitewainganing, Shegwanaindand and Wequamekong"* voiced their concerns about these encroachments to the local Indian Agent, George Ironside.[31] At first the Crown took steps to fulfil its guarantees by protecting us in the exercise of our rights, warning off non-Native fishermen. In fact, some federal

officials readily supported our continued involvement in the commercial fishery, as the following 1858 report illustrates:

> *"The Fisheries surrounding the Islands on all sides in the large Bays, and in Lake Huron are excellent, and if properly managed would furnish not only a supply of food to the Indians themselves, but also prove a source of considerable profit to them."*[32]

During 1855-56, some non-Native fishermen applied to the Indian Department for leases covering certain Anishinabek fishing stations on Manitoulin. These overtures were at first resisted by our leaders, but after we were assured that the arrangements would be equitable, some limited leases were negotiated. These recognized our rights to the resource and our authority to negotiate the terms:

> *"The 1856 lease agreements were based on local negotiations between non-Native fishermen and the Chiefs of the Ottawa and Ojibwa. Although facilitated by agents of the Indian Department and ultimately sanctioned by the Governor General, the leases reflected Native control over fishery management."*[33]

There was no Crown legislation governing the Georgian Bay fishery until 1857 with the passage of the Fishing Act. Revised and renamed the Fishery Act a year later, it did not make specific reference to Anishinabek harvesting or management rights. However, an agreement was struck between the Superintendent General of Indian Affairs R.T. Pennefeather and the Commissioner of Crown Lands, P.M. Vankoughnet, to the effect that Anishinabek fishermen would be given the "first opportunity" to lease fisheries located near their villages. Other traditional fishery grounds were to be opened to non-Native commercial interests.[34]

At best, these provisions could only be as effective as the person charged to implement them. Unfortunately for us, this person was one William Gibbard, appointed as the first fisheries Overseer for Georgian Bay, Lake Huron and Lake Superior in 1859. In his first year he issued ninety seven leases: 14 to the Hudson's Bay Company, 71 to "practical fishermen", and a mere 12 to members of Anishinabek communities. He did not even show up on Manitoulin Island until July 1859, twelve days before the deadline for tenders on fishing leases. Later, it turned out that he had already handed out licences covering a number of traditional Anishinabek fishing stations to non-Natives by the time he arrived.[35]

Gibbard's opinions about our people were firmly entrenched, and he was not shy about making these opinions public. Some of his comments follow to give an indication of the views which he espoused and promoted:

* *"the Indians would be far better off if they attended to their farms instead of dabbling in fisheries."*

* *"In my opinion all the Indians would be better men and better off if they never saw a fish."*

* In a letter to the Daily Globe, printed on the first page of its March 21st 1862 edition, he described the Odawa fishermen of Wikwemikong as *"miserable looking, ill-clothed, drunken, lying stealing vagabonds"* whose rights to the fishery were no more than *"squatter's rights"*.

Instead, he reserved his favour for American fishermen, whom he encouraged to take leases in Canadian waters, hoping to attract a "superior class of fishermen".[36]

Efforts on the part of our leaders to counter these developments were met with animosity or denial. The Anishinabek consistently argued that their rights to the fishery were based on prior possession, had been guaranteed by Treaty, and that their livelihood was being devastated. The Secretary of State for the Colonies subsequently commissioned a report on the issue, which was not favourable to our rights and which trivialized the commitments that were made in the Treaties. In fact it asserted that we had forfeited our right to the fishery by not maintaining a monopoly over it prior to 1857. In other words, we were being punished for our willingness to share. Taking heart, Gibbard increased the number of licences within his zone to 155 in 1861 - this time only four went to Anishinabek fishermen in the Manitoulin area.[37]

The unwillingness of Crown officials to deal equitably with our people led to growing frustration. A number of incidents occurred during 1861-63 in which our fishermen destroyed the nets and equipment of non-Natives within our territory, and in some cases physically evicted them. This was an attempt to assert management control over the fishery, but it incensed Gibbard. He led a posse of 21 constables to Wikwemikong, only to be "driven back to his boat by a large force of armed Ottawa warriors". On his retreat to the Sault, he arrested an Odawa Chief named Oswa-ane-mekee (Osawa-nemeke, or Yellow Thunder) whom he accused of being one of the "lawmakers of Wikwemikong". In the event, the charges were thrown out, but the

story was not yet over:

> *"By a matter of coincidence or otherwise, Gibbard and Oswa-ane-mekee got on board the same ship that departed from Sault Ste. Marie on 27 July 1863. During the evening the ship encountered heavy fog in the north channel of Lake Huron. The following morning, Gibbard could not be found aboard the ship. A few days later, Gibbard's body was discovered washed up on the shore of Manitoulin Island. A public inquest determined that Gibbard had been murdered. Many eyes turned toward Oswa-ane-mekee, but no witnesses were found to prove a connection and no one was ever charged."*[38]

These events prompted a legal review by Solicitor General Adam Watson who, based on his interpretation of the common law, stated that Indians could not assert any "special right" or "exclusive use" to any fishery. This opinion in turn influenced the amendment of the Fishery Act in 1865. The new Act for the first time contained a regulation relating to First Nations which allowed for leases to be granted to us under certain conditions, **but only for food**. Our efforts to protect our rights to the commercial fishery had been met with a punitive response.

The next year, the Commissioner of Crown Lands directed that *"all Fisheries around Islands and fronting the mainland belonging to Indians be disposed of by the Fisheries Branch of this Department"*.[39] V.P. Lytwyn reports that throughout the 1870's, Crown officials were repeatedly instructed to *"dispel any ideas about Native fishing rights"*, and circulars were distributed to officials which contended that *"Indians enjoy no special liberty as regards the places, times, or methods of fishing."*[40]

In a period of only about twenty years, the once vibrant Anishinabek commercial fishing economy around Manitoulin was relegated to a "marginal" subsistence activity. To add a twist of dark irony, although the fishery regulations had ostensibly been imposed to ensure conservation, the opposite result was obtained:

> *"...legislation, although purported to be guided by principles of conservation and sustainable resource management, allowed non-Native commercial fishermen to deplete the fisheries that had sustained Native subsistence and commerce for countless generations.*

> *"Fishery depletion in Georgian Bay and Lake Huron was detected as early as 1870. Although pollution from saw and pulp mills contributed to the decline of fish stocks, it was mainly caused by a rapidly growing and poorly regulated non-Native fishing industry. By the 1880's, most Native leases had been taken over by non-Native commercial interests who were increasingly controlled by several powerful American companies."*[41]

So, our loss was two fold: not only had we been deprived of a major element of our economy, but the resource which we had managed and sustained for many thousands of years was being damaged by poor management.

4.3. The Crown Divided:

Although many Crown officials and agencies helped to develop and execute the policies which we have described, not all of them were in agreement. In many ways, our rights became casualties of the jurisdictional disputes that took place between the Crown's various personalities in the post Confederation period.

At the federal level, the views of the Indian Affairs Branch were often at odds with those of the Fisheries Department. As an example, here is what William Plummer, Indian Superintendent for Manitoulin Island, had to say in 1878 about developments in the fishery:

> *"...the fisheries which have been exclusively Indian have for the past few years been taken from them and given to white traders who employ white fishermen....It cannot be for the public interest to lease the best fishing grounds to a few white men and to deprive several hundred Indians who reside in adjacent villages of the privileges which they have enjoyed from time immemorial.... As to Indian Treaties, it is well known that in the general surrenders, large tracts of land and adjacent islands were reserved and there are no treaties in existence covering any surrender of these tracts and islands and the waters by which they are immediately surrounded. It is also well known that these tracts and islands were released for the express purpose of retaining the privileges of fishing in the adjacent waters, and it is quite natural that they should think they are arbitrarily deprived by Government of rights which they have never surrendered."*[42]

These sentiments certainly contrast with those of Fisheries Overseer Gibbard, and they highlight the fundamental disagreement between these two Departments on the nature and extent of our rights and their relationship to economic and resource policy. However, as a senior Department, the positions adopted by Fisheries were most often the ones that prevailed.

Add to this the fact that during this period there have also been many policy and jurisdictional clashes between Canada and Ontario. These related to control over Crown lands and resources, as well as the issue of Indian lands and rights. In the late 1800's Ontario began taking the position that Anishinabek harvesters had no rights to hunt, fish or trap off reserve. In time, they also adopted a policy which denied us the opportunity to adapt to the emergence of a mixed economy, by insisting that people could not engage in traditional economic pursuits and the wage economy at the same time. At least as far back as 1945, around the time when Ontario imposed the registered trapline system, the Department of Game and Fisheries refused to issue trapping licenses to Indian people working on the railway or in lumber camps because they were no longer living a "traditional" way of life.

The Department of Indian Affairs, however, recognized that some employment would never be more than seasonal, and that trapping, along with subsistence hunting and fishing would have to remain an important part of the Native economy and made attempts to press this point with Ontario.[43] Ontario resisted. Consistent with our experience at other times, Canada was unable or unwilling to secure provincial cooperation. Authorities have acknowledged that both governments became so preoccupied with their own jurisdictional disputes over the fishery that our rights and interests were not seriously considered.[44]

Overall, Crown policy towards us has been ambivalent and contradictory over the past century. As far back as 1815, the Imperial government began expressing concern about the "costs" of maintaining the Indian Department, and from that time until today we are constantly faced with Crown initiatives intended to remove the "burden" of expenditure related to Indian Affairs, and to "make the Indians pay their way". In this sense the Treaties were consistent with this policy - they were intended to provide for our self sufficiency and prosperity into the future by guaranteeing us access to land and resources (see #9.4.). In principle, we have no problem with these objectives. Our goal is to be self reliant and productive partners in the economy and the political life of this country.

The problem we have is that these statements were (and are) being made at the same time that other agents of the Crown were implementing policies intended to undermine our economies and our ability to be productive and derive benefit from our resources and our labour. This contradictory behaviour on the Crown's part is not often highlighted, but it has certainly had a negative impact on our perceptions of its honour and motivation.

When we entered into relations with the Crown, there was no indication that it would divide, multiply, and ultimately become so schizophrenic. In practise, the division of responsibilities among various federal departments and between Canada and the province has enabled each to deny responsibility and point the finger elsewhere, without due regard to our rights or to the collective responsibility of the Crown as a whole to fulfil its duties to our people. At the same time, the Crown has never been able to justify how it could simultaneously apply policies which were contradictory and self defeating.

Clearly the Crown must get its own house in order if it intends to comply with the Supreme Court's direction regarding the recognition and implementation of our rights. In our view this is not a matter of discretion - the Crown in all of its personalities has a collective duty to comply with its constitutional and Treaty obligations. Disputes over the internal division of the Crown's responsibilities and liabilities ashould not be held out as an excuse for non-preformance.

5. LEAVING THE PAST:

Some trends can be observed from the foregoing pages and they are important to consider before we move to review our current circumstances. These can be summarized as follows:

* Prior to the arrival of the Europeans, we had our own governmental, economic and social institutions, entered into relations with other Nations, and managed our lands and resources sustainably.

* We entered into formal relations with the Crown through the Treaty making process, one which recognized our authority and guaranteed us certain rights over our lands and resources in return for sharing with the newcomers.

* In violation of these Treaty commitments, the Crown took steps to criminalize the exercise of our rights, and in effect our economies. Although ostensibly this was in the interests of "conservation", it was really the result of strident lobbying by sports hunters, anglers and commercial interests. The division of the Crown's responsibilities in 1867 added an element of jurisdictional confusion which enabled both Canada and the province to shirk their fiduciary and Treaty obligations.

* The Crown's actions, and the support received from the public, were underpinned by racism. Solemn and binding agreements made with us could be broken, our economies shattered and our resources distributed to others because we were, after all, "only Indian".

* The end result was the destruction of our once healthy local economies, our elimination as significant players in the commercial fishery, and the criminalization of our subsistence harvest. Other interests derived direct benefit from the appropriation and development of fish, wildlife and other resources which had been the basis of our economy. At the same time, mismanagement of these resources and their habitat significantly depleted their availability and quality.

We established a relationship with the Crown based on mutual authority and respect, and guided by the overriding principles of sharing and coexistence. These commitments on our part were met with no less than an assault on our economies, our culture, and our Treaty and aboriginal rights.

But the Crown's strategy has not succeeded completely. In many ways, we have continued to exercise our rights and our authority, but we have had to adapt to a hostile environment. Opportunities for meaningful negotiation with other governments on these matters have been the exception rather than the rule. The criminalization of our rights to harvest has meant that the courts are often the forum in which these issues are addressed, usually with our people being defendants and at an immediate disadvantage.

Today, our aboriginal and Treaty rights continue to exist - although they have been denied, they have not been eliminated or extinguished. In many cases they have gone "underground", beyond the view of outsiders. But as circumstances warrant, and as opportunities present themselves, we are committed to resuming the free liberty to exercise our rights as peoples, and our authority as governments.

PART TWO: PRESENT

6. THE CONSTITUTION AND THE COURTS:

6.1. Generally:

Much has happened in the past fifteen years. As you can see from the preceding pages, other governments had no qualms about violating our rights in the interests of political expediency. In law there appeared to be no available remedy for us. But with the coming into effect s. 35(1) of the Constitution Act, 1982, our aboriginal and Treaty rights were "recognized and affirmed" by the federal and provincial governments of Canada.

Despite the expectations that were raised at the time, this has not translated into immediate or substantive benefits for our people or our governments. The Crown since 1983 has been reluctant to take the steps required to allow for the effective implementation of this recognition and affirmation. Consistent with the observations made above about the criminalization of our rights, it has been in the courts that Section 35 has had the most treatment. Cautiously, the courts have ventured where Canadian political leaders have feared to tread.

There are a number of landmark cases which have provided clarification on the nature of our rights and the obligations of the Crown. These include Sioui, Sparrow, Simon, Agawa, and Guerin. We will not review these in detail here, but will instead summarize some of the direction which the court has provided to the Crown and Canadians at large with respect to these issues.

* Much pre-1982 case law respecting Treaty and aboriginal rights was founded on racist views which are no longer acceptable to the public at large and are inconsistent with the Constitution of Canada. A new era began with the coming into effect of the Constitution Act, 1982: therefore, a break with the past and new law are required.

* Existing constitutional provisions relating to aboriginal and Treaty rights are to be given a generous and liberal interpretation. They provide a degree of protection from the legislative powers of the Crown.

* The Crown has a positive fiduciary duty to our citizens and our governments. It must act in our best interests, and in a manner that is

trust like, not adversarial. This holds the Crown to a high standard of honourable dealing with respect to the aboriginal peoples, and the fact that this is a positive duty means that the Crown must be proactive in protecting our rights.

* Acknowledging the Crown's position of trust and also its potential conflict of interest, the courts have stated not only that the Treaties are valid and binding, but that they must be interpreted liberally, according to our understanding, and with due consideration to the historical circumstances of the time.

