

COOPERATIVE WILDLIFE MANAGEMENT

A Discussion Paper

**prepared for
the Canadian Wildlife Service**

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FOREWORD

Approaches to wildlife management have changed since the beginning of the twentieth century. Initially, public wildlife management was undertaken by government agencies alone, and touched only on the wildlife uses that they felt needed attention at the time. Most early activities were intended primarily to control commercial and sport hunting and trapping, which in the absence of regulation were major threats to sustained wildlife populations. Some wildlife populations were safeguarded in the establishment of game reserves.

Independent of and pre-dating the existence of professional wildlife management, various aboriginal peoples entered into treaties with the Crown. These treaties guaranteed, among other things, the continuing right to hunt and fish to the aboriginal peoples. The first treaties were concluded in the eighteenth century. The last treaty adhesion was not signed until 1930.

Two themes of change regarding wildlife have emerged as this century has unfolded. Habitat has dwindled and larger numbers of people have better access to wildlife. Public wildlife management now has to consider all uses and all users over wildlife populations' entire ranges. Private and public interests in wildlife have become increasingly organized, and new conservation workloads have had to be shared, leading to cooperative partnerships between governments and other groups. These groups, including aboriginal people, have demanded a greater say in wildlife management decisions.

The 1990 Wildlife Policy for Canada observes that our constitution recognizes and affirms existing aboriginal and treaty rights, some of which relate to wildlife. This secures a special place for aboriginal people in Canadian wildlife management. The Policy calls for cooperative wildlife management programs that reflect the role wildlife has for food and raw materials in Inuit, Indian and Metis culture. These programs are to involve aboriginal people in planning and implementing wildlife research, management, and enforcement.

Canadian governments and aboriginal peoples already have some experience in cooperative wildlife agreements, in comprehensive land claims settlements and, in arrangements for managing bison, moose, and caribou. The Canadian Wildlife Service has a vital interest in further application of such agreements. They will provide guidance, in future comprehensive claim settlements and in implementing management under the Migratory Birds Convention Act, for example. Provincial and territorial governments have made it clear they too will be involved in similar new arrangements.

Cooperative wildlife management agreements bring new elements to the field of wildlife management. Their cross-cultural nature dictates a need for special approaches for their successful negotiation and implementation. Beyond their biological and financial dimensions, they often pose unique legal and constitutional questions. On occasion, an interim agreement is needed while the parties to the agreement are still working out their differences. Agreements sometimes marry local and international concerns. They usually have to combine different approaches to wildlife management in a mutually respectful manner. It is a challenge to incorporate all these elements so that agreements result in satisfactory wildlife conservation and utilization from the point of view of all parties.

To provide background for discussion, CWS commissioned a review of cooperative wildlife management in Canada and convened a workshop on the subject in June, 1988. In the paper that follows, Trevor Swerdfager presents a review of the literature, an inventory of some cooperative wildlife management agreements negotiated in Canada and the United States, the results of the workshop and an analysis of lessons learned.

We commend the results to you in the hope that the paper will stimulate debate on the changing approaches to wildlife management in Canada, and be a useful reference for people involved in developing cooperative agreements.

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INTRODUCTION

Wildlife has traditionally played important symbolic and economic roles in Canadian society. Various wildlife species adorn our coats of arms, flags, postage stamps and currency. Wildlife artists such as Robert Bateman receive national prominence and acclaim for their work. All school children are taught about the key role the fur trade played in the early economic development of our country. Today, many Canadians, especially those living in the northern parts of the nation, continue to rely heavily on wildlife for income and for food.

Wildlife is of particular importance to Canadian aboriginal peoples (Brody 1981). Many aboriginal customs and traditions are based upon great reverence for various wildlife species. Indeed, all aboriginal societies place major emphasis upon being in harmony with the land and the creatures it supports. On the economic front, the fur trade was one of the most important historic influences shaping relations between aboriginals and Europeans (Crowe, 1974). Today, aboriginals, perhaps more than any other Canadians, continue to have a significant socio-economic and nutritional reliance on wildlife.

Notwithstanding their mutual interest in wildlife, aboriginal and non-aboriginal societies have not often worked together with respect to wildlife management. On the contrary, governments have generally managed wildlife resources as though aboriginal hunters were no different from any other resource users and were not deserving of any special management attention. Aboriginal people on the other hand, particularly those remote from large urban areas, have typically ignored governmental rules and regulations while continuing to hunt in accordance with traditional practices.

In recent years however, there has been a growing recognition among government resource managers and aboriginal resource users that this unresolved management duality cannot continue if wildlife populations are to be conserved and equitably utilized in the future. Indeed, in the context of northern land claim settlements and a number of species-specific management agreements, both parties have firmly acknowledged the need for cooperation in the management of wildlife (Quebec, 1976; DIAND, 1984; Canada, 1985). It is in response to this need that cooperative wildlife management (CWM) has emerged.

The purpose of this report is to describe CWM. It focuses primarily upon Canadian experience, though reference is made to initiatives in the United States. It begins with a definition of CWM. It then analyses recent experience, to identify common characteristics and basic structural elements of these agreements,

appropriate management contexts in and conditions for success. In a final section, several conclusions are presented.

The paper has drawn upon three primary sources of information: (1) a review of relevant literature, (2) an inventory of several CWMAs concluded prior to 1989 (see Appendix I); and (3) the results of a CWM Workshop hosted by the Canadian Wildlife Service and coordinated by the author (summary in Appendix II).

COOPERATIVE WILDLIFE MANAGEMENT

Definition

Cooperative wildlife management seeks to unite government wildlife management schemes with regional or local indigenous systems. It embodies cooperation between the science-based management style favoured by governments and a traditional, community-oriented and experience-based approach, in an effort to ensure the sustainable use of wildlife resources. Cooperative management involves a sharing of the exercise of decision making power and clearly describes the nature of the rights and obligations of all parties with respect to the resource. Finally, CWM agreements (CWMAs) clearly delineate the ways and means to be used in jointly collecting, disseminating and analyzing information about particular wildlife resources and the uses they can sustain.

The blending of the two management systems begins from rather different perspectives. A model of the government or state system, with its roots in the works of authors such as Thoreau, Audubon, Marsh, Muir and Leopold (Paehlke, 1989) has been described by Usher, (1986, p. 2) as follows:

"The state system rests on a common property arrangement in which the state assumes exclusive responsibility and capability for managing a resource equally accessible to all citizens. The state manages for certain levels of abundance on a technical basis, and then allocates shares of this abundance to users on an economic and political basis. The system of knowledge is based on a scientific accumulation, organization, and interpretation of data, and management problems are resolved in a technical, a historical, and "value-free" framework. This system of management is bureaucratic, which is to say hierarchically organized and vertically compartmentalized. For example, managers are distinct from harvesters, authority is centralized and flows from the top down, and separate units are designated to manage individual components of the environment. Not least, the management of fish and wildlife resources is always functionally separate from the management of the lands and waters that sustain them".

Enforcement of the rules and regulations developed by this system is carried out by yet another component of the bureaucracy. Tags, licences and so on are issued to prospective resource users, usually for a fee, and conservation officers and police forces are expected to ensure that the regulations are obeyed.

This management approach relies fundamentally on the assumption that resource data required for management are readily available in a form suitable for use by decision-makers. It is further predicated upon the idea that most harvesting activities of users are known to resource managers and can be controlled by them. If the necessary data are not available or if resource users operate beyond the purview of the system and do not report their harvests, the system is weakened.