* We have first access to fish and wildlife resources, subject to conservation and safety needs. If the facts demonstrate that our rights have been interfered with, then:

  -the Crown must prove in each circumstance that First Nation use of the resource is indeed a threat to the stocks;

  -Crown regulation relating to the use and allocation of fish and wildlife resources must be adjusted to take into account our rights and needs;

  -if restrictions on our use of the resource are proved to be valid and reasonable, then compensation for loss of use is due.

* Section 35 provides a solid constitutional basis for the negotiation of issues related to jurisdiction, management of resources, and intergovernmental relations between aboriginal peoples and the Crown.

Of course, these are general principles, and they are subject to the facts revolving around each specific situation. They remain to be applied to our circumstances.

6.2. Closer to Home:

On January 29, 1993, the Ontario Court of Appeal, this province's highest court, released its judgement in the case of R. vs Bombay and Bombay. Two Saulteaux people, beneficiaries of Treaty #3, had been charged and convicted of fishing out of

season, fishing with a prohibited net, and selling fish out of season. The court found the defendants not guilty on the grounds that:

* Treaty #3 unequivocally guaranteed their right to pursue their avocation of fishing;

* there was an historic right on the part of the defendants to fish where they had been carrying out their activities;

* the Supreme Court of Canada's reasoning in Sparrow with respect to the aboriginal right to fish was equally applicable to Treaty rights; and

* federal fisheries regulations and legislation constituted an infringement of their Treaty right to fish that had not been justified.

The court accepted the fact that there was a right guaranteed by Treaty #3 to fish commercially.[45]

In a recent fisheries prosecution involving members of the Saugeen Ojibway First Nation, trial judge David Fairgrieve of the Ontario Court of Justice, Provincial Division, had the opportunity to apply many of the principles we have cited to a situation that is very similar to ours. The Saugeen Ojibway reside on the Bruce Peninsula, just to the south of Manitoulin, and they are part of the Anishinabek Nation. They have their fishermen as we do, and they experienced the same harsh measures that we did over the past century.

In The Queen vs. Jones and Nadjiwon[46], the court had to consider a case in which Ontario had restricted the commercial quota available to the Chippewas of Nawash Council. The judge found the two defendants not guilty, and took the time to provide some thoughtful consideration of these issues as they apply to Ontario's management of the fishery resource in our part of the province. The similarities between their history, culture and economy and ours dictate that the judge's comments warrant some mention here.

He characterized Ontario's historic treatment of the Anishinabek fishery as follows:

> *"What the evidence disclosed was a relentless, incremental restriction and regulation of the admitted aboriginal right, despite continuing protests, petitions, objections and resistance by the defendants' Band."*[47]

The judge acknowledged the difficulties implicit in making the distinction between the "subsistence" and "commercial" fishery in Anishinabek culture, and in the alternative, drew attention to the principles of survival and livelihood.

> *"It is the Band's continuing communal right to continue deriving 'sustenance' from the fishery resource which has always been an essential part of the community's economic base."*[48]

> *"The Band's fishing income is a crucial part of what is essentially a subsistence economy. More limited access to the resource caused by the quota produced greater deprivation and, predictably, contributed to the negative consequences of increased unemployment and poverty on both the individual and community level."*[49]

Instead of constitutional or even biological considerations, the judge agreed based on the evidence that political factors played a paramount role in allocation decisions:

> *"...[Q]uotas imposed for particular species, and their allocation among different license holders, were not biological decisions, but reflected the political and social realities of the time."*[50]

He also found that non-Native commercial and sports fishermen had far greater access to the fishery than Anishinabek harvesters:

> *"[T]he evidence established that the effect of the Ministry's quota system has been to allocate to non-native fishermen the vast preponderance of fish available for commercial harvest. The failure to regulate the recreational fishery in accordance with the same conservation plan has had the inevitable effect of shifting a greater share of the resource to that user group. In neither respect has the Crown demonstrated that the plan or, in the case of the largely uncontrolled sport fishery, the developments permitted outside the plan, recognized that s. 35(1) required that priority be given to the aboriginal's stake in the fishery*

resource. [emphasis added]

> *"The evidence also established that other methods were available to achieve the conservation objectives, which could have accommodated the appropriate priorities. Reference was made to programmes including the closure of the fishery to anglers or preventing them from catching lake trout specifically, or imposing 'catch and release' procedures.....It may be that for political reasons such programmes would not be popular, but that does not permit the constitutional priorities to be overlooked."*[51]

In closing, Judge Fairgrieve summed up his assessment of Ontario's track record in responding to the "existing Constitutional framework" of Canada and the direction of the Supreme Court:

> *"In the years since the imposition of quotas, even following the clarification of the effect of s. 35(1) by the Supreme Court of Canada, the evidence does not disclose any serious attempt by the Ministry to reconsider the restrictions imposed at a time when their constitutional implications were perhaps not so clearly understood."* [52]

> *"What should be stated.....is that a high-handed and adversarial stance on the part of the Ministry will neither meet the constitutional requirements with which, one would expect, it would consider itself duty-bound to comply, nor will it provide an enforceable regulatory scheme capable of achieving the conservation goals which it seeks. It is self-evident, I think, that s. 35(1) of the Constitution Act, 1982, particularly after the judgement of the Supreme Court of Canada in Sparrow, dictated that a new approach be taken by the government to ensure that its policies discharge the obligations assumed by its constitutional agreement. I do not think that it was ever suggested that there would necessarily be no adjustments required or no costs attached."*[53]

We cannot help but take satisfaction in the judge's findings and have no difficulty in saying that by and large they apply to our situation. It is noteworthy that Ontario chose not to appeal this decision, but to negotiate instead.[54]

6.3. Conclusions on the Constitution and the Courts:

Taken together, these statements from the courts support many of the things that we have said all along. Despite the Crown's historic policy of denial and avoidance, we have consistently maintained that our rights are valid and enforceable. There is a ways to go yet, but our elders and leaders of the past have been vindicated in the positions they have taken, and in their efforts to keep alive the knowledge that we were justified in asserting and exercising our rights.

The courts have stated that the Constitution Act, 1982 ushered in a new era of law. They have provided some direction on these issues. But the problem of enforcement and implementation remains - not only with respect to our rights, but also with regard to the decisions of the Courts themselves.

7. THE CONDUCT OF THE CROWN:

7.1. Resisting Change:

Given the dramatic shift in public opinion and judicial reasoning that has taken place, and taking into account the constitutional recognition and affirmation of our Treaty and aboriginal rights, one would expect that other governments would be ready and willing to make the required changes. We have always been willing to negotiate, and to share, as the Treaties themselves demonstrate. But opportunities for substantive discussions with other governments - ones which accommodate our priorities and our understanding of the relationship between our governments - have been almost non-existent. It has even proved difficult (if not impossible) to get other governments to comply with the direction provided by the courts. We are often still faced by a Crown policy which is founded on denial, avoidance, and delay.

As a result, we remain locked in costly legal battles over the extent and nature of our rights to the resource, and over fulfilment of the Crown's obligations to our people. In the 1980's we were forced to take the Crown to court over its mismanagement of unsold lands and other issues related to the 1862 Manitoulin Treaty. It was only in response to our court action that Ontario agreed to negotiate with us. Canada for its part still refuses to acknowledge any obligations with regard to the 1862 Treaty and we expect that we will not get them to the table until we commence action against them as well.

7.2. Operation Rainbow:

Most often, however, we find ourselves in court as defendants. The most recent and extreme example of this was "Operation Rainbow", carried out by agents of the Ontario Ministry of Natural Resources (MNR) in the fall of 1989. Over sixty conservation officers were brought to Manitoulin from across the province with the objective of finding evidence that Anishinabek harvesters were abusing fish and wildlife resources.

They came in undercover, posing as sports hunters and intent on laying charges. Admittedly a few of the individuals who were investigated as part of the operation had in fact been abusing their rights to the resource, these people were in the minority. Other responsible people were then sought out and officers went on to employ

elements of entrapment to increase the number of charges that they could lay.

In some cases, these officers appeared to befriend our citizens; in other instances they used liquor. They also cruised our communities offering to buy wild meat. At the time, our people noted that these outsiders were insistent and refused to take "no" for an answer, to the point of harassment. To us it is clear that MNR attempted to create evidence when they couldn't find it, with prejudice to our people. In January 1990, 190 charges were laid under the Fish and Game Act against nineteen of our harvesters. Even though the trial judge threw them out in December 1991 citing unreasonable delay, the Crown appealed the decision and is still proceeding with the case.

So far, the only tangible results have been a huge expenditure of public money on the part of Ontario, and additional financial burdens on our governments and our citizens, who can least afford it. In the meantime, we cannot afford to wait. Our response has been to assert control over our harvest, to prevent abuse and to protect our people from wanton harassment.

7.3. Policy, Law and Practise:

In the Sparrow decision, the Supreme Court of Canada mentioned the fact that the Crown's practises often contradict its stated policies, and that both policy and practise are not necessarily in conformity with the law. Although the federal Crown states publicly that its objective is to fulfil its "lawful obligations" to the First Nations, Canada has been conspicuously absent during our times of need. It has made only a minor effort to fulfil its fiduciary obligation to protect us in the exercise of our rights.

For the past two years, Ontario has provided a clear example of the discrepancy between policy and practise. In the summer of 1991, at Fort William, a Statement of Political Relationship was signed by the Crown in right of Ontario and the First Nations of this province. This document laid out some basic principles for the conduct of relations between the province and the First Nations. Among other things, Ontario:

* recognized that our relationship with the Crown is based on our Treaty and aboriginal rights, and that as First Nations we have an inherent right to self government within the Canadian Constitutional framework.

* committed to facilitate the exercise and implementation of our inherent right to self government and to respect existing Treaty relationships.

On many occasions, Ontario has also publicly stated its willingness to negotiate issues with First Nations as "equal partners", as an alternative to costly litigation. And yet, this is this same government that has pressed ahead with the charges laid in the wake of Operation Rainbow, and opted for an adversarial relationship instead of a cooperative one. We believe others will agree with us when we say that public funds are much better spent on negotiations with the goal of reaching an accommodation, rather than on questionable and ineffective enforcement and prosecution measures.

It may be that circumstances will change. In June of this year a framework agreement was signed between the Grand Council of the Anishinabek and the Province of Ontario which provides for the negotiation of matters related to use and management of the fishery. As members of the Grand Council, we will be able to review this framework and measure it against our current objectives and initiatives. This may offer an opportunity to engage in discussion with Ontario, looking toward a shared understanding of the respective roles and responsibilities of our governments in the area of the fisheries.

But here again the question of the division of the Crown arises. Ontario only has authority to administer the fishery - in terms of the Crown's internal division of responsibilities, Canada has retained ultimate authority over this resource. The federal Crown also owes to us a fiduciary duty which cannot be ignored. In the framework agreement which we have referred to, Canada's roles and obligations are not clear, and neither is the certainty of their participation in discussions with the First Nations. This requires further clarification and will be a consideration as we assess the utility of negotiations pursuant to the framework.

8. FISH and WILDLIFE RESOURCES:

8.1. Value and Regulation: Costs, Benefit and Privilege:

8.1.1. Prejudicial Bookkeeping:

One must be extremely cautious in looking at the relative costs and benefits of the fish and wildlife sector, for a number of fundamental reasons. In preceding pages we have outlined the Crown's attempts to appropriate our authority over, and use of, natural resources. Behind these events though, one can see the imposition of a new set of values, an alien method of determining the relative worth of these resources, and the removal of any consideration of the actual costs and benefits involved. We have described how, beginning in the late 1800's, the Crown began its attempts to control and regulate supply and demand related to fish and wildlife resources. What we now see are the results of this effort - the Crown has squandered much of the resource and allocated use based on privilege, not need or constitutional requirements. Remedial measures are required.

The sports harvest is favoured through government regulation because selective use and analysis of statistics inflate its true contribution to the economy. The "value" of the sports harvest seems to be determined only by looking at the consumption patterns of those who participate. On the balance sheet, no consideration is given to significant costs related to our economic and social dislocation: welfare dependency; poor health due to a reduction in the consumption of fish and game; or overwhelming but ineffective enforcement and prosecution measures. At the same time, no consideration is given to the value which these resources hold for our communities: the savings from not having to purchase store bought food; the health benefits of country food; or the importance of harvesting activities to our social, cultural and spiritual life.

Sports harvesting is based on the notion of privilege. The majority of anglers and hunters today do not have to hunt or fish for their food, and they do not generally live in the areas where they prefer to harvest (see #8.3.1.). For them, harvesting is a leisure activity, and not a way of life or a means of survival. Government and commercial operators have created a market full of distortions that has determined a relative "price" for these resources. A very low value is put on "subsistence" harvesting, in terms of economic weight and social status, and a very high value has

been put on "sports" harvesting. As a result, we have been effectively priced out of the market.

It seems strange that outsiders (who can afford to) come hundreds, sometimes thousands of miles to harvest game and fish in our territory, while at the same time we who actually live here have serious problems with access. Restrictions on the availability of these resources and the prospect of prosecution and persecution are costs that we are forced to pay so that outsiders can continue to enjoy their privilege. So it is now often more convenient, safer, and cheaper for our people to buy groceries at the local store than it is to go into the nearby bush to take fish or game. This demonstrates how the dominant system as a whole is biased against a balanced evaluation of our real situation in relation to Ontario's economy and society.

At the same time, other costs and benefits - for instance, the value of clean habitat, and the costs of habitat destruction and pollution - are not factored into the Crown's balance books to be weighed against the relative costs and benefits of non-renewable resource extraction over the long term. This makes it even more difficult to see the true picture. Even Crown revenues from resident angling licences go directly into the Consolidated Revenue Fund, and are not directly tied to expenditures related to the operations of the fisheries program.

On a global level, other governments' mismanagement of their resources affect us here in Canada. Habitat destruction and poor management in other parts of the world have meant that traditional sources of certain kinds of game have disappeared, and their markets are looking for others. For example, a bear's gall bladder can fetch up to $4,000 (Australian currency) in Asian markets, and these markets are now looking greedily at Canada.[55] Locally in Sucker Creek, a notice had been put on the community bulletin board by outsiders, looking for deer antlers with the velvet on them. This was roundly denounced by the harvesters, who wanted specific attention given to poachers tempting the more impoverished people.

As a result of all of these factors, existing statistics do not provide an accurate picture of the actual value of fish, wildlife and other resources, or the actual rate of return on these assets. This is one of the ways that the marginalization of our political, economic and social rights has been legitimized over the past one hundred years: any consideration of our costs and our benefits have been removed from the balance books, as well as from the political and legal agenda. We are made to bear the real costs, these costs are suppressed or ignored, and others are free to derive the benefit.

This analysis can also be applied successfully to the aftermath of the 1862 Manitoulin Treaty, which is still the subject of dispute and litigation. That Treaty brought about the sale and settlement of the majority of the eastern sector of the Island. We were to receive the proceeds of the land sales to provide capital for our communities into the future, so that we could grow and prosper in the long term. However, it turned out that the Crown used the proceeds of the land sales to pay for survey costs, the administration of the sales themselves, and even the construction of roads on the island. These things therefore did not appear on the public accounts as a cost associated with opening up the island for settlement - they were a savings for government, and a cost borne by us.

Crown agents did not even collect all of the monies due for some of the land sales, and allowed some settlers who had defaulted on their payments to retain possession of their lots. The monies that were leftover dissipated quickly, administered by the Crown for our "use and benefit". As a result, today we are left with no significant capital from the land sales, and the government was able to benefit from opening up a new area for settlement which it might not have been able to afford if it had been required to pay the real costs.

The same can be said of the costs and benefits associated with the management and use of fish and game: if the Crown and sports harvesters had to pay the real costs of our dispossession, it might not look like such a lucrative sector of activity after all.

8.1.2. The Available Numbers:

So, our participation and stake in the fish and wildlife sector is not reflected in available statistics, whether they be for economic impact or for actual use. Most of the information available to us on the revenues generated by fish and wildlife harvesting are for Ontario as a whole, and we do not yet have comprehensive data on all activities in this sector. With a large dose of salt, though, they provide some insight into this sector's impact on the economy.

Total revenues to the government of Ontario from the sale of fish and game licences and permits in 1991-92 amounted to $36.37 million.[56] Revenues from the sale of resident sport fishing licences in 1990-91 added up to $11.5 million, but make up only a portion of the total budget for fisheries operations which was $52.4 million.[57] However, of this total amount 25% was spent on administration, and 24% on enforcement - for example, Operation Rainbow. Only 51% was left over for the other

components of the fisheries program, which include critical activities like inventory and assessment, population and habitat management, research, and fish culture and stocking.[58]

In 1990, anglers in Ontario spent over $1.3 billion on activities and supplies directly connected with recreational fishing. In total, during the same year, it is estimated that anglers spent close to $3.4 billion on goods and services related in whole or in part to their angling activities.[59]

With respect to the operation of tourist lodges, we do have some data that refers specifically to Manitoulin Island. In 1977, the Manitoulin District accounted for 6% of the registered establishments in Ontario, with 106. Total gross revenues for these operations were $4.78 million, and the average revenue per establishment was $47,700.[60] It can be said with some confidence that in the intervening sixteen years, these revenues have probably increased.

These are not small amounts, and they give the impression that the sports harvest and related activities generate significant revenues for Ontario's economy and its government. But without adding our costs and our foregone benefits to the balance sheet, they are of little real value. There is little if any relevant data on our costs and benefits, and how they relate to the prevailing statistics. This is one area of work which will need to be addressed in the coming months.

8.2. Collection of Harvesting Data:

It was difficult to get specific data on the state of the resources in the Manitoulin and Robinson Huron Treaty area from the Ontario Ministry of Natural Resources (MNR), since much of their information is presented for the whole of the province. Secondly, this is the first time that MNR has been asked to provide detailed information to a First Nation in the Espanola district, adding to the delay. As we develop a working relationship with the Ministry, we expect that measures will be taken to improve the collection and analysis of relevant statistics.

Because of the massive numbers of non-Native harvesters in Ontario, it is said to be impossible to accurately count each legal harvester and his take. So, for the non-Native harvest, Ontario uses mail-in surveys and random checks in the field to collect harvest data on the commercial and sports fisheries as well as moose and deer hunting. As a result, Crown data on harvest levels are estimates only.

The province does not keep statistics on Native harvests of moose, deer, fish or any other resource, except for incidental licenses purchased by Native people to avoid harassment, or where the rare co-management agreement exists with a First Nation. Also, due to the lack of trust that exists, even the local conservation officer would be hard put to estimate anything about our harvest. Based on community knowledge of our current levels of harvest, however, we believe that our take does not pose a threat to conservation of fish and game.

We know that effective and responsible management must be based on accurate baseline data - with respect to overall stocks, existing harvest levels, and anticipated needs. Estimates and guesses are not enough, and our goal is to be able to account accurately for all of our harvest. Our view is that harvesters have a responsibility to report their harvest levels to provide the data that is needed for effective management. In the coming months we will be starting our own land use and harvesting studies to fill the gaps in our knowledge and to use as a tool in our approaches to fish and wildlife management. Once we have accurate data on our own use and needs, we look forward to working with other governments to develop more effective approaches to monitoring overall harvest levels.

8.3. The Fishery:

8.3.1. Sports:

As we have said, Ontario does not take into account aboriginal harvest levels in most of its statistics, so those that follow refer only to the non-Native harvest. There were over 2.7 million active anglers in Ontario in 1990, including those under the age of eighteen. Non-residents made up over 600,000 of this total, most coming from the United States. Urban males accounted for over 63% of the total number of resident anglers, and about 11% of resident anglers were members of an angling organization or association in 1990. Moreover, approximately 21% of resident anglers also hunted wildlife during this period.

Adult anglers caught an estimated 149.5 million fish in 1990, keeping less than 50% of their catch. The total weight of fish kept was over 58.4 million pounds. A survey of anglers' management options, motivations and preferences carried out by MNR in 1990 and provides some qualitative data on the sports fisherman's profile:

* *"Anglers strongly disagreed with the option of limiting the number of anglers. Other options they did not agree with were: the shortening of seasons, catch-and-release only fishing, no baitfish fishing and the use of barbless hooks."*

* *"Resident and non-resident anglers said the most important reasons why they fished where they did were for relaxation, to get away, and to enjoy nature."* On the other hand, "catching fish to eat" was only ranked as a moderately important reason for fishing.[61]

The sport fishery in our territory is still growing. Ontario is gradually buying out commercial fishing licenses and introducing non-native splake and salmon to favour more "lucrative" sport fishing. The Ontario Fish Culture Stations as well as volunteer sport fishing organizations raise fish fry and eggs for release into the waters. But the impacts of introduced fish species to the natural fishery are uncertain. Many of our harvesters felt that the predatory salmon are eating too much, thereby taking away from other fish. A review of the commercial fishery is underway, and Ontario has stated that it is developing an aboriginal fisheries policy.

Four day and seasonal sports fishing licenses can be purchased anywhere in the province and used anywhere, so it is difficult to know how many fishing days were in the immediate area of Manitoulin or the North Shore. The rough estimate information is provided to MNR by Conservation Officers' random checks of fishermen.

8.3.2. The Anishinabek:

Elders in the community remember fish being more plentiful so that there was no problem to catch as many as were needed. Sheshegwaning community members rarely fish nowadays simply because the fish are no longer available. Harvesting has decreased elsewhere because many people are reluctant to fish in inland lakes, in waters outside of the reserve, or commercially. Reasons given were harassment by MNR and non-Native fishermen, low fish populations, or no equipment. There have been incidents where our harvesters' nets and equipment have been tampered with or damaged, and these events can discourage people from engaging in harvesting activities. This situation prevails in all UCCM communities, which is ironic considering that all are alongside water, and the sites were chosen because of their access to the resource. Yet people expressed interest in doing more fishing if barriers

were taken away and if there were opportunities to participate freely.

Some of our communities have taken the initiative and are involved in restocking projects. The voluntary West Bay Fish and Game Club and Sucker Creek First Nation both run fish fry projects to raise fish for release, thereby putting back into the ecosystem what was taken out. It is expected that this sort of activity will continue and expand in the time to come as we develop our capacity.

8.4. Deer and Moose:

Habitat on the Island has been affected by development: there are many year-round or seasonal cottages, and much land has been cleared for farming. The only major industrial activity is focused around Espanola, at the EB Eddy paper mill. Deer hunting is done mostly on reserve, partly to avoid harassment by MNR and also because there is very little unoccupied Crown land left on Manitoulin. This restricts access to the resource. Deer numbers vary on each reserve, depending on the intensity of development and the amount of remaining forest in which the deer can hide. Sometimes our hunters must pay a non-Native land owner for permission to hunt on his wooded lot. The limited amount of reserve land, shrinking habitat for deer, and limited access puts pressure on four parties: the non-hunting land owner whose land is prime deer habitat, the hunter, the deer itself, and the land to support deer.

More people participate in deer hunting than for moose because these animals live in and around our communities. On the other hand, moose hunting takes planning and a concerted effort to travel to the North Shore where the habitat supports moose (there is no regular moose hunt on Manitoulin because the habitat is too open and moose like denser bush, although there is an occasional hunt carried out at Sheshegwaning). MNR estimates that the Ontario moose herd amounts to about 150,000. Ontario has put into place two separate processes for allocation of moose - one for resident hunters, and one for the tourist lodge industry, which are said to *"recognize different objectives and values held by these two groups"*. As a result of this system, 10% of the annual planned moose harvest is allocated to the tourist industry, essentially a commercial interest.[62] The Anishinabek of Manitoulin and the North Shore have no formal allocation nor do they provide harvest numbers to the province.

Based on MNR estimates, the average number of deer taken annually by sports hunters from the three Wildlife Management Units on Manitoulin Island is 3,739 (1990-92).[63] Anecdotal information provided by our harvesters consistently shows

that only a few members hunt for the community as a whole. Meat is distributed to the hunting partner's family, one's own extended family, friends, neighbours and those in need. So one carcass can theoretically be divided into a minimum of half of an animal per family up to smaller portions amongst several families.

The combined population of our communities is about is 4,000. Even if each individual received the equivalent of one deer only per year, an improbably high ratio, our take of deer on Manitoulin would only just surpass the numbers taken by non-Native hunters. But because not everyone likes deer meat, plus restricted access leading to finding alternative food sources; our actual harvest is only a tiny fraction of the non-Native harvest. Since moose are taken even less frequently, (for example in 1992, one reserve only took one moose), it appears that our moose harvest levels are also very minor in comparison to the non-Native harvest.

8.5. Relations With Ontario's MNR:

8.5.1. The Anishinabek:

Presently, we do not have a formal cooperative relationship with MNR. Lately some support has been received from the Espanola District office, and a Native liaison officer has been hired. But relations are still tentative. On the ground, our general perception of MNR's policies on management and the exercise of our rights can be reduced to two points - it is non-Natives who get priority in allocations, and the Anishinabek who feel the brunt of enforcement measures. Not without reason, many of our harvesters see MNR's approaches to management and enforcement as alien and arbitrary. At the same time, traditional management systems have been undermined and are not as effective or as pervasive as they once were. As a result, there is, among many of our citizens, a lack of respect for the regulations and institutions associated with provincial resource management.

Harvesters felt that the non-Native system is insensitive to Anishinabek culture and provided examples to demonstrate why they held these views. In some cases, caution and deference to Ontario regulations has proved futile: individuals had obtained Ontario licences, joined non-Native hunting associations, carried out harvesting in a proper manner, sometimes even on reserve, and yet were still charged. Others have been charged for commercial fishing on reserve; transporting fish and meat from one reserve to the next, or from Crown land to the reserve; accused of jacklighting during the evening when they were actually dragging a deer or moose carcass out that had

been shot earlier in the day.

Another common issue is the uncertainty and mixed messages that come from Ontario officials. Policies adopted by Queen's Park are not necessarily implemented in the field, or are applied inconsistently (for instance the Statement of Political Relationship has had little direct effect on us).[64] People expressed the view that the system does not even deal effectively with recognized abusers of the resource. As things now stand, the community sees no benefit and in fact loses if an abuser is convicted, because his fine does not go back into the community or even into conservation efforts; there is the possibility of jail; his equipment is held or lost; and even the meat isn't necessarily accounted for. On top of this, because the abuser is not dealt with by his peers, there is no local accountability even if, in the eyes of the community, an abuse had taken place. Yet if there was no violation, for example if the harvester was only exercising a Treaty right within the boundaries of community-accepted ethics, he would continue to have their support. But in the eyes of the province, he may continue to be viewed as a violator.

While some MNR Conservation Officers seem to have a good relationship with the UCCM community (field officers sometimes drop off confiscated meat for distribution by the West Bay Fish and Game Club), there are others who make life difficult by overt or subtle harassment. People state that there is no effective forum for registering or resolving complaints about the conduct of enforcement officers. This was the case whether it had to do with treatment of the person himself, or witnessing abuse carried out by others.

As we develop our own solutions to these problems, we remain open to working out the ways and means of cooperating with MNR in appropriate areas. Recently the Ministry has adopted a policy of contacting Chief and Council to inform them of irregularities and to get direction. Although small, this is a good step and we expect to develop more cooperative measures as our initiative proceeds.[65]

Operating in a legal limbo where uncertainties abound, there are opportunities for misuse and abuse of the resource by both Native and non-Native alike. Based on experience, unless our harvesters feel some ownership over the management system that is in place, and unless they see some tangible benefits, it is difficult to expect that they will willingly comply. At the same time, it is only through accountability at the community level that potential abusers of the resource will see the necessity of conforming to community expectations. Resumption of formal authority over

resource management by our governments is key to ensuring responsible use of the resources by our citizens.

8.5.2. The General Public:

Surprisingly, even though it is their government, many Ontario citizens and organizations engaged in harvesting regard MNR, and the province's approach to management generally, with a degree of cynicism. Much of this, all admit, has to do with the different interests and priorities of the various players. Surveys conducted by Ontario identified this problem and acknowledged that *"Conflicts arise among shareholders who do not have a common set of values and consequently do not agree on how to share the resource".*[66] This fact is obvious to us.

These conflicts arise within and between all user groups. A 1977 study of the tourist lodge industry in Ontario found that:

> *"There is too often a serious communications gap between lodge operators and MNR. Many operators have little faith in Ministry planning and management efforts, and feel ignored by the Ministry. The Ministry, on the other hand, feels that many operators look only at their short term self interest, and are ignorant of the biological theories and data underlying regulations meant to serve the long run interest of the resource base and all its users."*[67]

Organizations like OFAH have made it clear that they are not happy with existing allocations and management practises, and have publicly announced a lack of trust in their elected representatives and their public servants. Other groups, like outfitters who profit from the harvest of moose, feel that they should get more of the resource:

> *"Some outfitters feel they should be given as many moose tags as they felt they needed to keep the industry viable. This often meant 'enough adult tags for all clients', 'enough tags to make a business profitable', or 'one cow and two bull tags for each outfitter'."*[68]

This conflict and self interest are byproducts of the distorted system of values, costs, and benefits that has taken hold over the past century. The reality is that there are not unlimited numbers of fish and game, and that if existing total allocations cannot be increased because of conservation requirements, a redistribution of existing

allocations is needed. This has been acknowledged by the Ministry and by the courts, but it does not resolve the issue.[69] Action and re-education are required. From our perspective, the Crown needs to work these matters out with its constituents over the long term. We do not wish, and should not be required, to become embroiled in the internal relations between other governments and their constituents.

8.6. Conclusions on Fish and Wildlife:

There are serious and fundamental problems with fish and wildlife management in Ontario. When considering how and why things got this way, on balance it appears that the Crown at its "stakeholders" have the most explaining to do. Not only have our rights to use and manage these resources been denied, but the resources themselves have been depleted, contaminated, and in some cases threatened. In the Cuprem Court's terms, they must now justify their conduct in light of their (mis)management of the resource and our (in)ability to exercise our rights.