Aboriginal wildlife management systems function differently. Usher (1986, p. 3) refers to such management as the indigenous system and describes it as follows:

"The indigenous system rests on communal property arrangements, in which the local harvesting group is responsible for management by consensus. Management and harvesting are conceptually and practically inseparable. Knowledge comes from the experience of every aspect of harvesting itself - travelling, searching, hunting, skinning, butchering, and eating. It is accumulated by every individual and shared intimately and constantly within the household, the family or whatever is the social unit of production. It is also shared and exchanged within the larger society, and handed down in the form of stories from one generation to the next. This collective knowledge becomes the cultural heritage of these societies".

Biological data are not collected, stored or analyzed according to rigidly defined standard procedures and reporting relationships. Enforcement of management decisions is carried out through internal social mechanisms as opposed to an external authority. Information is rarely written down, making the operation of the system difficult to describe or observe.

CWM formalized the means by which these two systems can work together to achieve common conservation objectives. For the most part, these objectives focus upon a mutual desire to ensure the maintenance of healthy wildlife populations. Additionally, the parties to CWM generally seek to establish mechanisms for the sustainable use of these populations. Reduced conflict between resource users and the promotion of open communications and amicable conflict resolution is seen as a key by-product of these mechanisms.

Although most CWM initiatives to date have involved aboriginal user groups, CWM is not an alternate vehicle for the negotiation, definition, establishment, affirmation, abrogation or alteration of aboriginal or treaty rights. Rather, it is a mechanism for enabling these rights to be exercised within the context of broader

societal requirements. Thus, it need not involve the transfer of management authority or rights in either direction between governments and user groups. Government retains ultimate decision making authority regarding wildlife population conservation, while user groups retain aboriginal or treaty hunting rights.

The application of CWM need not be restricted to aboriginal user groups. However, most CWMAs which directly involve wildlife users in decision making have been concluded with aboriginal groups and it is likely that the increasingly frequent court recognition of specific aboriginal and treaty rights (Canada, 1990) will necessitate the rapid expansion of CWM approaches. Therefore, while recognizing the potentially broad utility of CWM, this paper focuses upon CWMAs involving aboriginal user groups.

In Appendix I, eleven such agreements are briefly described. This inventory is by no means exhaustive and is intended only to provide a sampling of CWMAs. In the following section, several common characteristics of these agreements are identified and commented upon.

Common Characteristics

Cooperative wildlife management agreements are tailored to meet the specific needs of local or regional management situations, so that CWMAs may well differ in structure, scope or operating procedures. This variability illustrates a fundamental characteristic of CWM, a flexible adaptive approach to resource management. In this respect it differs significantly from conventional state system frameworks which seek to implement an essentially uniform regime across a broad range of wildlife species and user groups (Holling, 1978; McDonald, 1988). CWM allows for, and indeed encourages, regional variability.

Notwithstanding this variability, several similarities among the CWMAs described in Appendix I can be identified. To begin with, it would seem that the development of CWMAs is generally motivated by one of three factors. In several instances, most notably in the American states of Washington and Wisconsin, court decisions confirming the continued existence of aboriginal and/or treaty hunting rights and the legal requirement that they be addressed by wildlife management agencies, have forced the development of CWM arrangements (Cohen, 1986; Busiahn, 1989; GLIFWC, undated). In these cases, the courts ordered the parties to establish management regimes explicitly acknowledging aboriginal fishing rights and providing specific resource allocations for aboriginal users. In Nova Scotia, the expectation of similar court orders galvanized the development of a CWMA (Nova Scotia, 1990).

Second, perceived crises in wildlife populations spurred the creation of the new management approaches, such as the Beverly-Qamanirjuaq Caribou Management Agreement and the Yukon-Kuskokwim Delta Goose Management Plan, (USFWS, 1989). State system methods were clearly not working and the direct support of user groups was required. In each case a CWMA was developed as a result.

Third, land claim negotiations in Canada have also motivated CWM. Claims typically involve situations in which land ownership and access rights are divided between governments and claimant groups. Given this situation, each party has a direct stake in the management of wildlife ranging over the lands involved. A management system acknowledging this unique situation became a necessity and the CWM approach was developed as a result.

In Canada, CWM generally features the establishment of management boards or committees upon which government wildlife management agencies and aboriginal wildlife users have equal representation. These bodies are typically supported by a secretariat which advises the management body and is often responsible for implementing its directives. Board or committee decisions are, to the greatest extent possible, to be achieved through consensus.

In a strict legal sense, all of these bodies are advisory in that government retains ultimate decision-making authority. In practice they seem to be de facto decision-making groups. The clear intent of provisions regarding the retention of governmental authority is to allow government to overturn management decisions in unusual or extremely conflictual situations. If experience to date is any indication, these bodies will make decisions with which governments will usually agree as a matter of routine.

Non-aboriginal, non-governmental organizations are generally not directly represented in CWM structures. Although there are exceptions to this situation - the Porcupine Caribou Management Board for example, has non-native, non-aboriginal membership - there are few provisions in the agreements specifying a decision-making role for the public (see Appendix I). Members of groups which are not signatories to the CWMA do not participate directly in decision-making and must rely upon government officials sitting on these bodies to represent their interests.

This situation is particularly significant in light of the broad terms of reference of many CWMAs. Generally, the management bodies are expected to consider the development of wildlife management plans and related legislation, policies and programs as well as habitat protection issues. The management

bodies also typically have a significant role in identifying the need for, and directing or conducting relevant research.

Minimum Structural Elements of CWMAs

A review of the agreements inventoried in Appendix I, together with a consideration of the workshop conclusions presented in Appendix II and relevant literature, indicates that effective CWMAs must contain certain structural elements, identified in this section.

1. Definitions

Clear definitions of key terms of the agreement are critical to minimizing uncertainty and confusion with a view to encouraging smoothly operating CWMAs. Poorly understood terminology can easily lead to varying interpretations of an agreement and attendant difficulties in implementing its provisions.

Many terms can be defined in a relatively straightforward fashion. However, one cannot assume that everybody agrees on what specific words mean. For example, some may feel that "conservation" has a generally agreed upon meaning. Yet various individuals may define conservation in many different ways (Erasmus, 1989). This need not be a problem if parties to agreements collectively define all important terms in the text of the agreement.

2. Principles

The basic principles upon which a given CWMA is to be premised must be clearly spelled out. Doing so sets the CWMA in a particular context and gives a strong indication of the spirit of the agreement. This is of critical importance as it often guides the interpretation of subsequent sections of the agreement. A well-worded principles section can also provide a strong justification for the agreement by outlining exactly why the agreement is necessary.

Several items require attention in the principles section:

- the primacy of conservation concerns;
- the need for cooperation;
- the need for management;
- aboriginal harvesting rights and traditions;
- general linkages to other regional, national or international management initiatives; and
- the interests of non-signatories to the agreement.

3. Objectives

The objectives of the CWMA should be clearly laid out and stated as specifically as possible. Vague objectives such as "to encourage conservation" are to be avoided.

4. Scope

The scope of a CWMA has several dimensions. The geographic area to which the agreement applies is of central importance. Boundaries should be as precise as possible to avoid confusion. It may also be necessary to identify certain management zones within these boundaries. Second, membership of the parties to the agreement must be clear. Who are the parties to its terms? (This issue is often dealt with in an agreement section entitled "eligibility".) Third, the specific management issues with which the agreement is concerned must be identified. Direct reference to matters not included in the agreement can also prove useful. Fourth, the relationship between the agreement and any other management systems must be explained. Failure to do so can result in confusion and conflict as the intended scope of the agreement and other frameworks is debated and disputed (Heron and Glynn, 1988; Swerdfager, 1988).