Due to current provincial management practises and policies, the Anishinabek do not have equitable access to fish and wildlife resources. Increased competition from non-Native harvesters, habitat destruction and the enforcement of other governments' regulations have all played a part in restricting our use of these resources.

Community members consistently cited fear of harassment as a major reason for not participating in regular harvesting activities. However, harvesting for food still continues, along with traditional systems for distributing fish and game within the community. We require more equitable access to these resources. If existing overall allocations cannot be increased, then they must be redistributed so that we have access to what we need - the Constitution of Canada requires it.

We are willing to assist other governments in some of the public education and planning that must take place to prepare and execute this redistribution of allocations, but ultimately the Crown will have to deal directly with its own constituents to reach some accommodation. We did not create the problem, and we cannot be used as a scapegoat for what must take place. The reality is that for far too long, sports harvesters have been insulated and sheltered from the real costs of their pursuits.

Conventional methods for determining the costs and benefits associated with harvesting, and the relative values placed on these resources, are distorted beyond repair. They are skewed in favour of sports harvesters and to our prejudice. Our costs

have not been balanced against the purported "value" and "benefits" of the sports harvest.

Current data gathering techniques employed by MNR only provide estimates as to the overall stock and non-Native harvest levels. Responsible management requires accurate and actual figures, which we are prepared to gather as a part of our proposed management plan. Ontario needs to take similar steps to manage its own harvesters more effectively. Ontario harvesters in turn must demonstrrate a commitment to meeting the same stringent standards.

In any discussions related to co-management agreements, the First Nations are held to a very high standard by the Crown and by sports harvesters - who will hunt, how much will be taken, where it will be taken, how it will be taken, and exactly how much was taken. Many of these standards are ones which we know and accept as part of our traditional management ethic anyways. But we wonder why the Crown and the sports harvesters seem unable or unwilling to adhere to these same stringent standards. It seems that we are the ones who must prove ourselves even though the evidence demonstrates that the majority of the problems are a result of non-Native use and management.

We believe that only through local accountability and responsibility can we ensure responsible use and management of our resources. One of the problems we see with Ontario's current approach to management is that is largely anonymous: potential harvesters can obtain a licence, access lands they know little or nothing about, do what they want and leave again, perhaps never to come back. There is no obligation or duty to report harvest levels or related data. Without the knowledge that they are accountable to the land or to a particular community, there is a greater potential for abuse of the resources. This has been known by authorities for a long time.

In response, Ontario has tended to focus on enforcement measures which create their own problems, and which gobbled up 24% of the fisheries budget alone in 1990-91. We would suggest that far more effort should be devoted to local accountability, education, and prevention if Ontario intends to work toward a more effective approach to management. We challenge other governments and "user groups" to apply the same standards to their use of the resource that they want to apply to ours.

Our experience and perceptions of MNR's policies and practises has not inspired confidence in their willingness or ability to accommodate our rights and our culture. This is why we have decided to take care of our own interests with regard to harvesting. As changes take place we remain prepared to enter into cooperative arrangements with the Ministry at the appropriate time and in the appropriate circumstances.

3

PART THREE: FUTURE

9. THE EXERCISE OF ANISHINABEK JURISDICTION and RIGHTS:

9.1. A New Era of Law:

The Courts have stated clearly that with the coming into effect of s. 35(1) of the Constitution Act, 1982, a new era of law began. Assumptions and prejudices which guided Canadian relations with First Nations over the past century are no longer acceptable - much the same way in which attitudes, policies and practises flowing from the slavery era had to be eradicated after Abolition in the United States. A break with the past has to occur. Since 1982, there has been a lot of talk about these issues (witness the various First Ministers' conferences of 1983-93) and substantial litigation, but precious little effort at responding to these challenges in real terms on the ground. Old attitudes do not die easily, and we know that it will take time for a new equilibrium to be found.

9.2. Action is Required:

But we cannot wait until there is nothing left to negotiate, and we cannot sit by passively while our rights continue to be abrogated. Without any opportunities to seriously discuss the issues at hand, circumstances have led us to unilaterally formalize and assert our authority over these resources and over our citizen's use of these resources. This has been done as a defence against harassment and intimidation by other governments, to guide the conduct of our citizens, and to protect the future viability of the resources themselves. We have come to understand that other governments will not begin to respect our rights until we demonstrate that we can manage our own use of these resources effectively and responsibly. In any event, given previous and current experience, other governments have not demonstrated that they are very good managers of the resource, and we believe that we can do better.

9.3. Our Approach to Self Government Development:

This goes beyond the use and management of fish and wildlife. It involves the resumption and renewal of our authority as governments to be responsible for our citizens and to be good stewards of the resources that have been given by the Creator. Ultimately, Anishinabek government will involve many institutions and many areas of activity, each of which will respond to particular needs and responsibilities of our governments and our people.

But each aspect of self government must evolve in its own time, based on the priorities, needs, capabilities, and wishes of the people. We believe that we can be most effective in building durable, practical institutions of government if the challenges are taken on one at a time, based on community support. This is how we have developed the Fish and Wildlife project - a measured and responsible approach, under the authority of our governments and based on the direct participation of our citizens. To us, this is democracy. When other governments are ready to talk seriously, we will be prepared.

9.4. Costs vs Benefits:

One commonly expressed concern about the exercise of self government relates to the supposed costs involved with the full recognition of our rights and the exercise of our jurisdiction. Some may say that these things will be "a continued drain on the public purse", or "yet another giveaway to the Indians". In an era of deficits and difficult economic times, these sentiments can trigger reaction and retrenchment. But if one looks at the overall situation in context, it should be clear that implementation of our rights to land, resources and self government will actually **reduce** our dependence on others. In this respect its not a drain on the Treasury but rather setting us free to pursue our avocations and restore our role as productive contributors to the economy of this country.

This is not to say that it won't take some resources at the front end to resolve some of the more pressing problems and set the stage for renewed productivity, but how does this compare with prolonging the status quo? As things now stand, the social and economic costs of our marginalization are certainly a drain on the overall economy in terms of health, housing, policing, justice, and so on.

As a specific example, look at measures like Operation Rainbow. We don't have exact figures on the cost of the operation, but we can estimate the magnitude of the expense in a crude equation:

> wages, overtime and living expenses for 60 conservation officers over a period of weeks for the initial investigation + attendance at court + court time + Crown prosecutor's time + our time and costs + the costs and time of individual defendants + loss of fish, game and equipment, spread over three years = a significant expenditure of public and private monies

And yet with a fraction of this amount we have been able to begin to take care of these things on our own and set the stage for responsible and sustainable management of our resources. It should not be hard to understand why we say that the resumption of our authority and the recognition of our rights can only be a move towards increased productivity and prosperity, for us and for our neighbours.

The Robinson Huron Treaty guaranteed that, should the territory produce revenues such that the Crown could "without loss" increase the annuity, our return would increase. Our lands and resources have definitely turned a profit and provided wealth and prosperity for the Crown and its citizens, but these benefits were not shared equitably. Now the money has been spent, more has been borrowed, and the province tends to plead poverty due to tough fiscal times and the growth of the deficit (although there always seems to be money for enforcement).

Despite the damage done, our resources and lands are still generally intact. They can and do continue to provide benefit. A just settlement will not cost money so much as it will "cost" a realignment of jurisdiction and a redistribution of future benefit. We know from centuries of experience that the land can provide for our needs, as long as we have the ability to use it.

9.5. Shared Benefit, Shared Reponsibility:

One thing should be made clear at this point: we are not advocating the takeover of all fish and wildlife management, or exclusive use, in our territory. But we are asserting the right and the responsibility to regulate our own use and management of these resources in the areas where we have traditionally harvested, based on our needs. We are also prepared to challenge other governments when it appears to us that they are not managing their share of these resources responsibly. On our part there has always been a willingness to share the abundance of resources that reside in our territory, but at this stage we are not getting an equitable share, and we are not satisfied that the resources themselves are being managed properly. Prompt action is needed.

Eventually we can see that there will be some areas in which we have exclusive use and management responsibilities, and others where these responsibilities are shared with the Crown. We are looking to create nothing new or radical. All we require is a renewal of the original relationship that was negotiated and agreed upon between our leadership and the Crown through the Treaties. This relationship was to be based

on mutual respect for each other's governments, areas of jurisdiction, and economies, and was to be guided by the overriding principle of sharing and coexistence for mutual benefit.

We remain committed to negotiation with other governments and certainly prefer discussion to litigation. However, the Crown must be prepared to approach these matters in a way that recognizes and affirms our aboriginal and Treaty rights, as the Constitution requires. In Sparrow, the Supreme Court of Canada stated clearly that the recognition and affirmation of aboriginal and Treaty rights found in s.35(1) of the Constitution Act, 1982 provides a solid foundation for the negotiation of these issues. We fully expect the Crown's representatives to respect the Court's direction.

10. TRADITIONAL RESOURCE MANAGEMENT:

> *"[The Odawa] say that this is the native country of one of their Gods, named Michabous - that is to say, 'the great Hare', Oisaketchak, who is the one that created the Earth; and that it was in these Islands that he invented nets for catching fish, after he had attentively considered the spider while she was working at her web in order to catch flies."*[70]

10.1. The Anishinabek View:

When an indigenous community such as the Anishinabek depends on the harvest of migrating fish and animals to survive, we have had the luxury of thousands of years to refine knowledge of the animals' movement in order to learn the skills to capture them. A certain respect develops from learning about the ingenious skills that living things have in order to survive themselves, and a respect and thankfulness evolves towards the Creator who made all things this way. So when our people conscientiously integrate these practises into the spirituality and culture of everyday living to promote the goal of conserving the proper balance, this in effect makes up the basic principles of sustainable management of resources.

If balance were not achieved, the results would be very quick and disastrous. Killing a whole cluster of animals or fish, or destroying their habitat, would guarantee that there will be none for the following year, thus starvation of a whole community.

Traditional harvesting is not for sport, it is for survival. Thus, it is in the harvesters' own best interest to learn about the living things and the environment that supports them - so that he knows when the proper time is to harvest for the best food quality, while ensuring that there is enough for future generations of not only the living creature, but his own family too. When the Robinson Treaty refers to our right to hunt and fish as we had been "in the habit of doing", it is referring not only to our use of the resources, but also our management ethics: these "habits" were founded on sustainable management of natural resources through self-regulation.

The other thing that should be mentioned here is that "wilderness" has always known human activity. The lands and waters of our territory were pristine when the Europeans arrived, but that did not mean that they were not used regularly or intensively. What it demonstrated was that we were impeccable managers of the land

and its resources, and that this standard of management was a result of our beliefs and our knowledge. Today, when we here calls for preservation of "wilderness" with the implication that no human activity or use would be permitted, we cannot understand how this could be - just as we suffer a loss at the disappearance of certain species in the forest, the natural world would suffer a loss with the disappearance of human activity. The critical issue here is not the removal of human activity, but the character and conduct of human interaction with the natural world.

The consumption of fish and game has also provided for our health and well being. Increased reliance on store bought foods which came about as access to country foods was restricted has had health impacts in our communities that have yet to be quantified, but which are evident to us. The effect of changing patterns of consumption were also evident to previous generations. In 1948, a number of Robinson Huron Chiefs advised the government of the connection between country food and health:

> *"....[W]ild meat is the most essential food of the Indian to preserve the vitality of human body. The maintenance of good health is an asset and a weapon to ward off disease as otherwise has been the case which developed by undernourishment and improper food to the adults as well as the children. The Indian demands these for a stronger and healthier rising generation as well as present needs."*[71]

Aside from the costs associated with a less healthy community, there are also the costs associated with having to purchase food instead of taking it from the lands and waters.

During community meetings held over the past six months, harvesters frequently narrated the teachings handed down to them from their fathers. These stories covered all areas, from understanding the natural law; to eery predictions of environmental degradation and changing relationships with non-Native people unfolding within this generation; to proper respect for the earth; or something as mundane as taking fish out of a net properly. At one point in every session, there was a request to speak to the elders, out of respect for their knowledge.

Despite the Crown's denial of our authority, and although the Indian Act and other measures have often constrained our ability to exercise our jurisdiction, many elements of our traditional management systems have survived and continue to influence harvesting patterns. For example, not once during our consultations was

there ever a mention of establishing a harvesting season based on a particular day of the month. Even the months were rarely used. Instead, the start of a season to harvest began first, obviously, when the fish and animals have come to the area. Their arrival is dependent on the temperature and other environmental conditions which usually occur within a four to six week period. It is for these reasons that a season is designated as "late summer" or "late fall", and not a particular month, since animal and fish migration is the result of fluctuating seasonal patterns, and not arbitrary dates on a calendar.

Additionally, each community has informally designated harvesters. Not all people hunt or fish, so that those who do, may take large quantities which are distributed amongst many families. This practise is a continuation of our traditional system, in which communities designated harvesters and harvesting Chiefs. In 1859, Fisheries Overseer Gibbard expressed frustration at the fact that *"none of the Wikwemikong fishermen would speak to him because their 'Fishing Chief' was away."*[72] He did not seem willing to accept that we had our own fisheries experts and authorities.

10.2. Emerging International Standards and Concepts:

The traditional conservation ethic of the Anishinabek is similar to the values and practises of many other indigenous peoples throughout the world. These values have often clashed with those of European societies, particularly over the past one hundred years. Today, there is increasing concern about conventional approaches to economic development, and the damaging effect that irresponsible practises can have on the environment. These concerns motivated the United Nations General Assembly to establish the World Commission on Environment and Development in 1983.

The Commission's report, entitled "Our Common Future" (also known as the Brundtland Report, in recognition of the Chairperson, Gro Harlem Brundtland), dealt with the relationships between economic development, environmental management, and the economic and political disparities between peoples. They reached certain conclusions about these relationships and identified areas for positive action, directed at resolving the problems posed by these complex issues. Norms and standards of conduct for both states and peoples were proposed in this context, and they are of direct relevance to our current discussion.

Key among these is the concept of "sustainable development": the principle that development must meet *"the needs of the present without compromising the ability of future generations to meet their own needs".*[73] In calling for better stewardship of the Earth's resources, the Commission also noted that a redistribution of these resources is required to ensure that those who have been dispossessed *"get their fair share of the resources required to sustain... growth".*

The Commission did not overlook the role and rights of indigenous peoples in this process. In fact, they highlighted the significance of indigenous peoples, not only as custodians of valuable knowledge, but also as victims of conventional development practises:

> *"These communities are the repositories of vast accumulations of traditional knowledge and experience that links humanity with its ancient origins. Their disappearance is a loss for the larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems.....*
>
> *The starting point for a just and humane policy for such groups is the recognition and protection of their traditional rights to land and the other resources that sustain their way of life - rights they may define in terms that do not fit into standard legal systems. These groups' own institutions to regulate rights and obligations are crucial for maintaining the harmony with nature and the environmental awareness characteristic of the traditional way of life. Hence the recognition of traditional rights must go hand in hand with measures to protect the local institutions that enforce responsibility in resource use. And this recognition must also give local communities a decisive voice in the decisions about resource use in their area."*[74]

These conclusions reflect a recognition on the part of the international community that indigenous peoples are indeed peoples, with their own institutions of government, areas of jurisdiction over resources. They are also an admission of the massive scale of the dispossession and denial that have fuelled the growth of western political systems and economies. The parallels with our situation and our aspirations are readily evident.

Our current efforts to resume control over our harvesting of fish and wildlife are partly based on the realization that poor management practises have contributed to the decline of these resources, and that we have something essential to contribute to the solution.

11. SUSTAINABLE RESOURCE MANAGEMENT FOR THE FUTURE:

We have developed a blueprint for our approach to resource management, combining traditional knowledge and practise with modern "scientific" disciplines. It is just a beginning, and certainly more work is required, but we believe that it will rest on a solid foundation and we are confident that it will provide solutions not only to the problems that our communities face with regard to harvesting, but those of the wider society as well. (For a summary of the community consultations and other activities that formed a part of this project, please refer to Appendix 1)

11.1. Regulations:

As a result of the community consultations, we have developed draft regulations which will be going to the people and leadership for review, amendment and/or approval (Appendix 2). These regulations refer to the overall objectives and purpose behind the initiative, as well as stating the fundamental principles that must guide our use and management of the resource. Some of these principles are respect for fish and wildlife and responsibility for their conservation; distribution and sharing among community members; and safety. Seasons, methods, and procedures are laid out for the various species of fish which are harvested, as well as moose and deer. Eligibility criteria for harvesters are identified.

Finally, reporting procedures are laid out so that we can speak with accuracy and confidence about our harvest levels and assess their impact on the overall stocks. No tags or quotas were recommended for this year since it is unknown precisely how many animals have been taken over the past few years, and we beleive that current harvest levels do not threaten conservation needs. Discussion and decisions related to harvest levels and forecasts can only take place after a harvest study is completed and compared with the total number of animals available locally. However, we are committed to accurate reporting and analysis of our harvest levels in the knowledge that this data is needed for responsible management.

These draft regulations will be fine tuned and eventually ratified sometime in the summer of 1993.

11.2. Compliance:

There is agreement that some measures to encourage compliance with the regulations are needed. But instead of the province's emphasis on enforcement, we will focus on prevention and responsibility. Users will be accountable to their communities for their conduct, and any sanctions imposed will be of benefit to the community. The following levels of sanctions have been identified, which are now being discussed in our communities:

1) Awareness first. Discuss with family members so that everyone knows ahead of time that something was done wrong.

2) First warning.

3) Fine offenders and take gun or equipment away. In the alternative, the offender will do community service or work on a conservation project.

4) Fines shall be directed to conservation projects. Any meat is given to those who need it within the community so that it is not wasted.

To a large degree, compliance is dependent on community understanding and acceptance. Consistent with our emphasis on prevention and responsibility, we are developing educational materials targeted particularly at our youth to inform them of the objectives of this project and the principles of responsible use and management. It is expected that each community will also find its own ways of informing its members and educating them.

But regardless of the level of community acceptance, there will still be a need for prevention, protection, and habitat management. Eventually, we intend to employ our own Conservation Officers who will work on conservation projects, monitor harvest levels and stocks, and deal with compliance issues. Efforts are now underway to develop a project which will address this issue. In addition, it has been proposed that safety courses be adapted and/or developed to promote responsible use of firearms and equipment.

It was understood that the harvester and enforcement personnel (once they are in place) should work hand-in-hand. Any unusual sightings or incidents shall be referred to the Native conservation officer as soon as possible. When there is no opportunity

to do this, a system will be established to record the information in the field so that the Native conservation officer can, if necessary, investigate later. We will also need to work out how our citizens will conduct themselves when out in the field with non-Natives.

11.3. Commercial and Subsistence Use:

Earlier, we cited comments by judge Fairgrieve in R. vs Jones and Nadjiwon which spoke to the difficulty in distinguishing between "commercial" and "subsistence" harvesting in our societies. We have always harvested for our livelihood and this has involved subsistence, distribution among the community, trade and barter between our communities, and with other First Nations, in addition to commercial exchange with non-Natives upon their arrival. The assertion of our responsibility over our citizens' harvesting does not mean that we intend to take all the fish and game and sell it off. It does mean however that we will work towards resuming our traditional use of these resources as circumstances allow and subject to conservation needs, with the objective of providing for our survival and our livelihood.

11.4. Relations with Other Anishinabek Communities:

There are other communities nearby who were not directly involved in this initiative, but who also have an interest in the lands and resources within the territory. Over time, we expect that our effort will lead to discussions with them with a view toward developing cooperative and consistent approaches to the use and management of our fish and wildlife resources. We hope that the experience we have gained will assist them in addressing these issues, and we expect that we will also learn from their experience and knowledge.

12. THE GENERAL PUBLIC:

12.1. The Need For Public Education:

Any initiative which goes beyond the status quo requires a clear understanding among affected parties if it is to proceed smoothly. The general public has significant influence over the policies of other governments - after all, provincial and federal governments are elected to represent their constituents. At the same time, it is with our non-Native neighbours on the Island whom we must ultimately coexist, and it is important for us to maintain positive and cooperative relations in the long term. Taking these things into account, the general public's understanding of the issues is critical to successful implementation of this initiative.

Norms and standards have changed considerably over the last fifty years. Today, the public is aware of the fact that our rights have been violated, and they are supportive of efforts to heal our relationships and rebuild our communities. When the average person is faced with the specific facts and gains an understanding of the enormity of the loss that we have suffered, he or she usually becomes even more supportive of remedial efforts. Public education, in both the short and long term, can respond to the general public's lack of knowledge about these issues - for instance, our history, the nature of our rights, and the basis of the Treaty relationship. It needs to take place in the education system, in the media, and wherever opportunities present themselves. This kind of effort is crucial if, over time, we are to realize our original objective of mutual respect, sharing and coexistence with our neighbours.

There are a lot of misconceptions out there which need to be addressed and set straight, and this can only be done through clear communications and an ongoing effort at dialogue. We are involved in public education efforts focused on our non-Native neighbours and we will continue these, but often we are left with the impression that the onus is on us alone. Recognizing that Canada and Ontario have presided over the evolution and entrenchment of negative public attitudes and misconceptions, we believe that they must participate actively in the public education that needs to take place. This has yet to be demonstrated on a consistent basis.

12.2. Third Parties:

Among the general public, there are of course third parties which have an interest in fish and wildlife use and management. These include not only individual users, but also industry and advocacy organizations such as the Northern Ontario Tourist Outfitters Association (NOTO), and the Ontario Federation of Anglers and Hunters (OFAH). Some third parties have expressed concerns about the effect of Treaty and aboriginal rights on the management and allocation of fish and wildlife resources, and these concerns, where legitimate, deserve a forthright response.

However, there are still elements within Canadian society that harbour the views and stereotypes of generations past, and who greet the possibility that these issues may be resolved with hostility. These include, not surprisingly, some sportsmen, as well as some commercial interests (commercial fishermen, tourist outfitters, lodge operators). To assess their motivations and the legitimacy of their concerns, one must put them into historical context: they are successors to the same interest groups that played a role in the destabilization of our economies and benefitted from our dispossession in the last century.

Many third party concerns are said to be based on conservation - for instance, that the exercise of our rights will lead to abuse and ultimately the demise of the resource. If there are concerns about conservation, we have no problem addressing them, because we know that conservation of the resource is a prime objective which is in everyone's interest. In fact, our draft regulations and the approach that we have taken so far should demonstrate our commitment to conservation and responsible use, and we would challenge others to commit to an accurate accounting of <u>their</u> harvest levels.

But one often finds that once the conservation issue is set aside, other sentiments rise to the surface which cannot be so easily addressed. Prime among these are ignorance, fear, and self interest. We are confident that ignorance can be replaced with knowledge through general public education, as explained above. The self interest and fear of some parties, however, may be more difficult to resolve, largely because they have come to see fish and wildlife resources as their own, and because they feel that we are not governments and have no rights. In this light, any redistribution of existing jurisdiction or allocations, regardless of whether they are required by law or necessary to right past wrongs, are seen as a threat.

We have no choice but to meet this challenge. UCCM representatives have spoken at meetings of the OFAH local, and in fact we seem to have generally cordial relations with them on the Island. Over the past year a number of radio and print media interviews have taken place, all intended to make clear our intentions and our priorities. (Appendix 3) We plan to continue and expand these efforts to ensure that at the very least, other parties have access to accurate and relevant information on the nature of our rights and on this particular initiative. We have no problem communicating with, and under appropriate circumstances, cooperating with third party interests and non-governmental organizations on harvesting issues. We want to be clear about our actions and our objectives, and take a cooperative approach to management & conservation. In fairness, OFAH is involved in a number of commendable volunteer conservation projects, and has published some useful guides to wildlife biology (ie., moose).

But at the same time, we choose not to enter into dialogue in an atmosphere of hysteria. We have had the opportunity to review OFAH's "Position Paper on Co-Management of Crown Lands and Resources in Ontario" and to us it does not seem to indicate a commitment to reasoned dialogue.[75] There is no inclination on our part to respond directly to the assertions contained in that position paper because we find them offensive and inflammatory.

However, the document in question is attached as Appendix 4, and we invite you to review it and draw your own conclusions. We are confident in the facts of our situation and in our commitment to conservation and safety, and we are willing to engage in discussion with our neighbours as long as clear minds and mutual respect prevail. In the absence of goodwill, however, the utility of dialogue becomes questionable.

There are no short term solutions to this particular problem, since these views are deep seated and have been encouraged by other governments (and the dominant system generally) for many generations. But this is not to say that all people involved in these sectors are self interested or intolerant. In comparison to the total number of sportsmen and commercial operators, they appear to be a minority.

Surveys conducted by MNR indicate that only about 11% of resident anglers are even members of organized angling associations or groups.[76] But the fact is that some organizations appear to wield influence far in excess of their numbers. Perhaps because they are so vocal, other governments tend to lend them an ear. These are the

"political and social" considerations which judge Fairgrieve cited in R. vs Jones and Nadjiwon, and other governments need to reassess the relative weight given to them in light of the requirements of the constitution and our own political, economic and social needs.

There is another type of third party which has a corporate interest in lands and resources. An example from our territory is the E.B. Eddy paper mill at Espanola. Corporate players can drastically effect fish and wildlife habitat through such activities as clearcutting, and the discharge of effluents into river systems. A major spill at the Espanola mill a couple of years ago had the immediate and dramatic effect of killing thousands of fish. Although we have not had a chance to investigate their activities and impact closely, in time more focus will need to be put on the duties and responsibilities of corporate players as they relate to the quality of fish and wildlife habitat.

Third parties have concerns that need to be addressed, and interests which need to be considered. However, it must be made clear that we cannot, as governments, negotiate issues affecting our rights directly with third parties. As Canadians and residents of Ontario, they have their own governments elected to represent their interests. It is with these governments that we will engage in discussions related to our relative jurisdiction and the exercise of our rights. If these governments do not have the trust or confidence of certain of their constituents, that is a problem that only they can resolve. In the end, as responsible governments they must make decisions based on the law and the long term health of the resource, not short term political expediency.

13. INTERGOVERNMENTAL RELATIONS:

We are governments that represent the rights and interests of our people. We have never given up our right of self government, and as we have said, we intend to take every opportunity to formally resume our authority and jurisdiction. But we also know that this cannot take place in a vacuum. There are other levels of government, particularly Canada and Ontario, which have their spheres of authority and their own constituents to whom they are responsible.

We still maintain the expectation held by our leaders over 150 years ago that we can arrive at a negotiated arrangement which provides for mutual respect, and sharing and coexistence. It is understood that the damage done in the past century cannot be undone overnight, and we are committed to devoting the time and energy that this will require over the long term. In the meantime, there are practical and mutually beneficial issues which can be dealt with immediately as long as the political will exists among the other parties.

A major problem that we face is the absence of effective processes in which to conduct our relations with Canada and the province. For instance, there is no available forum for addressing matters related to the interpretation and implementation of our Treaties other than the courts, and in our view this is not satisfactory. Addressing and resolving outstanding issues related to the Treaties is a priority for us and should provide a primary basis for reaching some accommodation of our relative spheres of authority.

Despite the existence of the Statement of Political Relationship between our Nations and Ontario, on the ground its effect has been negligible. What the Crown says publicly and what it actually does are not necessarily the same. On a practical level, the lack of interface between our governments means that we continue to be locked out of decisions that affect our future and the health of the resources. There is little meaningful exchange of information which may have an effect on harvesting levels and stocks, and no effective opportunity for us to participate in decisions that may affect fish and wildlife.[77]

This situation must change. We live here and we must have a voice in decisions that affect us. Other governments need to demonstrate a willingness to engage in substantive discussions with our governments, and find ways to establish durable yet

flexible arrangements for day to day and long term relations. This can be done with political will and a creative approach, and taking into account successful and appropriate models that are in use elsewhere. We want to be partners in a cooperative relationship with other governments for the mutual benefit of our citizens, and for the long term stewardship of the lands and resources within our territory.

14. REPAIRING THE DAMAGE DONE: COMPENSATION and REMEDIES:

In preceding pages, we have provided factual data to demonstrate that indeed we have experienced a net loss over the past century, contrary to the legally binding and constitutionally based guarantees provided by the Crown in the Treaties. With respect to fish and wildlife, the nature of these losses is many-fold: loss of "commercial" benefits from the fishery; loss of "subsistence" use due to restricted access and deteriorating stocks; loss of knowledge and skills; loss of health and social cohesion due to enforced changes in our diet and family activities; incarceration; fines; confiscated and damaged equipment[78]; and so on.

Measured against these losses are the benefits that accrued to others as a result of our dispossession: royalties and other revenues to the Crown; profits to commercial operators from the fishery and sports activity; profits to corporations like E.B. Eddy which were obtained in ways that diminished fish stocks and damaged habitat[79]; etc.

Taking into account the decision of the Supreme Court of Canada in Sparrow, and admitting the fact that Ontario's policy has favoured non-Native sports fishermen, the presiding judge in R. vs Jones and Nadjiwon accepted the possibility that compensation may be due to distribute some of the economic benefits derived from the sports fishery back to the Anishinabek of the Saugeen First Nation:

> *"If there is a perceived need to maintain and encourage a sport fishing industry for other economic reasons, altogether outside the aim of conservation, it may warrant consideration of compensation to the Band for the diversion of its proper share of the resource to another user group. It seems to me that the transfer of the economic benefit of the fishery achieved by the regulatory scheme is tantamount to 'expropriation', and considering the factors suggested by Sparrow, the absence of 'fair compensation' weighs against the Crown....."*[80]

Although we appreciate the judge's comments, we would be less tentative as to whether or not compensation is due: we have experienced significant loss in breach to the Crown's guarantees, and we require redress.