Refinement of the scope of CWMAs can prove difficult. Choosing between biologically- and politically-defined geographical boundaries can be problematic. For example, resource managers, often biologists by training, may argue that the location of the majority of the wildlife population to be managed should determine the area to be covered by the agreement. Others may argue that political factors, such as the boundaries described in an Indian treaty and the rights the treaty describes, should be the primary factor. Reaching an accommodation between these perspectives can be quite difficult.

Discussions with individuals involved in the development of CWMAs indicate that the precise definition of the substantive scope is often perceived as a detail to be worked out later. Unfortunately, the process of "working things out" often involves the confusion alluded to above. Considerable attention should, therefore, be paid to defining the substantive scope of CWMAs early in their negotiations.

5. Management Structures

The central premise of any CWMA is that it establishes a cooperative structure for the management of wildlife resources. The agreement must clearly identify the management bodies involved in the agreement, the membership of these bodies, the powers and duties of the management entities and the mechanisms to be used in

carrying out these duties. Without such elements, the CWMA essentially becomes a hollow shell in which the parties may agree to work together but do not specify how they will do so. It is unlikely that credible wildlife management can be undertaken in such circumstances.

Canadian CWMAs have generally established management bodies comprised of an equal number of government and aboriginal representatives. Evenly proportioned membership has been thought necessary to ensure that neither side is able to dominate the proceedings. Equal numbers of federal, provincial and territorial representatives are usually appointed according to the jurisdictional responsibilities involved in the scope of the agreement.

This balancing of membership numbers is not an absolute necessity. The Beverly-Qamanirjuaq Caribou Management Board, which includes more native than non-native representatives, does not appear to have bogged down in its decision-making (Osherenko, 1988b). What is essential to success is a situation in which all parties can participate on an equal footing during deliberations.

Under the terms of the James Bay and Northern Quebec Agreement, a Chairperson is appointed from within the management body's membership. This has caused several problems. It is hard to chair a meeting and participate in it at the same time (Feit, 1988, personal communication) and very difficult for individuals to act impartially if their organizations have a direct stake in the outcome of the meeting. Thus, even if the Chair position is passed from party to party, unbiased chairing of meetings is difficult to obtain. Consequently, most CWMAs have stipulated the appointment of an external chairperson. In the event that an acceptable person cannot be found, a court may be asked to make the appointment.

The management entities established through Canadian CWMAs are advisory in nature. They may make recommendations to the appropriate Minister regarding issues within the scope of the agreement. However, final decision-making authority rests with the Crown.

In the United States, CWMAs generally do not establish single management bodies featuring equal membership. On the contrary, the Boldt decision in Washington (United States, 1975) and the decisions in Wisconsin (GLIFWC, undated) have led to the establishment of an aboriginal management system which in many respects parallels the state system. In Wisconsin for example, the Great Lakes Indian Fish and Wildlife Commission (GLIFWC) was created to manage Chippewa use of fish and wildlife resources. The Commission hires its own biological staff, collects its own data, has an enforcement staff of thirty-two officers, has headquarters

and regional offices and so on (Schlender, personal communication, 1989). Under the terms of a variety of agreements related to different fish and wildlife species, the Commission works very closely with the Wisconsin Department of Natural Resources to mutually define harvest quotas, methods, locations and seasons. The two systems work together cooperatively rather than merging to form a third management framework. Thus, rather than establishing a new joint management body, "in the United States, an agreement for CWM usually defines the roles, rights, responsibilities and obligations of the parties who enter into the agreement. The agreement defines the terms of their cooperation and may empower an aboriginal organization to assume some functions over which the government authority has jurisdiction" (Osherenko, personal communication, 1990).

A fundamental tenet of CWM throughout North America is that it is tailored to suit unique regional or local management needs. Therefore, it is crucial that government and user group officials participating in CWMA implementation be fully aware of the socio-political context of the agreement. To ensure sensitivity to local concerns, it is an advantage for officials to be residents of the area covered by the CWMA. However, care should be taken not to exclude non-resident expertise unnecessarily. A particularly knowledgeable hunter who has re-located out of the region or a non-resident biologist with longstanding research experience in the area may make excellent CWM body members.

Both state and indigenous wildlife management regimes rely fundamentally upon the development and analysis of information pertaining to the resource in question. Most CWM bodies will be responsible for developing recommendations on harvesting and related legislation, policies and programs. These duties are difficult to carry out without adequate information. The body should, therefore, have some means of obtaining information specifically suited to its needs. This may entail having the body directly hire researchers to carry out specific tasks. Alternatively, the CWMA may simply stipulate that government research priorities be guided by the recommendations of the CWM group.

In Canada, most CWMA's do not feature formal public participation components, though a great deal of informal consultation usually takes place between members of CWM groups and the public. There is nothing to prohibit CWM bodies from holding public meetings and hearings. Groups such as the Beverly-Qamanirjuaq Caribou Management Board generally hold their meetings in a open forum format. Nonetheless, public participation is not a formal element of most CWMA's and members of the general public are not guaranteed a say in the decision-making process.

This situation creates several potential difficulties. It may lead to a distancing of the CWM activities from individual communities and hunter organizations. As Osherenko (1988a, p. 42) has noted, a CWM "regime must have strong support from and a link to the villages. Representation of users on a regional body alone is insufficient to ensure that the indigenous system is melded into the regime." In the absence of formal public participation requirements in a CWMA, such support may be difficult to engender and maintain.

The absence of such requirements could create more fundamental problems from the perspective of non-aboriginal publics. CWM bodies will clearly be affecting wildlife resources of interest to many Canadians. However, most CWMAs assume that government employees "know what is best" for the public they represent and will act accordingly. This assumption raises a myriad of questions regarding the nature of public interests represented by civil servants, the public accountability of these individuals and the legitimacy of decisions affecting the general public.

A full exploration of the extent to which bureaucrats represent the views of the publics they serve is beyond the scope of this paper. However, the need for more formal and direct public input to government environmental decision making is now commonly acknowledged (Arnstein, 1969; Burton, 1971; Schnaiberg, 1980; Duffy, 1986). Thus, while it would be an overstatement to suggest that existing Canadian CWMAs are fatally flawed because they do not require public hearings, meetings, consultations and so on, the absence of formal third party input to CWM decision making may reduce management effectiveness while inhibiting conflict resolution. Indeed, the tempestuous circumstances surrounding the establishment of cooperative fisheries management with aboriginals in northwestern Ontario, Washington and Wisconsin is clear evidence of the negative backlash exclusion of non-aboriginal resources users can generate (Ontario, 1988; Cohen, 1986; GLIFWC, undated).

In the context of wildlife management, nothing stirs hostile emotions so much as the setting of harvest quotas which permit resource access for some users and deny it for others. It comes as no surprise therefore, to find mechanisms for specific harvest controls at the heart of most CWMA management structures. Indeed, many CWMAs feature a separate section dealing specifically with harvesting. CWMAs rarely set specific harvest levels directly. Rather, they delineate the processes through which basic aboriginal harvest needs, non-aboriginal needs, and harvesting methods, locations and seasons, are to be determined and balanced.

6. Implementation

To date, the means by which the provisions of the agreement will be implemented have generally received scant attention in the text of CWMAs. The general tendency of CWMA negotiators appears to have been to figure out what should be in the agreement and to worry about how to implement it later.

This has resulted in some confusion and delay in acting upon the terms of land claim agreements establishing joint bodies (Heron and Glynn, 1988; Swerdfager, 1988). In part, these difficulties can be attributed to the growing pains experienced by all new organizations. Equally to blame however, is the absence of clearly assigned responsibilities and procedures for implementing specific provisions. Failure to provide details of this nature in the text of CWMAs can result in inaction and uncertainty. A key element of future CWMAs must be a section dealing specifically with implementation.