In 1850 Commissioner Robinson guaranteed that *"should the lands in question prove sufficiently productive"*, we would receive proportionate benefit. This promise is

reflected in the text of the Robinson Huron Treaty. Certainly the lands in question have proved to be immensely productive and profitable. In fairness it must be said that our annuities have risen - once - from the original amount of $1.00 per person annually to the generous amount of $4.00. But this is nowhere near the kind of equity that was promised by Robinson when he met with our leadership and concluded the 1850 Treaty, and it is laughable in light of the enormous profit that has come to others from the extraction of minerals, timber, and other resources within our territory.

But there are some challenges posed: how does one quantify the loss to our people of their way of life, of potential benefits never realized, or of the pain and suffering that have been inflicted? Some have said that even if these things could be quantified, there would not be a bank with deep enough pockets to pay the bill. However, a loss occurred, benefit has as a result accrued to others, and constitutional rights and guarantees have been breached - the matter cannot be dismissed so easily (see re: costs in #9).

These issues, although separate from our immediate initiatives related to fish and wildlife management, demand an equitable remedy. But as with other things cited above, there are no effective processes in which these matters can be negotiated. Although Canada has in place a policy called "specific claims", which purports to address, among other things, unfulfilled Treaty obligations, in practise the federal government has refused to entertain claims related to Treaty harvesting rights.

The courts are expensive, time consuming, and contain an element of risk. In any event, as commentators and the courts themselves have noted, a positive judicial decision does not necessarily result in diligent remedial action on the part of the Crown. Effort must be devoted toward finding appropriate vehicles for obtaining fulfilment of the Crown's Treaty and other obligations, and for obtaining equitable remedies in the case of fundamental breach. Measures to ensure the enforcement of Treaty obligations may in some circumstances be required. We have not had the opportunity in connection with this project to investigate the options, but we know that this is a fundamental issue which requires substantive thought and action.

15. THE NEXT STEPS:

We have demonstrated that we agreed to share our land and resources on the condition that we could continue to benefit from them and prosper **along with** the settlers in our territory. Instead, the Crown has attempted to regulate the use and management of lands and resources unilaterally, and eliminate us from the picture. They even cut us out of their balance books. We know what the courts have said about the standards and tests to be met and we know that the facts of our situation can meet these. The terms and context of our Treaties are clear to us, as are the benefits that went to others and the loss that have we had to assume. We are in fact victims of the very "frauds and abuses" that the Royal Proclamation of 1763 was intended to prevent, and in many cases the fraud and abuse has been committed by the Crown itself. Without question, the law requires an equitable remedy. Part of this must include a significant realignment and redistribution of authority over and use of lands and resources within our territory. We do have a proprietary and governmental interest in these resources that has to be reconciled with the dispossession that has taken place.

The issue of fish and wildlife is important, but only one of the many things that we are addressing as we resume our authority and encourage the healing process in our communities. Self government for us will be achieved when we have full accountability and responsibility for our actions and our future. Through the course of this project, much research has been started and a great deal of community activity has been initiated. Much more needs to be done. As the months come and go we trust that this effort will produce substantive and lasting benefits for our communities, our lands and resources, and for all of our neighbours.

These are not easy issues, and neither are the answers that must be found. But surviving here as we have through many centuries we know that the land and its resources, if taken care of responsibly, will provide for the generations yet to come. Although we are prepared to take on these challenges ourselves, we look forward with the hope that we can resolve these issues in partnership with other governments and our neighbours.

PART FOUR: RECOMMENDATIONS

RECOMMENDATIONS

A. THE POLITICAL RELATIONSHIP:

1. The authority and competence of First Nations to govern their affairs and their lands and resources must be recognized. This does not require constitutional amendment. The courts have stated that existing constitutional provisions provide a "solid basis" for negotiations on these matters between our governments and the Crown. What is required is political will on the part of the Crown to apply the norms and standards which were agreed to in our Treaty discussions as the basis of our relationship: mutual respect, sharing, coexistence, and mutual benefit. Taking into account these principles, other governments cannot unilaterally impose their policies or their agendas on negotiations or discussions - this denies the relevance of First Nation interpretation, priorities, and authority. For too long, the erection of policy barriers by other governments has been an excuse for non-compliance with Treaty and constitutional duties.

2. The Treaties must be implemented *"according to their spirit and terms"*, consistent with the commitment made by Queen Elizabeth in Alberta during the 1970's. A accessible process must be put into place which provides the opportunity for substantive discussion with the Crown on issues related to Treaty interpretation and implementation, as well as issues related to fundamental breach and compensation. Through the Royal Proclamation of 1763, which is still in effect, the Crown took it upon itself to prevent "frauds and abuses" from being committed against our people. In time, the Crown reneged on this commitment and began presiding over the frauds and abuses of others, or committing frauds and abuses of its own. The Crown is required to comply with its duties and its obligations. If it is unwilling, remedies must be found which enforce the provisions of the Treaties and the operation of the Constitution.

3. The Crown as a whole must take responsibility in fulfilling its duties and obligations. For many years, the succession and division of responsibilities between the Crown's manifestations has been relied on as an excuse for inaction and avoidance of duty. The division of powers and responsibilities is internal to the Crown and should not be held out as an excuse for non-performance of its obligations.

4. First Nations must be provided the opportunity to resume and assert their authority in the area of fish and wildlife management, and provided with the tools to do it. Due to the recognized inequity of existing allocations, and management systems, a redistribution of resources and jurisdiction - exclusive in some areas, shared in others - is necessary.

B. THE ECONOMIC RELATIONSHIP:

5. Our economies are crucial to our survival as peoples and for our ability to contribute productively to the community of Canada. The Treaties we entered into were based on the understanding that we would retain our economic stake in the lands and resources within our territories, and would continue to prosper as a result of our agreement to share them. An economic realignment must parallel the political realignment referred to above, taking into account the commitments already made by the Crown, as well as our real costs and benefits. We must be able to derive benefit from the lands and resources within our territories, and once again become productive partners in Ontario's economy.

6. Current techniques for calculating the "value", "benefit" and "costs" involved in resource management must be fundamentally altered so that they provide a more accurate reflection of the real costs and benefits of existing and proposed development. Until then, the inherernt biases and distortions which prevail in conventional methods must be acknowledged and accounted for.

C. THE SOCIAL RELATIONSHIP:

7. Public education is essential in confronting the problems posed by ignorance and misconceptions regarding our place in Canadian history and the nature of our rights. All Canadians should have the knowledge required to understand our situation, as well as the knowledge that what we have sought all along is mutual respect and coexistence. The First Nations must play a role in this process, but the Crown has a special responsibility to be an active participant, as do other institutions, such as schools, museums, service organizations, and the Royal Commission itself.

D. THE RELATIONSHIP WITH THE NATURAL WORLD:

8. A totally new approach to fish and wildlife management, and to the calculation of values, benefits and costs related to use of these resources, is required. Poor management practises and habitat pollution and destruction have been the overriding factors in the historic decrease of fish and wildlife stocks. All managers and users of these resources must make a commitment to account accurately for harvest levels and must strive to meet the same stringent standards. Public perceptions and definitions of "commercial" and "sports" harvesting need serious and fundamental re-thought. Ecosystems need to be viewed in totality - its not just fish, but the water systems in which they live and what goes into those water systems. Its not just wildlife, but the bush in which they live - the trees, the medicine plants that animals and humans both use. Pollution and habitat destruction affect the health and quantity of fish and wildlife stocks - the responsibilities of corporate players in this context must be taken into account and factored into decisions relating to resource development.

9. Continued encouragement is required to apply traditional knowledge along with science to the management of fish, wildlife, and ecosystems generally. "Scientific" methods of management have been proved to be largely based on conjecture and guesswork, and not that successful in terms of obtaining the desired result. We have thousands of years of accumulated knowledge based on experience, observation, and intimate awareness of specific local habitat. Give increased credence to traditional knowledge in the development and implementation of resource development plans.

APPENDICES:

1. Summary of Activities related to the IPP's support of the UCCM Fish and Wildlife Project.

2. Draft UCCM Harvesting Regulations.

3. UCCM presentation to OFAH, 1991-92.

4. "Position Paper on Co-Management of Crown Lands and Resources in Ontario", Ontario Federation of Anglers and Hunters, Peterborough, April 1993.

ENDNOTES:

1. Alexander Henry, *Travels and Adventures in Canada and the Indian Territories between the Years 1760 and 1776*, James Bain, ed. (Rutland, Vt; Charles Tuttle, 1969):33-34. In 1761, for example, fur trader Alexander Henry stopped opposite Little Current at Great La Cloche Island, where there was a large Anishinabek village - made up of ancestors of the Birch Island and Sheguiandah people. Henry bartered away some of his goods with them for fish and dried meat.

   Jesuit Archives, Université de Sudbury D-5-4 *Relation du père Dominique du Ranquet*, 1850. In the fall of 1850, Father Dominique du Ranquet, a Jesuit missionary from Wikwemikong, spent several weeks touring the islands off the east side of Manitoulin. There, some of our people were netting fish. We sold thousands of pounds every year to merchants from Goderich and other parts of Lake Huron.

2. The A.G. of Quebec vs Regent Sioui, Conrad Sioui, Georges Sioui and Hugues Sioui and the AG of Canada and NIB/AFN, Supreme Court of Canada, 24 May 1989, pp. 29-30.

3. R. vs Sioui, p. 18: The Supreme Court of Canada has provided some insight into what characterizes a Treaty: the intention to create obligations; the presence of mutually binding obligations; and a certain measure of solemnity.

4. The Manitoulin Treaty of 1836; The Robinson Huron Treaty of 1850; and the Manitoulin Treaty of 1862.

5. National Archives of Canada M(anuscript) G(roup) 11 Microfilm Reel B-337 CO42/431. Sir Francis Bond Head to the Right Honorable The Lord Glenelg, Colonial Secretary, Toronto, 20 August 1836, fo.27v.

6. "Manitoulin Island Treaties" by Robert Surtees, Treaties & Historical Research Centre, Ottawa, 1986, pp.9-11.

7. Vidal Anderson Report, 5 December 1849: NAC RG10 Vol. 266.

8. NAC RG10 Treaty #61.

9. The Robinson Huron Treaty, 9 September, 1850. These annuities were to rise as Crown revenues rose, but in the last 143 years they have only risen once, from the original figure of $1.00 per individual annually to the princely sum of $4.00.

10. Robinson to Bruce, 24 September, 1850, cited in Alexander Morris, The Treaties of Canada, Toronto, Belfords, Clarke & Co., 1880: p. 18. Robinson to Bruce, 14 September, 1850: NAC, RG10 Vol. 191 File 2043.

11. NAC RG10 Treaty #94.

12. NAC RG10 Vol.574, p.46. C.T. Dupont to Wm Spragge, 23 January 1864.

13. "Manitoulin Island Pioneers and the Obidgewong Indians" (Interview with John Hall), *The Gore Bay Recorder*, 22 November 1951.

14. *Through the Years* Vol.IX #1 (Nov.1991):22.

15. *Through the Years* Vol.IX No.8 (July 1992):38.

16. *Through the Years* Vol.IX No.8 (July 1992):26-31.

17. Chiefs of Wikwemikong to Agent Ironside, 2 July 1894. Northern Superintendency - 1st Division - Manitowaning: Correspondence re: the petition of the Wikwemikong Band for permission to fish the waters adjacent to their reserve with seine nets and complaints from the Mississauga Band regarding treatment received from local fishery guardians, 1894-95. NAC RG10 Volume 2758 File 149,944 Reel C-11,275.

18. *An Act for the Protection of the Provincial Fisheries* Statutes of Ontario 55 Vic. cap.10; *An Act for the Protection of Game etc* 55 Vic. cap.58 [1892].

19. *An Act for the Protection of the Provincial Fisheries* Statutes of Ontario 55 Vic. cap.10; *An Act for the Protection of Game etc* 55 Vic. cap.58 [1892].

20. NAC RG10 Vol.6743 File 420-8 Vol.1. Frank Pedley to F.R. Powell, 24 Dec.1908.

21. The wording of the two acts was similar:

14 (1) The Lieutenant-Governor-in Council may by regulation provide for the issue of licenses, free of charge, to frontier settlers in any of the said districts or in any new part of the Province, or to any Indians residing on any reserve, or to any band of Indians residing on a reserve, to take fish in such waters other than speckled or brook trout or black or other bass, by net or night or set line with not more than five set lines, exclusively for use and consumption for their own families, and any settler or other person to whom such license is issued who shall sell or barter fish caught under such license shall be subject to a penalty and forfeiture of his license. [Fisheries Act]

12. The provisions of this Act shall not apply to Indians or to settlers in the unorganized districts of this Province, with regard to any game killed for their own immediate use for food only and for the reasonable necessities of the person killing the same, and his family and not for the purposes of sale or traffic. [Protection of Game Act]

22. *Through the Years* Vol.IX No.8 (July 1992):38.

23. See UCCM draft harvesting regulations, Appendix #2, section #2.5.5.

24. Ontario. *Final Report of the Ontario Game and Fisheries Commission 1909-11.* (Toronto:King's Printer, 1912):202-208. See Appendices to this report for a list of who was consulted in the course of their work.

25. *Final Report of the Ontario Game and Fisheries Commission*, 198.

26. *Final Report of the Ontario Game and Fisheries Commission*, 193.

27. Hudson's Bay Company Archives. B109/a/1-9. La Cloche Post Journals.

28. V.P. Lytwyn, "Ojibwa and Ottawa Fisheries" in The Native Studies Review 6 No.1 (1990): p.10.

29. "Manitoulin Island Pioneers and the Obidgewong Indians" (Interview with John Hall), *The Gore Bay Recorder*, 22 November 1951.

30. *Through the Years* Vol.IX No.1 (Nov.1991):22.

31. Lytwyn, 1990, p.13

32. AO RG18, vol. A-9, p.1, cited in Lytwyn, 1990, p.14.

33. Lytwyn, 1990, p. 16.

34. Lytwyn, p. 17.

35. Lytwyn, p. 17.

36. Lytwyn, pp. 18-20.36.

37. Lytwyn, p. 19.

38. Lytwyn, pp. 21-22.

39. Lytwyn, p. 22.

40. Lytwyn, P. 23.

41. Lytwyn, p. 24.

42. NAC RG10, vol. 2064, File 10099, cited in Lytwyn, p. 25.

43. Fred Matters, Indian Affairs, to Ontario Department of Game & Fisheries, 19 November, 1945: NAC RG10 Vol. 6748 File 420-8-2 Part 1.

44. Lytwyn, 1990, p.27 note #17; R. v Jones & Nadjiwon at p. 27.

45. R. vs. Bombay and Bombay, Court of Appeal for Ontario, No. C5126, 28 January 1993.

46. The Queen vs. Jones & Nadjiwon, Ontario Court of Justice (Provincial Division), judgement issued at Toronto, 26 April 1993.

47. ibid. at p. 27.

48. ibid., at p. 28.

49. ibid. p. 30.

50. Ibid. p.38 See also page 39: "While the allocation process adopted....in 1984 may have reflected social and political realities at the time, it is not at all apparent that the constitutional realities played any role at all. Neither has it been demonstrated that since the time appropriate adjustments have been made in response to belated recognition of the priority of the Band's right."