That section should address five sets of issues. First, it must explain who is eligible to benefit from the agreement. In many CWMAs, the parties have chosen to include a separate section focusing on eligibility. Whether or not this is done, eligibility must be specifically addressed. In order to ensure that the agreement is applied in a fashion acceptable to all signatories, it is useful to develop eligibility criteria jointly. Given the obvious sensitivities involved in determining who is eligible under the agreement, it may be prudent to leave the application of the eligibility criteria to the user groups.

Second, the methods by which the management decisions reached through the agreement are to be enforced should be delineated. Ideally, major enforcement efforts should not be required as the essence of CWM is to encourage voluntary compliance with management decisions. Where enforcement, either by government or the user group may be required, the means by which it occurs should be mutually agreed upon.

Third, specific responsibilities for implementation should be identified. Individual government agencies or user groups and their responsibilities for acting upon certain clauses of the agreement should be pinpointed and deadlines for their actions be established.

Fourth, funding to implement the CWMA must be considered. This may be done in a separate financial agreement or as part of an implementation section. All parties must be clear about the level and sources of funding involved. Care should be taken to ensure that all components of the agreement are adequately funded.

Fifth, a series of clauses addressing what may be termed "agreement maintenance" is necessary. It is foolish to assume that an agreement concluded at a particular time will meet all current and future management requirements. Therefore, an amending formula is a necessary part of any agreement. In order to identify required changes, a mechanism for reviewing and evaluating the performance of the agreement is also required. Absence of this evaluation function can permit poorly functioning agreements to continue operating in a fashion which is not in the best interests of the resource or its users. Finally, a system for resolving disputes is needed.

Many of these issues could be addressed elsewhere in the text of a CWMA. However, bringing them together in one section reminds all parties that implementation of the agreement is an important issue.

The six structural elements of CWM described in this section are essential components of any CWMA, regardless of whether it features the Canadian approach of establishing joint management bodies or the American use of parallel systems. Their presence in a particular agreement does not guarantee management success. Indeed, CWM is not a panacea for all management problems arising in areas populated by aboriginal user groups. However, CWM is especially amenable to use in the three management contexts identified below.

Appropriate CWM Contexts

The CWM approach is ideally suited for management regimes in large, sparsely populated areas, where individual hunters, though they may have favourite or traditional areas for certain types of hunting, can range widely, making it virtually impossible to determine precisely where hunting is taking place. Detailed assessments of harvest levels are equally difficult to make. From a logistical standpoint, strict and comprehensive enforcement of hunting regulations is virtually impossible, making compliance an essentially voluntary act.

In general, people do not voluntarily comply with laws and regulations to which they are opposed. Nor are they likely to observe restrictions developed by a system into which they have no formal input, unless they are forced to do so. Not surprisingly therefore, aboriginal hunters are generally reluctant to comply willingly with hunting regulations developed unilaterally by the state system.

CWM systems, by acknowledging the indigenous system and incorporating its practices into a larger management framework, can

increase the likelihood that aboriginal resource users will voluntarily comply with regulations. The sense that resources are being managed with aboriginal interests in mind, and with aboriginal practices and expertise factored into decision-making, can encourage aboriginal hunters to judge that it is in their own best interests to comply with regulations or any other instruments used to express the decisions of the CWMA. The experience in Alaska following the development of the goose management plan illustrates the gains to be made when such feelings are engendered (USFWS, 1984; Pamplin, 1986).

The utility of CWM in the context of managing large areas is not limited to ensuring compliance with hunting regulations. CWM also greatly enhances the collection and exchange of information regarding wildlife resources in the region (Pamplin, 1986; Osherenko, 1988b). By incorporating aboriginal local knowledge and expertise, CWM systems factor a greater volume of relevant information into decision-making than the state system considers.

In keeping with its suitability for large areas, CWM is particularly useful with respect to migratory wildlife species. The range of migratory species is rarely contained within one political jurisdiction. Now is it usual for migratory species to be harvested exclusively by one group of people. Thus, the management activities of groups in various regions of a species' range affect each other. Effective management of migratory species requires coordinated action by governments and user groups in several regions. CWM, with its emphasis on bringing together agencies and user groups, is an ideal vehicle for managing migratory species. The arrangements created for managing the Beverly-Qamanirjuaq caribou herd illustrate this point.

CWM is useful in situations in which resource harvesting and access rights or ownership are disputed or divided. It is for this reason that CWMAs have played such a prominent role in land claim settlements. In areas subject to land claims, ownership of the lands supporting wildlife is in dispute (Task Force to Review Comprehensive Claims Policy, 1985). In areas where settlements have been reached, aboriginal peoples retain special harvesting rights which must be recognized in any wildlife management system. All Canadian land claim agreements concluded to date have identified CWM arrangements as the most effective means of managing the use of wildlife.

Finally, CWM systems can serve as vehicles for the development of trust and understanding between governments and resource user groups. In areas in which relations between resource users and enforcement agencies have deteriorated significantly over time, CWMAs offer the opportunity to bring opposing sides together to

achieve a common objective. CWM encourages parties to work together rather than continuing to function in an adversarial fashion. CWM will not remove all bad feelings and historical antagonisms overnight. Nonetheless, it can go a long way towards ensuring that dissatisfactions do not become permanently entrenched. However, in order for such initiatives to succeed, several conditions must first be met. These conditions are discussed in the following section.

Conditions for Successful CWM

The number of conditions underpinning CWM is small. All that is required for CWM to begin is that it conform with certain legal principles, that the parties involved recognize and respect each other's values and traditions and that all parties have the ability, willingness and mandate to negotiate and act upon commitments made in the agreements. Each of these conditions is discussed below.

1. Retention of Government Management Authority

All management bodies created in Canadian CWMAs to date are, in strict legal terms at least, advisory bodies. In no instance does a Minister cede decision-making authority to a CWM board or committee. In several cases, Ministers are required to respond, in writing, to recommendations made by management bodies and must provide reasons for disagreeing with the recommendations, should they decide to do so. However, final decision-making authority rests with the Crown.

The reason for this is quite simple. Federal and provincial legislatures have assigned the responsibility for executing wildlife legislation to their appropriate Ministers. According to commonly accepted principles of administrative law, this responsibility cannot be delegated to other governmental agencies or non-governmental organizations (Mann, personal communication, 1990). Ministers must retain their ultimate decision-making responsibility.

This circumstance does not place Ministers beyond the law, nor does it preclude a sharing of the exercise of Ministerial authority. Courts may pass judgement on whether or not Ministers have acted legally in fulfilling their responsibilities. Enforcement of CWMAs can be delegated to management bodies in a fashion similar to that in which responsibility for the enforcement of legal and medical codes of practice is assigned to groups such as the Canadian Bar Association or the Canadian Medical Association. Non-native hunters can be regulated by CWM bodies if the Crown chooses to accept recommendations to that

effect. Agreements can be concluded with any user group and need not be confined to users who possess aboriginal hunting rights. In short, as long as a situation contemplating the relinquishment of ministerial authority is not created, the designers of CWM structures are free to develop whatever management solution fits the problem.

It could well be argued that this restriction is unnecessary. Parliament could, in theory, assign executive powers to CWM bodies instead of Ministers. Mechanisms for providing these bodies with the ability to implement decisions could then be developed. Full management autonomy would then rest with the CWM body with government's only decision making role being the participation of its officials on the body.