51. R vs. Jones & Nadjiwon, pp. 42-43. See also pp. 37-38: "[A] consequence of the constitutional recognition and affirmation given by s. 35(1) to the defendants' aboriginal and treaty rights to fish.....is that the Saugeen Ojibway Nation has priority over other user groups in the allocation of surplus fishery resources, once the needs of conservation have been met. I am also satisfied that the evidence relating to the allocation of the quotas under the existing regulatory scheme has made no attempt to extend priority to the defendants' Band.

"Scrutiny of the government's conservation plan discloses that anglers and non-native commercial fishermen have in fact been favoured, and that the allocation of quotas to the Chippewas of Nawash, much less the Saugeen Ojibway as a whole, did not reflect any recognition of their constitutional entitlement to priority over other competing user groups."

52. ibid., pp. 42-43.

53. Ibid., p. 45.

54. Press Release, Ontario Ministry of the Attorney General, 20 May 1993.

55. "Earthwatch", CBC Newsworld, 30 June 1993.

56. Ontario Ministry of Natural Resources, "1991-92 Fish & Wildlife Revenue"

57. Ontario Fisheries Advisory Council Annual Report, 1990-91, pp. 3-4.

58. Ontario Fisheries Advisory Council Annual Report, 1990-91, p.5.

59. Ontario Ministry of Natural Resources, "Recreational Fishing in Ontario, 1990 Fact Sheet".

60. The Fishing & Hunting Lodge Industry in Northern Ontario, Prepared for the Ontario Ministry of Northern Affairs & The Northern Ontario Tourist Outfitters Association, January 1979, pp. 10-11.

61. MNR, "Recreational Fishing in Ontario, 1990 Fact Sheet"

62. "A Review of the Allocation of Adult Moose Validation Tags Within the Tourism Industry", Final Report, Ontario Ministries of Natural Resources and Tourism & Recreation, November 1992.

63. MNR Deer Hunter's Guide, 1992. Manitoulin Island is covered by three different Wildlife Management Units: #43A, 43B, and 44.

64. For example, a family with a gutted animal was once held up for hours in the hot sun while an apparently new field officer tried to decide what to do when coming upon a Native hunting party. Another time, an MNR field officer forbade a fisherman to take brown trout before spawning; yet later the Espanola district officer contradicted the field officer. Certain methods, such as spearfishing, are suppressed by field officers without any evidence that the method in question is a threat to the resource.

65. A system needs to be set up so that abuses by non-Natives are documented and investigated, whether they are reported by Native harvesters or Native enforcement personnel. MNR needs to be held accountable for its questionable tactics through some type of reporting, monitoring and mediation system. An annual or biannual meeting with MNR and UCCM harvesters should be held to discuss issues and evaluate progress. MNR should practice employment equity and not lay off Natives who may have been hired last, and when there are cutbacks to be made, fired first.

66. "1990 Survey of Recreational Fishing in Ontario: Anglers and non-Anglers of Ontario: Results of the Resident Sample", MNR, March 1992, p. 9.

67. "The Fishing & Hunting Lodge Industry in Northern Ontario", Prepared for the Ontario Ministry of Northern Affairs & The Northern Ontario Tourist Outfitters Association, January 1979, p. 24.

68. "A Review of the Allocation of Adult Moose Validation Tags....", op. cit., p. 5.

69. "A Review of the Allocation of Adult Moose Tags...", op.cit., p. 5: "The harvest cannot be increased to satisfy demands by one group or another, it can only be redistributed. Increasing the allocation to outfitters requires decreasing the allocation to resident hunters."

70. Thwaites, 1896-1901, Volume 54, p.201, quoted in V.P. Lytwyn, "Ojibwa and Ottawa Fisheries", Native Studies Review, 6 no. 1 (1990), p.5.

71. "Report submitted to the Indian Convention held at Sudbury", February 20, 1948, NAC RG10 Vol. 6749 File 420-8-2-1 part 1.

72. NAC, RG10 Vol. 250 part 1, p. 12,153, cited in Lytwyn, pp. 17-18.

73. Our Common Future, Report of the World Commission on Environment and Development, Oxford University Press, England, 1987: p. 8.

74. Our Common Future, pp. 114-116.

75. "Position Paper on Co-Management of Crown Lands and Resources in Ontario", Ontario Federation of Anglers and Hunters, Peterborough, April, 1993.

76. Ontario MNR, "Recreational Fishing in Ontario, 1990 Fact Sheet"

77. At present, UCCM First Nations are not informed by MNR about spills into the water and resulting fish kills, or other impacts to fish and water such as water level control, introduction of new species, quotas, etc. There is no forum in which we are able to express our views about (let alone influence) proposals to lease timber rights, uranium dumping, mining or other resource extraction on Crown land that effect fish

and animal habitat.

78. There is evidence that MNR has tacitly allowed nets and other equipment to be damaged by unknown persons. It appears that when advised, enforcement officials do not increase vigilance, conduct investigations or carry out public relations to educate non-Native people of the rights to harvest nor to warn perpetrators of punishment if caught.

79. No compensation was ever offered to UCCM after the EB Eddy paper mill spill from two years ago despite the observed fish kill and the drop in fish population afterwards. There are no arrangements within our territory for notification regarding proposed development, or to determine whether the impacts might deleteriously effect fishery or animal habitat.

80. R vs. Jones & Nadjiwon, p. 43

APPENDIX #1

SUMMARY OF ACTIVITIES: UCCM FISH & WILDLIFE PROJECT.

(a) Community Consultations:

In December 1992, an outline of a draft fish and wildlife management plan was developed after reviewing two dozen plans from Native communities across North America. A visit was paid to individual harvesters in their homes to gauge their interest by asking what they thought about current harvesting, what they did not like, and what they would like to see in a plan.

This was followed by community meetings held during a one week period each month from December 1992 - June 1993. To encourage people to attend, and to get as much covered as possible during the limited time, dinners were served first, then the meeting got underway. Each time, it was explained that the purpose of the facilitator was to encourage discussion, write down everything said, and incorporate it into a growing document.

The following month, there was a quick review of what was said the month before to ensure that it was accurately recorded, then the discussion advanced to areas where there was contention or that had not yet been covered. It was emphasized that whatever the plan was, it was not written in stone, but rather is made to be evaluated and changed to meet new and unexpected circumstances as time goes on. Over and over, it was also explained that it is up to the harvesters to want this, otherwise it will not work without their support. Therefore, they understood that it is in their best interests, and contributed their thoughts and comments with enthusiasm.

The first meetings were longer because the whole project had to be explained and put into context of UCCM initiatives. For example, although UCCM is involved in self-government initiatives like most other communities in the country, and although the failed Constitutional talks had just finished, the concept of self government required more discussion at the community level. This and other relevant material such as the implications of Supreme court decisions were explained in understandable language. For example, when the R. vs Bombay court decision recognizing the Treaty right to commercially fish came out in February 1993, a one pager was distributed to all the harvesters

that week, and lead to discussions on commercial fishing.

As well, each month there were new handouts given to harvesters in response to their requests from the month before. Examples are the Mik'Maq Natural Life harvesting booklet and harvest record cards, the Golden Lake First Nation Harvester Identification card and the draft Union of Ontario Indians agreements for fishing. The last meeting in June had the wildlife enforcement officer from the Golden Lake First Nation and one of the claim negotiators explain their situation, and in particular, the job of the officer. This is because there is much support for each community having its own conservation officer, and Golden Lake is the first Native community in Ontario to have a cross-deputized officer recognized by both the community and the province.

In May, four harvesters from UCCM attended the Native American Fish and Wildlife Society conference held in Saskatoon, May 17-21, 1993. It was the first time that the conference was in Canada, so was extraordinary in the displays and presentations made from both sides of the border. The purpose was to introduce the harvesters to modern day Native management in practise combining tradition and science, since what UCCM is discussing is the planning, and the conference offered real experiences. From all accounts, the conference was beneficial. (Note: Funding for this trip was secured separately from RCAP's IPP contribution to this project.)

(b) Research and Analysis:

Parallel to the community consultations, research and analysis were being undertaken. Published and archival materials relating to the history of the Anishinabek were identified, reviewed and analyzed, and documented for use by the Tribal Council and harvesters. Data on the economic impact of the sports harvest, estimated harvest levels, and other relevant materials on management were also collected from government and non-government agencies and reviewed. Significant court cases and scholarly works underwent the same treatment. Finally, experts in the field were consulted, particularly other First Nations (such as the Algonquins of Golden Lake and the Mik'Maq of Nova Scotia) who had experience in these issues.

(c) Communications and Public Education:

The community consultations themselves were an important form of internal public education. In addition, interviews were done with the Manitoulin Expositor and the Manitoulin Recorder, two regional newspapers, as well as CBC North out of Sudbury. Draft informational materials for the general public were prepared but have not been finalized as this goes to press.

30 June 1993.

DRAFT ANISHINABEK FISH AND WILDLIFE GUIDELINES

DRAFT ANISHINABEK FISH AND WILDLIFE GUIDELINES

PART 1 PURPOSE

1.1 SPIRITUALITY

It is the Creator's law that if we look after the land, it will look after us, because that is our role given by the Creator. We should be the leaders because we are the closest to the land, because protecting our lands is part of our identity. We are taught to respect all life, and to give thanks to the Creator with tobacco for the animal and fish so we can be fed.

Being out on the land gives enjoyment and peace. It has been said that seven prophecies were fulfilled, and that we are on the eighth prophesy now.

1.2 MAINTAIN NATURAL BALANCE

There is a lot of pressure from all areas to fish and wildlife, so extra effort is needed to protect fish and wildlife so they can regenerate. This can only be done through a joint effort with all reserves, including other Native communities because we share resources. This is only common sense.

1.3 PROTECT RIGHTS AND LEGAL BASIS

Anishinabek people have the inherent right of self-government, including among other things, the right to exercise jurisdiction to strengthen the relationship with the lands, waters and environment by developing our own system according to our own values. This is to ensure that the rights are kept alive for future generations, while providing for this current living generation. Rights, like the treaty, are there for everybody, as a collective whole entity, with responsibilities to ensure those rights to harvest are carried out without abusing other persons or living things.

Exercising our rights will make others aware, and allow us to be able to hunt and fish without harassment, and to continue traditional practises of sharing, trading, bartering, and commerce. Furthermore, there should be no misunderstanding with our own laws in place. The laws must be customized so that they work for each community.

1.4 TRADITIONAL PRINCIPLES AND PRACTISES

It is good to stop, reflect and figure out what we want for our future. It must be remembered that people do not own the earth, the earth owns us. This is the natural law. Our own laws shall reflect this while providing for domestic, ceremonial, trade and commercial needs of community, so that we can continue our way of life. This means sharing with hunting partners, family, elders and others in community. It also includes documenting and promoting traditional methods of harvesting to show that we have been doing this all along. Self-regulation will show the public that we are not abusers.

PART 2 HARVESTING ETHICS TO ENSURE ENOUGH FOR FUTURE GENERATIONS

2.1 PRINCIPLES

2.1.1 When hunter comes upon a family or group of animals, do not kill every animal. Leave some from that area.
2.1.2 When animal is wounded, make sure it is followed and killed quickly.
2.1.3 Take only what you need, and only what you can carry out. Do not waste lives nor meat.
2.1.4 After cleaning animal where it was killed, leave unneeded parts out for other animals to feed on.
2.1.5 Support community efforts to distribute meat to feed those who need it.
2.1.6 Continue practice of designating people within the community to go out and get fish and deer.

2.2 SAFE HARVESTING PRACTISES

2.2.1 Night hunting, if it must occur, under strict safety regulations. Careful consideration should be given to designate areas for "jacklighting", and only on land with land owners' permission.
2.2.2 No abuse of alcohol when hunting or fishing.
2.2.3 Require basic safety course with 1) theory, 2) field experience for firearm handling, hunting and fishing for 13 to 16 year olds. After 16 you can be on your own. Examine graduated permits and retesting after so

many years.

2.2.4 Night hunting is banned in West Bay, Sucker Creek, and Sheguindah.

2.2.5 No hunting in the direction of residences, buildings or where people are present.

2.3 MONITORING

A monitoring system will be established to keep track of overall harvesting levels, as well as fish and animal populations. All harvesters will be expected to contribute to this process for the long term health of the resource.

2.4 SUBSISTENCE FISH HARVESTING

Species	Season	Method	Net Width	Net Length	Mesh Size
Whitefish,Pike, Green Bass, Ling, Catfish, Rainbow Trout, Splake, Salmon, Suckers, Pickerel	Spring, Fall, Winter	Gill net, line, and spear	Depends on depth of water	300 feet	4 1/2 inches
Sturgeon	Late Spring	Gill net, line	10 - 12 ft.	300 feet	8-9 inches.
Yellow Perch, Herring, Rock Bass, Sunfish.	Spring, Fall, Winter	Gill net, line	"	300 feet	3 1/2 inches.
Smelt	Spring	Dip net	"		1/4 inch.

2.4.1 Check net every day in the fall and spring.

2.4.2 Check net every 2-3 days in the winter.

2.4.3 Maximum 300 feet of net can be used by any one person.

2.4.4 Put net in location to match amount of fish wanted.

2.4.5 Set nets in designated areas if there are many people out fishing, however this may not be necessary because so few people go out to fish.

2.4.6 Buoys marked in bright colour, with name and band number on both ends.

2.4.7 If nets are being damaged, camouflage their location by underwater markers, or tying long rope from net to tree, until perpetrators stop.

2.4.8 Avoid setting nets at river and creek mouths to permit migrating fish to return to their spawning grounds.

2.4.9 Net fishing in summer for sturgeon only because they live in deep water.

2.4.10 Wear life jackets while on the water.

2.4.11 Dump live bait only in water from which it originally came.

2.4.12 Splake to be taken in May as soon as ice is gone.

2.4.13 Spearfish in spring for pike because that is when fish are plentiful.

2.4.14 Smelt taken in April, or as soon as they are seen in early spring.

2.4.15 Ban the indiscriminate slaughter of all fish in the spring.

2.4.16 Hatchet, rock or .22 gun can be used to give death blow to sturgeon. Or bleed it quickly.

2.4.17 Any potential commercial fishing is not limited by these guidelines.

2.5 DEER AND MOOSE HARVESTING

DEER REGULATIONS

TYPE	SEASON	METHOD	HARVESTING AREA
Female Doe or Cow	Fall, Early Winter Doe must be without fawn	Gun, Bow, Snaring, Crossbow	Treaty territory, First Nation land
Male Buck or Bull	Fall, Early Winter Earliest, if absolutely necessary, after strawberries are ripe	"	"
Fawn or Calf	In cases of extreme need, no harvesting before late summer.		"

2.5.1 Respect the animal.

2.5.2 If animal is wounded, follow it to ensure it is killed quickly, and if private land must be crossed, or used, offer landowner a share of meat.

2.5.3 If hunter comes across a group or family of animals, take only what is needed. Leave some animals for next time.

2.5.4 Female deer and their fawns not to be taken in spring, summer or fall, or when fawn is still dependent on mother.

2.5.5 Fall harvest is best because that is when the meat is at its prime. In winter, deer browse on bark so that their meat acquires a bad taste. Their diet needs grass for good taste.

2.5.6 Give a young animal a chance to have gone through its life cycle; ie., do not shoot a young fawn.

2.5.7 It is easier to track a deer or moose after a snowfall. However,

hunting stops by Christmas.

2.5.8 Private land must be posted as such, with other notices to watch for cattle, etc.

2.6 WHO CAN HARVEST?

2.6.1 UCCM will develop and distribute identification cards stating that the harvester has the right to harvest within the territory. These cards will be issued to eligible harvesters based on their agreement to abide by the Tribal Council's harvesting regulations, and based on their ability to demonstrate that they have adequate experience or equivalent safety training.

2.6.2 Hunters between the ages of 13-16 are to be supervised by an experienced adult, and have the **first** stage of a UCCM safety course; or can demonstrate good hunting capability.

2.6.3 Hunters between the ages of 16-18 are to be supervised by an experienced adult, and have passed the **second** stage of a UCCM safety course; or can demonstrate good hunting ability.

28 June/93

PRESENTATION TO

THE ONTARIO FEDERATION OF ANGLERS & HUNTERS:

We want to thank you for inviting us here tonight so that we can exchange views with you on matters that are important to all of us. The United Chiefs & Councils of Manitoulin are committed to having dialogue with all of our neighbours as one way of making sure that we understand and respect each other. We know that hunting and fishing are two issues which are pretty sensitive and this makes it even more important for us to try and build bridges.

COMMITMENT TO SOUND MANAGEMENT AND CONSERVATION:

First, we want to make it clear to all of you that we are committed to sound management and the responsible use of our wildlife resources. Above all, this principle must rest on conservation, to preserve the fish and the animals for our children and their children. But for this to happen, some changes need to be made. Existing approaches to wildlife management have not worked effectively, and we are dealing with that legacy today. Tonight we want to explain our position on these issues, and share some of our history so that you can better appreciate where we are coming from.

ABORIGINAL AND TREATY RIGHTS:

There has been a lot of disturbing talk in the press and the media lately which ignores our history and the nature of our rights, and which must be put to rest. We have read in magazines like **Ontario Out of Doors** that we enjoy special privileges based on race; that we "cannot expect to receive more and more at the expense of others"; and that we "cannot be given the responsibility of managing fisheries and wildlife" because we are exploiters and not conservationists. Frankly, this kind of coverage smacks of racism and will do nothing to improve the situation.

The reality of our history and rights are very different than some would have you believe. The fact is that there was ample wildlife here before the non-Indians arrived, because we practised conservation. The decline in wildlife populations over the past two hundred years is a result of habitat destruction and over use by non-Indians, not us. The Ojibwa, Odawa and Pottawatomi Nations of this part of Ontario have signed a number of Treaties with the

Crown. We signed these Treaties as Nations - as governments - and these Treaties became a part of the constitutional framework of Canada. They are based on the principle of mutual sharing and coexistence. They cannot be ignored or dismissed, since they are a part of the supreme law of Canada. And our aboriginal and Treaty rights **are not based on race** - they are based on our existence as a separate people with our own language and culture, and with a constitutional relationship to the Crown that is totally different than the relationship which you have with your governments.

In the Robinson Huron Treaty our people were clearly guaranteed continued rights to harvest fish and wildlife resources, among other things, in return for sharing the land. Our leaders sought these guarantees so that we could provide for ourselves and continue playing a role in management of the resource. But over the years, other governments began to believe that they could ignore these rights, and we found ourselves being prevented from harvesting what was ours. We used to be actively involved in the commercial fishery at one time, but we were cut out of it to make room for non-Indian commercial fishermen. When wildlife stocks were reduced to dangerous levels in the past due to poor management and over hunting by non-Indians, we were the ones who were charged and put into jails merely for trying to put food on the tables for our families.

These events were driven by racism - many people took the view that as Anishnabek we had no rights, and that white people had all of the rights. But over the past twenty years, the courts have looked at these matters and in large part they have agreed with what we were saying all along - that our Treaties are binding; that we do have rights to the resource which are different than other peoples; and that we have been wrongly denied access to what is ours.

These are facts, and they lay the groundwork for the building of a new relationship between our peoples - one that recognizes our differences, but is based on the principle of mutual sharing and coexistence. Now it is time to accept the fact that we are, and will remain, key players in any initiatives related to wildlife or the fisheries in our territory. This is not bleeding heart liberalism, it is the law.

APPROACHES TO MANAGEMENT:

Ontario needs a new approach to the management of it's wildlife resources. This is not just because of our renewed involvement - it also has to do with Ontario's mis-management of these resources in the past. For one thing, pollution and habitat destruction have reduced wildlife populations, but there has been little if any effort directed at connecting these realities with wildlife management - except to increase restrictions on the end users. To us, this approach has to be replaced with a broader framework that links the preservation and rehabilitation of habitat with use of the resource. This means that the forestry and mining sectors must shoulder a greater responsibility for the effect of their activities on wildlife habitat and populations. It also means that as communities we all need to take a closer look at local development to preserve and enhance wildlife habitat.

On another level, our First Nation governments have a role to play in management of the fisheries and wildlife. Contrary to what some people may say, we do have the political will and the expertise to manage our use of the resource - what we need is the opportunity to show you what we can do. As we see it, our approach to management would include internal enforcement, detailed harvesting studies, harvest levels based on need, habitat enhancement and rehabilitation, and full cooperation with other agencies to share information and expertise. We are the best placed to regulate our own harvest, since we know who are hunters are and where they hunt.
In other areas of Canada and in the United States, there are many successful examples of self regulation by the Tribes, even though they were initially met with scepticism and resistance by other governments and user groups. Nova Scotia is one example: there the Mi'kmaq have engaged in a self regulated harvest of moose and deer for over four years with their own tagging and reporting system. There have been no problems of abuse, and relations with provincial wildlife authorities have been cooperative and mutually beneficial. Golden Lake appears to be another example of successful self regulation - despite all of the cries that their hunting agreement would be a licence to kill, their harvest this year for deer was 40% **less** than the quote which they had negotiated, and similar for moose.

The fact is that Ontario's management of these resources has not been a total success - new approaches are needed, and we will play a role in the

development of these new approaches. We would much rather do this in cooperation with all parties than in an atmosphere of mistrust and paranoia, and we hope that this meeting tonight will be one step in beginning this process so that we can work together on these matters.

ALLOCATION OF THE RESOURCE:

The allocation of limited wildlife resources poses certain problems. It is important to realize that these problems have been created not by you or by us, but by years of government mismanagement. The reality is that we have been excluded from adequate allocations in the past, and this exclusion was based on racism. Even sixty years ago, our people were suffering starvation and incarceration as a result of this policy. The law says that today this must change. There is no logical reason why we should be singled out now for attempting to get our fair share, unless racism is still alive and well. We have been denied our fair share for so long that perhaps some people feel that they have a right to their existing allocations - but this is not the case.

In Ontario, the Native harvest of wildlife is a drop in the bucket compared to the sports harvest, and any increase in our share of the take will not have a great effect. On Manitoulin Island alone, 3,000 deer were taken by sportsmen last year, which is nowhere near our harvest level. The truth is that allocations for non-Anishnabek may decrease as our harvest levels come back to an equitable share, but this is part of the cost that must be paid for generations of denial.

TOWARDS THE FUTURE:

Instead of dwelling on the problems, we should be working on solutions, and this takes us back to the question of management. Here is where the need for habitat rehabilitation and enhancement becomes very real - and this is one area where we can work together to increase the numbers. There are other areas as well, and we are here to let you know that we are ready to begin the dialogue. We do intend to negotiate a new approach to management of the fishery and wildlife with Ontario, government to government, and based on our constitutional rights. But this doesn't mean that we can't work together as neighbours to build the trust and the cooperation that is needed to make a better future for our children. Meegwetch.

ONTARIO FEDERATION OF ANGLERS & HUNTERS

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ONTARIO FEDERATION

OF

ANGLERS AND HUNTERS

POSITION PAPER ON COMANAGEMENT OF CROWN LANDS

AND RESOURCES IN ONTARIO

APRIL, 1993

CONSERVATION PLEDGE

I give my pledge, as a Canadian, to save and faithfully defend from waste, the natural resources of my Country — its soils and minerals, its air, waters, forests and wildlife

INTRODUCTION

The Ontario Federation of Anglers and Hunters (O.F.A.H.) recognizes the guiding principle set out in the Royal Proclamation of 1763, the rights enshrined in the Constitution Act, 1982 and the Supreme Court of Canada decision in Sparrow vs. Regina.

Aboriginal and Treaty Rights

The O.F.A.H. understands that the Constitution Act, 1982 recognizes and affirms aboriginal and treaty rights as they existed in April of 1982. This may result in aboriginal peoples with those aboriginal and treaty rights having special status.

We also acknowledge that the Supreme Court of Canada recognized and affirmed that Ronald Sparrow, while not having any adherent treaty rights, has 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 rights of Sparrow extend to most aboriginal people in Canada. However, it must not be ignored that the Sparrow decision is the result of litigation, where no treaty or agreement existed.

The O.F.A.H. is convinced that the current Ontario government has gone far beyond the intent of the Supreme Court in its Sparrow decision. Saying it wants to avoid provoking additional constitutional/legal challenges, the current Ontario government, despite what treaties state, actually 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 also 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 and, in fact, 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." The Supreme Court in Sparrow also 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(1) "affords aboriginal peoples constitutional protection against provincial legislative power." However, Sparrow also says, "Section 35(1) does not promise immunity from government regulation in contemporary society."

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The Supreme Court of Canada raised many constitutional concerns and sent these constitutional questions, referred to in Sparrow, back to the lower courts to be answered there. The British Columbia Crown decided not to proceed in the lower Courts, hence the confusion.

The O.F.A.H. understands that Treaty Indians have certain nonresource related rights conveyed to them at the time when aboriginal title to their occupied territory, along with other privileges, were ceded to the Crown through the signing of a treaty or a "purchase and surrender."

If one reads the treaties and interprets the wording in their literal sense, then there is no question that title to land in these territories were ceded. In one form or another, the numbered treaties 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." Additionally, when these numbered treaties were signed, there already were fisheries regulations in place.

Similar wording is written in the Robinson-Huron and Robinson-Superior Treaties: "...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..."

The Williams Treaty of 1923 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..."

While much has been written and said about this not being the intent of the treaties, the fact remains that is what the treaties state. Because the Courts and governments have decided to liberally interpret the meaning of treaties serves only to further confuse the issue.

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Therefore, the O.F.A.H. firmly believes that the Constitution, along with the Charter of Rights and Freedoms, Supreme Court decisions, and liberal interpretations of treaties do not obligate the government to ignore the exact wording of the treaties. The O.F.A.H. insists that treaties be interpreted as written.

Flowing from the above, it seems appropriate to state that the ownership of land and resources has been transferred to the Government of Canada, and subsequently to the Province of Ontario. On this basis, the O.F.A.H. maintains that Treaty Indians do not posses any exclusive claims to Crown land or resources within the geographic boundaries of Ontario, with the exception of their reserves. It also is apparent that nonstatus Indians and Metis rights to Crown land or resources within Ontario were forfeited or never existed and, therefore, are the same as those of nonnatives.

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PREAMBLE

The Ontario Federation of Anglers and Hunters (O.F.A.H.) is Ontario's leading conservation organization. As a province-wide coalition of individual members and affiliated clubs, we provide a strong, unified and an informed voice for conservation for all Ontario people.

The O.F.A.H. and many of 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 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 aboriginals. Such claims have moved natural resources and Crown land into the political arena as bargaining chips, leading toward aboriginal self-government: the supposed solution of social-economic problems of aboriginals and, in addition, 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 biological decisions being made, and ignores the vast majority of Ontario's citizens who also 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.

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

For the purposes of this position 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.

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 uses of a given area; and
2) Ensure that two or more partners with common 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.

Natural Resources, Crown Lands and Waters

Crown lands, and the indigenous natural resources they harbour, 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 public common property resources. Concerning freeliving fish and wildlife, the protection against proprietary, possessionary claims extends even onto patented lands. NO ONE PERSON OR GROUP OWNS THEM! 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.

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.

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By adopting these "comanagement" models, the current Ontario government is relinquishing the 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, ie. aboriginal peoples. This gives the O.F.A.H. little reason to expect a uniform management philosophy; that natural resources will be subjected to a vast uncoordinated, often inconsistent, array of management concepts. Further, 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.

We are at a time in history when the public is pressing more than ever for a say in the management of resources. Virtually every citizen from every culture group in Ontario is demanding a say in conservation and environmental protection. They want and expect that the government ensures 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 to an unacceptable level such public access and use will be greatly increased if we move control to anyone other than 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.

This position paper examines the fundamentals of true comanagement arrangements. 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 of all resource users and allow for their full participation and sharing.

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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.

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 reintroductions, zebra mussel and purple loosestrife control initiatives, Long Point Waterfowl Management Unit, etc.).

3) Hands-on projects with volunteer labour 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, waterfowl nesting boxes, deer wintering habitat improvement, anti-poaching patrols, Pitch-In projects, etc.).

The comanagement efforts described in 1) through 3) are driven by the nonpartisan, nonpolitical 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, and nothing else, from being a pivotal part in sound resource management. To our knowledge, none of the nongovernment participants have ever claimed proprietary or possessionary rights to any of the natural resources on Crown lands they have comanaged.

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"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 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" institutions. For example, the Wabaseemoong Band (formerly known as Islington) located near Kenora, signed a Memorandum of Understanding with the Ontario Minister of Natural Resources.

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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. These six were all 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:

Three Aboriginal Representatives:

They follow their own political agenda and solely represent the interests of the aboriginal community they serve.

Two M.N.R. Representatives:

They must:
- uphold the honour 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 favour one group.)

One Third-Party Representative:

This person 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 public in general is grossly under represented. The O.F.A.H. finds the make-up of this committee to be 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 Understanding between the Province of Ontario and the Teme-Augama Anishnabai in May of 1991.

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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 makeup 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 Robinson-Huron Treaty lies with the Federal government, not the province.

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RECOMMENDATIONS

1) That every comanagement agreement strive to promote fish, wildlife, 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 Ontario Ministry of Natural Resources 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 position 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., as the largest provincially-based conservation organization, 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 nonaboriginal citizens.

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9) If a recommendation from such a board is deemed by the M.N.R. 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.

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SUMMARY

The Ontario Federation of Anglers and Hunters strongly believes that comanagement committees as recommended in this paper, 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 acceptable to all Ontario citizens.

The direction being taken by the current Ontario government will (and has) created animosity between aboriginals and non-aboriginals. This is unfortunate but the relationship will only deteriorate further if Ontario implements additional "comanagement" arrangements that do not conform to the standards contained in this paper.

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.