This approach, though perhaps technically feasible from a legal perspective, is confronted with several profound political obstacles to success. Decisions made by autonomous CWM bodies would have significant implications for all resource users yet the decision-makers would not be responsible to this wider constituency. In a society fundamentally premised upon responsible and representative government, such a development would be politically unacceptable. Structuring a CWM body in such a way as to have it advise aboriginal users regarding decisions to be made by aboriginals, would be no more palatable as it would entrench a situation in which one small sector of society can dictate to society as a whole.¹

An obvious remedy to this situation is to provide for the election of the number of entities created under CWM. While this may alleviate problems of political legitimacy, it institutionalizes a patchwork quilt of management systems with no overarching integrative mechanism. The interface between these systems and their linkages to existing public government mechanisms, would be convoluted at best. Comprehensive regional, national or international management programmes would become very difficult to implement. For example, it would be very difficult for the Minister of the Environment to honour his or her obligations under the Migratory Birds Convention Act given the existence of several independent management entities which would not be required to set regulations in keeping with national needs. In sum, it is argued that the establishment of autonomous, decision-making CWM bodies, whether they have an element of

¹ This debate takes on a different complexion with respect to matters exclusively affecting aboriginal lands. In such instances, strong arguments can be assembled in favour of decision-making powers for aboriginal wildlife managers. See for example the federal policy on Indian self-government.

political legitimacy or not, would work against the achievement of broader conservation objectives, thereby undermining the ultimate goal of CWM. Retention of final government decision making authority is, therefore, essential to CWM.

2. Mutual Recognition and Respect Among Parties

A second important condition underlying CWM relates to the attitudes of all parties to an agreement. CWM must be seen as a joint management exercise aimed at achieving mutually desirable objectives. If government parties see CWMAs as nothing more than a better way to enforce existing legislation, the agreements will not work. Aboriginal user groups will soon realize that this is the hidden agenda and will more than likely withdraw from the agreement. Concomitantly, if aboriginal groups see CWM simply as a mechanism for legitimizing what they are already doing in terms of harvesting, CWM will not work.

Government agencies have to realize that they cannot manage wildlife resources without the active support of aboriginal user groups. This reality has already been acknowledged with respect to other resource users through initiatives such as the North American Waterfowl Management Plan (Canada, 1986). Equally necessary is an aboriginal recognition that without government, they cannot ensure the health of migratory species which periodically leave their control and that aboriginals cannot regulate the harvesting activities of non-aboriginals. In short, both sides must recognize that they need each other if wildlife is to be adequately managed.

The development of this mutual recognition relies fundamentally upon the parties having mutual respect for each other's management expertise and knowledge. This statement may seem a rather obvious platitude. Nonetheless, it is of critical importance to successful CWM. The state system has usually not acknowledged the management values of aboriginal knowledge and customs, preferring instead to rely on "scientific" information generated by members of the system (Usher, 1986; Osherenko, 1988a). Aboriginal local knowledge has generally been dismissed as too vague and too narrow in geographic scope to be of much use in science-based resource management (Feit, 1988).

Aboriginal peoples on the other hand, have tended to distrust the state system and the information it produces (Feit, 1988). They have generally focused on the health of wildlife populations in their immediate area and have paid little attention to broader regional or national management questions. They have sought to manage local resources according to their own traditions and have often ignored the state system (Usher, 1986). Moreover, failures in state system population estimates and predictions have been

cited by aboriginal people as reasons to scoff at the whole science-based way of knowing.

The state and indigenous systems of wildlife management also clash with respect to the human values served by interactions with wildlife. In most of North American society we are, from our earliest days, imbued with the spirit of 'fair play' with respect to wildlife. For example, we are taught that it is 'unfair' and 'unsporting' to use lights at night to attract fish, to bait deer rather than stalking them, or to use more than three shells in a shotgun while hunting ducks. Consequently, these activities are prohibited. To be sure, part of the objective of doing so is to ensure the conservation of wildlife resources. However, it is also to a large extent motivated by a desire to give animals "a fair chance" and to make hunting and fishing true 'sportsmans' activities.

This perspective clashes sharply with aboriginal ideology, as well as the views of many residents of remote communities in which hunting plays an important role. To these people, wildlife is a source of food. Wildlife is to be venerated and treated with respect and is not to be considered as the object of a sporting exercise. (Hence aboriginals' frequent objection to the use of the word game to denote certain types of wildlife.) Indeed, the primary objective of hunting or fishing is to kill animals and eat them. To make this undertaking any more difficult than it has to be is, from this perspective, simply stupid. Consequently, many aboriginal user groups have difficulty in accepting many of the restrictions governments seek to place upon them.

Attitude shifts will not occur overnight. In order to encourage their development, it is essential that both parties learn more about each other's management systems. Aboriginal resource users rarely have a clear understanding of the institutional structures and operating procedures of management agencies. In some jurisdictions knowledge of indigenous management systems is extremely limited.

Central to learning about each other's systems is the sharing of information, the fuel that runs the wildlife management machinery. Unless information is shared, CWM cannot operate. This information sharing involves more than simply passing unanalyzed biological data over to aboriginal user groups or having aboriginal elders tell government officials hunting stories illustrating traditional values. The information upon which decisions are based must be collected and evaluated jointly if it is to be trusted by both sides (Busiahn, 1989). Equally important, information must be easily accessible and understandable to members of wildlife user communities.

3. Ability to Implement CWMAs

CWMAs are ineffective if they cannot be implemented. Consequently, it is crucial that both government agencies and user groups have the standing, resources and mandate to be able to honour commitments made in CWMAs. Wildlife agencies must ensure that they possess sufficient resources to carry out the activities assigned to them in the agreements. A pledge to conduct additional surveys for example, cannot be honoured without the necessary resources. Further, the user group must be able to obtain the resources required to develop the management infrastructure.

Wildlife agencies must also be careful not to commit their governments to matters beyond their departmental mandate. In this context, it is particularly important for them to avoid endorsing positions regarding aboriginal or treaty rights prior to obtaining the advice of native affairs and legal departments. Provincial or territorial agencies must be signatories to any agreements affecting wildlife under their jurisdiction.

SUMMARY

This report has presented a discussion of Canadian CWM, based upon a consideration of relevant literature and the information presented in the Appendices. CWM seeks to integrate the state and indigenous systems of wildlife management. Additionally, CWM has been seen as the most appropriate way of resolving the wildlife aspects of northern native comprehensive land claims.

CWMAs are established through a process of negotiation. In Canada, they generally feature joint management bodies comprised of an equal number of government and user group representatives. In the United States, parallel management systems are more the norm. In order for CWMAs to be successful, they must contain the following basic elements: definitions, principles, objectives, a well defined geographic and substantive scope, management structures and implementation provisions. The CWM approach is especially well suited for management regimes dealing with large, sparsely populated areas. In addition, CWM is appropriate for managing migratory species which cross political boundaries or range over areas for which ownership or jurisdiction is disputed or divided. CWM can serve as a vehicle for building trust in management situations made difficult by historic antagonisms between government and user groups.

Three preconditions for CWM have been identified. First, all parties must recognize that Ministers cannot cede formal, legal decision-making authority to CWMA management bodies. Second, CWM must be seen as a joint exercise aimed at achieving the common goal

of conservation; mutual respect for each other's views is essential if government - aboriginal CWMAs are to succeed. Finally, both government and user groups must possess the resources and the mandate to implement the CWMAs to which they are party.

CONCLUSIONS

CWM represents a new management approach which has yet to become broadly accepted. The extent to which it continues to evolve and becomes a common way of doing business will largely depend upon its success as a management technique. Its success will have to be measured according to two primary criteria: (1) the biological impact of CWM; and (2) the extent to which CWMAs reduce conflict between government and user groups and between competing user groups.

If CWMAs lead to healthier and/or increased wildlife populations, they will have to be judged a success from the biological standpoint.

Degree of conflict is not easy to measure. However, indicators such as the number of hunting violations in an area, frequency of litigation, volume of letters to the Minister, number of public demonstrations, amount of media coverage and so on, can be used to provide an assessment of conflict levels. Any diminution of these activities as a result of the institution of a CWMA should indicate success.

Achieving success will not be easy. Widespread acceptance of CWM will require several rather substantial attitudinal shifts on the part of both government and aboriginal wildlife managers. Central to these attitude changes is the recognition that governments and user groups need each other to achieve their own objectives and that they must work together.

This mutual need will continue to grow. The range and volume of government resource management responsibilities is likely to continue to expand, yet the resources available to address these tasks will probably not be increased substantially. In the face of these opposing trends, governments will simply not be able to accomplish the tasks assigned to them by society without considerable help. Aboriginal assistance through vehicles such as CWM will therefore be critical to the achievement of government objectives.

This is not to suggest that aboriginal needs for government wildlife management support will remain the same. On the contrary, it is clear that most aboriginal groups do not, by themselves, possess the resources, the scientific information or the broad

jurisdiction necessary to complement their indigenous management systems in ways that will lead to the most effective management of wildlife in their areas. These difficulties make government support essential to achieving aboriginal wildlife management goals.

These growing government and aboriginal needs for each others' support suggest a certain inevitability of CWM as an approach to wildlife management in the future. In an age of increasing resource management complexity and rapid information exchange, this trend should hardly seem surprising. CWM firmly transforms some parts of wildlife management from a rather insular, bureaucratic undertaking into a fundamentally socio-political exercise. CWM, by bringing different political jurisdictions and societal groups together, explicitly recognizes this situation and erects structures for reconciling social concerns with scientific considerations.

FUTURE RESEARCH

This paper, by virtue of having been written as a discussion paper rather than an indepth analysis of all aspects of CWM, is intended to stimulate thought and dialogue regarding CWM in Canada. As such, it has only scratched the surface of the various aspects of CWM theory and practice. A great deal remains to be done to improve our understanding of CWM and to improve its development and implementation throughout the country. While there are many avenues of inquiry that could usefully contribute to this objective, four particular subjects seem to be of particular interest.

First, a comparison of Canadian and American approaches to CWM would be useful. No effort has been made in this paper to identify relative strengths and weaknesses of the somewhat legalistic, parallel systems approach favoured in the United States and the more informal, joint management style favoured in Canadian CWM. Many lessons are likely to be learned from comparing these alternatives.

Second, an evaluation of the performance of various CWMAs would be highly beneficial in determining whether the CWM approach described with such approval in this report is really deserving of praise.

Third, financial aspects of CWM must be considered. Management approaches which are wonderful in theory but hopelessly expensive to implement are of little use. An analysis of CWM costs would therefore, be useful. This analysis will be difficult to conduct. It is often hard to obtain financial information about

CWM implementation. What to count and what not to is also a matter of debate. For example, are the costs involved in negotiating a CWMA to be included as part of the cost of conducting CWM? Moreover, any assessment of the acceptability of CWM costs must be made against the costs of not carrying out CWM.

Fourth, means for addressing third party interests in CWMAs should be explored. CWMAs involving aboriginal groups are clearly predicated on special rights of aboriginal peoples to wildlife and must be implemented on that basis. However, the wildlife resources being managed are also of considerable interest to non-aboriginal Canadians. Simply leaving it to government bureaucrats to represent all the varied interests of this broad constituency may no longer be acceptable, nor be the most effective management response. An exploration of various means for resolving this conundrum would be beneficial.

APPENDIX I- INVENTORY OF CWMAS

The following CWMA's are described below:

- 1) Yukon Land Claim Agreement-in-Principle (1988)
- 2) Dene/Metis Land Claim Agreement-in-Principle (1988)
- 3) Tungavik Federation for Nunavut Agreement-in-Principle (1989)
- 4) The Inuvialuit Final Agreement (1984)
- 5) The James Bay and Northern Quebec Agreement (1975)
- 6) Porcupine Caribou Management Agreement (1985)
- 6A) The International Porcupine Caribou Management Agreement
- 7) Beverly-Qamanirjuaq Caribou Management Agreement (1982)
- 8) Yukon-Kuskokwim Delta Goose Management Plan (1984)
- 9) Wisconsin Wildlife Management Agreements (1984)
- 10) Nova Scotia Micmac Wildlife Agreements

1. YUKON LAND CLAIM AGREEMENT-IN-PRINCIPLE (1988)

An Agreement-In-Principle regarding the comprehensive land claims of Yukon First Nations was initialled by Government and the Council of Yukon Indians on October 30, 1988. The Agreement, when finalized, will constitute an Umbrella Final Agreement which will be binding on governments and all thirteen Yukon First Nations. In future, separate Yukon First Nation Final Agreements will be developed to set out provisions specific to each First Nation. The Agreement-in-Principle is made up of a number of Sub-Agreements, one of which relates to Fish and Wildlife Conservation and Use. It is this Sub-Agreement that is of interest in this report.

The objectives of the Sub-Agreement are to ensure: that fish and wildlife are managed according to principles of conservation; that the culture and identity of Yukon Indians are preserved; and that their local knowledge and customs are fully integrated with the knowledge base of the non-aboriginal resource management community.

The Sub-Agreement acknowledges the ultimate decision-making authority of the Crown and stipulates that general laws regarding conservation and public health and safety will continue to apply in the Yukon. Transboundary wildlife management agreements such as the one respecting the Porcupine caribou herd will continue to apply in the region. Government commits itself to seeking amendments to the Migratory Birds Convention to allow legal spring hunting of migratory birds to take place. A Fish and Wildlife Management Board is to be established under section 4 of the Sub-Agreement. "The Board shall be comprised of six appointees of Yukon First Nations and six appointees of Government, plus a chairperson" (Section 4.2). To the extent possible, government

appointees are to be Yukon residents. The expenses of the Board members and a supporting secretariat are to be met by government.

The Board "may make recommendations to the Minister and to Yukon First Nations (YFN) on all matters related to Fish and Wildlife, their habitat and their management, including legislation, research, policies and programs" (Section 4.11). The Board is also responsible for developing recommendations regarding Total Allowable Harvests for each species.

In addition to the Board, a Salmon Sub-committee is established as the main instrument of salmon management in the settlement area. Four Board members, two aboriginals and two government representatives, will form the Sub-committee. The federal Minister of Fisheries and Oceans may appoint two additional members. YFN may match these appointments. A chairperson will be selected from among the committee members. The Sub-committee is to make recommendations to the Minister of Fisheries and Oceans and the Management Board regarding all matters related to salmon including its habitat and management as well as legislation, research, policies and programs.

Section 5 of the Sub-Agreement establishes Renewable Resource Councils for each YFN Traditional Territory. Each YFN is responsible for defining an area surrounding its community to be designated as its Traditional Territory. Councils will have up to ten members with equal government-aboriginal representation.

The Councils are responsible for making recommendations to the Board or Salmon Sub-committee regarding all aspects of fish and wildlife management. They are also responsible for developing criteria for management of furbearers in the area and for allocating traplines. Recommendations regarding furbearers are to be forwarded directly to the Minister and YFN.

The Minister must reply to recommendations received from any of the three management bodies within sixty days of receiving such recommendations. Written reasons must be provided for rejecting, in whole or in part, any recommendations. The management body has thirty days to consider these reasons and re-submit a final set of recommendations. Written reasons must once again be provided for any rejection of the recommendations. The Minister must "as soon as practicable" implement any recommendations accepted. The Minister may refer any matter to the mediation process established in a separate sub-Agreement.

YFN are responsible for identifying basic needs levels and criteria for allocating quotas within First Nations. They are also entitled to participate in management activities not covered by the

Sub-Agreement and are expected to provide harvest information to the Board.

Yukon Indian people remain entitled to hunt outside the Yukon within Canada and may continue to exchange fish or wildlife amongst themselves in accordance with traditional practice.

The Board is responsible for allocating Total Allowable Harvests by amount and by area. In each First Nation Agreement, species for which First Nation members have a basic need will be identified. Basic Needs Levels will then be established and guaranteed in the Final Agreement. The Basic Needs Level may be adjusted from time to time on the basis of changes in populations, patterns of consumption, non-aboriginal use of the resource and commercial harvesting requirements. The Total Allowable Harvest remaining after the allocation of basic needs will be allocated by the Board. Allocations for non-aboriginal harvesting will also be made by the Board.

Guidelines for the allocations for non-aboriginal harvesting will also be made by the Board.

Guidelines for the allocation of salmon harvesting will also be made by the board.

Guidelines for the allocation of salmon harvesting will be established in the Umbrella Final Agreement.

Section 12 of the Sub-Agreement deals with conservation Areas. It notes that in order to protect and preserve certain habitats, species or rare natural features, certain areas not selected as Settlement Lands may be designated as Conservation areas.

The Agreement concludes with sections committing the parties to make best efforts to implement training program and management structures prior to the finalization of YFN Final Agreements. Governments also commits itself to sort out the financial and administrative responsibilities created by the Sub-Agreement prior to the conclusion of the Umbrella Final Agreement.

2. DENE/METIS Land Claim Agreement-In-Principle (1988)

Section 13 of the Dene/Metis (D/M) Agreement-in-Principle focuses on wildlife harvesting and management. The section begins with a set of objectives primarily relating to the protection and conservation of wildlife and the rights of DM to harvest wildlife in the Mackenzie Valley.

The D/M have the right to harvest all species at all seasons subject to regulation as described in the Agreement. They are to have exclusive harvesting rights on their own lands within the settlement area.

The Agreement-in-Principle establishes an eleven member Wildlife Management Board. Five members each are to be appointed by the D/M and government. The affiliation of the government appointees is not stipulated. A Chairman is to be appointed by the Board members. Voting procedures for the Board are not specified in the Agreement. Instead, operating procedures are left to the Board itself to determine.

The Board is to have the same powers as a commissioner under the Enquiries Act and is to have its own staff and its own research capability. The Board is to be funded by government.

The Board may hold public hearings with respect to any wildlife related matter and must hold hearings regarding the establishment of Total Allowable Harvest quotas for any species which have not had such quotas during the previous two years.

A Mackenzie Basin Harvest study is to be undertaken to provide information on wildlife and on D/M wildlife harvesting patterns. Following this study, the Board is to establish Total Allowable Harvests for each species. In addition, "Dene/Metis needs levels" are to be established. The difference between the "D/M needs level" and the "Total Allowable Harvest" is known as the surplus. The Board will determine how this surplus is to be allocated. In doing so, it must consider the needs of resident non-D/M.

The Board will determine whether or not commercial hunting will be permitted in a given area. Local councils may refuse permission for commercial hunting to take place in their area. Such a refusal is, however, subject to review by the Board. Should commercial hunting be permitted, the D/M have first right of refusal on any hunting, fishing or trapping licenses issued as well as on any licenses or permits issued for outfitting and similar activities.

The Board is to establish wildlife management policies and is to propose appropriate legislation. It is to be involved in approving wildlife management plans, conservation area designations and park management policies and guidelines. Government undertakes to consult the Board on all wildlife management matters pertaining to the settlement area.

Board decisions are to be transmitted to appropriate Ministers and are not to be made public by the Board. Ministers can accept, vary or reject Board decisions. In the later two instances, Ministers must provide written justification for their position. The Board can then reply to Ministers' decisions. Final decision making authority rests with Ministers.

Finally, the Agreement will establish Dene/Metis Local Wildlife Management Councils in each of the settlement communities. Each council will consist of not more than seven community residents and will be responsible for community level allocation of harvesting quotas. Local councils will also advise the Board on wildlife issues. Local councils with the approval of the Board, may also choose to form Regional Wildlife Management Councils to facilitate regional coordination and information interchange.

3. TUNGAUVIK FEDERATION FOR NUNAVUT (TFN) Agreement-In- Principle (1989)

The TFN wildlife management plan is the most lengthy and complicated such plan concluded to date. It is important to note that at present, it is only an Agreement-in-Principle and may not come into effect until the entire TFN claim is settled.

The wildlife management (WM) agreement is based upon fundamental principles recognizing the Inuit's traditional hunting, fishing and trapping rights as well as the need for an Inuit-oriented WM system premised on the sustainable yield concept. The objective of the WM agreement is to develop a system of harvesting rights which give first priority to Inuit resource users while ensuring that wildlife resources are conserved.

Under the Agreement, a nine-member Wildlife Management Board is to be established. The federal government is to appoint a representative from the Department of Fisheries and Oceans, the Department of Indian Affairs and Northern Development, the Canadian Wildlife Service and the Government of the Northwest Territories is to appoint a member. The Inuit are to appoint four representatives as well. A mutually agreed upon Chairman is also to be appointed. The Chairman will vote in tie-breaking situations only. The Board is to establish its own operating procedures including the methods to be used in gathering information and holding public hearings.

The Board is to be responsible for establishing harvesting levels and allocating any surplus resources. It will set community harvesting quotas which will then be administered by local hunting and trapping organizations (HTO) and regional wildlife organizations (RWO). The Board will also be involved in the establishment and management of wildlife sanctuaries, habitat classification, protection and enhancement programs, and wildlife education programs. The Board will also be responsible for undertaking and supervising wildlife research.

All Board decisions are to be forwarded to the appropriate Minister (federal or territorial) prior to being made public. Ministers can accept or disallow the Board's decision. Board decisions can be disallowed if they are not supported by

relevant evidence; contravene conservation principles; or if they conflict with international or inter-jurisdictional agreements. If Ministers disallow a Board decision, they must provide written reasons for doing so.

The wildlife agreement states that its terms could be implemented prior to the conclusion of the entire TFN agreement. Board decisions would, however, be only advisory in nature prior to the agreement's conclusion.

The Board is to determine Total Allowable Harvest levels for each species. Inuit Basic Needs Levels are also to be calculated for each community. The difference between the Total allowable Harvest and the Basic Needs Levels is to be known as the Surplus. The Board is to be responsible for allocating this Surplus.

The Board is to be jointly funded by the federal and territorial (NWT) governments.

4. THE INUVIALUIT FINAL AGREEMENT (1984)

Sections 12 and 14 of the Inuvialuit Final Agreement (IFA) relate specifically to wildlife harvesting and management and establish the three cooperative management bodies described below. The section is based on principles which embody a commitment to wildlife protection and conservation.

Importantly, the Agreement states that "the governments having responsibility for wildlife management shall determine the harvestable quotas for wildlife species".

Conservation is the sole criterion for determining quotas. The governments are to determine the quotas based upon the advice of Wildlife Management Advisory Councils established for the Northwest Territories and the Yukon North Slope. The Councils, created by Sections 12.46 and 14.45 of the Agreement, consist of an equal number of government and Inuvialuit members and a Chairperson appointed by the appropriate territorial government with the consent of the Inuvialuit. The Chairperson votes only to break a tie. Inuvialuit council members are appointed by the Inuvialuit themselves. Government members are appointed in equal proportion by the territorial and federal governments. Non-voting temporary members can also be appointed on an ad hoc basis.

With respect to wildlife, the Council provides advice to Ministers and other resource management bodies such as the Inuvialuit Environmental Impact Screening Committee. The Council is responsible for preparing advice regarding wildlife management plans, maximum harvest quotas and subsistence quotas and on land use regulations needed to protect wildlife habitat. In the event

a Minister does not agree with advice received through the IFA, the Minister will "set forth to the Council, his reasons and afford the Council a further consideration of the matter".

A separate Fisheries Joint Management Committee is established to advise the Minister of Fisheries and Oceans on fisheries matters within the Inuvialuit Settlement region. The Committee's role is to advise the Minister regarding the setting of fish harvesting quotas, the restriction of public access to the resource and on the nature of Inuvialuit harvesting patterns.

Finally, a Research Advisory Council is to be established to collect and collate data and to undertake, supervise or commission wildlife studies. The Research Council is to be comprised of one representative of each of the following: DFO, DOE, DIAND, GNWT, GYT, industry and the Association of Canadian Universities for Northern Studies. Lastly, two Inuvialuit serve on the Council. To date, the Council has not been formally constituted and there does not appear to be any plan to do so in the near future.

5. THE JAMES BAY and NORTHERN QUEBEC AGREEMENT (1975)

The James Bay Agreement is a four-party settlement involving the James Bay Cree, the James Bay Inuit, the Province of Quebec and the Government of Canada. The Agreement guarantees all eligible Native people in the settlement area, the right to hunt, fish or trap any wildlife species subject to the provision of the Agreement. For the most part, this right is an exclusive one on Category 1 and 11 lands and a first priority right on Category 111 lands.

Section 24.4.2 of the Agreement establishes a twelve member Hunting, Fishing and Trapping Coordinating Committee. Each party to the Agreement appoints three members to the committee. In addition, the Society de developement de la Baie James is entitled to appoint a non-voting observer member. By virtue of the Northeastern Quebec Agreement 1978, the Naskapi Indians also appoint two committee members. Additional federal and provincial appointees have been added as well. The Chair position is rotated among the parties to the Agreement.

All Committee decisions are made according the vote of the majority. In the case of a tie, the Chairman gets a second and deciding vote. In matters relating exclusively to provincial jurisdiction, federal Committee members do not vote and each provincial member has two votes. The opposite arrangement exists for matters of federal jurisdiction. Similarly, the Cree and Inuit members do not vote on issues which do not concern them.

The committee must meet at least four times annually. Each party to the Agreement is responsible for meeting the expenses of its representatives. A secretariat, funded by Quebec and consisting of not more than three members, is also established.

The Committee has final decision making powers binding the crown with respect to setting the upper limits for caribou, moose and black bear kills. In all other matters, the Committee has an advisory role only. It is entitled to propose regulations, initiate discussion or study of wildlife issues and to comment on all government wildlife legislation, regulations or policies before they are finalized. The Committee also reviews applications for licences or permits for wildlife use activities. It is responsible for collecting and collating information and is expected to contribute to local impact assessment activities.

Non-Native residents of the area are entitled to use the lands in the areas for sport hunting and fishing. In addition, portions of harvesting quotas may be allocated to them.

Finally, the Agreement stipulates that local Native people are to be trained in wildlife management enforcement activities and, where possible, are to be hired to carry out government enforcement responsibilities.

6. PORCUPINE CARIBOU MANAGEMENT AGREEMENT (1985)

The Porcupine Caribou Management Agreement was signed on October 26, 1985. Signatories to the Agreement include the governments of Canada, Yukon and the Northwest Territories as well as the Council of Yukon Indians, the Dene/Metis and the Inuvialuit Game Council. The Agreement deals with the unique management problems created by the herd's migration across jurisdictional boundaries and various native traditional hunting grounds.

The primary objective of the Agreement is to ensure the conservation of the Porcupine caribou herd. The Agreement is also intended to provide natives with priority access to the caribou resource as well as an opportunity to participate in its management. The Agreement establishes a Porcupine Caribou Management Board "to provide advice and recommendations to the Ministers". The Board has eight voting members and Chairman appointed from outside the Board. Canada, the Northwest Territories, the Dene Metis and the Inuvialuit Game Council each appoint one member to the Board while the Council for Yukon Indians and the Yukon Territorial Government each appoint two. Decision-making is done on a consensus basis as much as possible. In cases where a vote is required, the Chairman votes only to break a tie.

The Board is charged with establishing communications between parties to the Agreement, reviewing relevant scientific information and developing recommendations to federal and territorial Ministers. These recommendations are to focus on policies, legislation or regulations needed to manage the herd and may refer specifically to: management strategies and plans, guidelines for native participation in herd management, native management training, predator management, habitat protection and research requirements. The Board may also make recommendations to other boards or agencies.

In addition to these general recommendations, the Board is also responsible for considering allowable harvest levels for native users of the herd. In doing so, it may produce recommendations regarding: annual allowable harvests, categories and priorities of harvest allocations, harvesting methods, locations and seasons, age and sex of caribou to be of access to harvesting areas. In making these recommendations, the Board is to consider native food and clothing requirements, native herd usage patterns and levels of harvest, the ability of the herd to meet natives' needs and projections of herd populations.

Ministers must respond to the Board's recommendations within thirty days or notify the Chairman of their need for more time. If a Minister disagrees with the recommendations, they may refer them back to the Board for reconsideration. Ministers are free to accept or reject the recommendations in whole or in part. If the recommendations are rejected, written reasons must be provided for doing so. Ministers may act in emergency situations without consulting the Board but must provide reasons for doing so afterwards.

The Agreement guarantees a native priority right to harvest caribou and stipulates that natives do not have to pay fees for licences or tags. Conservation and safety laws of general application remain in force.

No commercial harvest of caribou is permitted by the Agreement. Native hunters may trade or barter meat. Meat may also be sold to disadvantaged natives such as individuals who are too old or too sick to hunt. Guidelines for determining who can be classified as 'disadvantaged' have been developed by the Board.

6A. The International Porcupine Caribou Management Agreement

The Porcupine caribou herd is now the subject of an international cooperative management agreement signed between Canada and the United States on July 17, 1987. This agreement was developed in recognition of the fact that the herd migrates between Alaska, Yukon and Northwest Territories.

The objectives of the agreement are similar to those of the Canadian agreement described above. In addition it refers to the desire to ensure cooperation between Canada and the United States regarding Porcupine Caribou management.

The Agreement commits the parties to taking appropriate action to ensure the conservation of the herd and its habitat. Importantly, the parties agree to give consideration to the herd and its users in evaluating any proposed development in the herd's range. In this regard, all such developments are to be subject to environmental impact assessment. Commercial sale of meat from the herd is to be prohibited.

An International Porcupine Caribou Board is established to provide advise to the parties regarding aspects of caribou management requiring international cooperation. The parties appoint 4 members each to the board. The agreement notes that the Board's recommendations are not binding.

The parties agree to provide the Board with information regarding the herd, notification of proposed activities affecting the herd and written reasons for rejecting, in whole or in part, the Board's recommendations.

7. BEVERLY-QAMANIRJUAQ CARIBOU MANAGEMENT AGREEMENT (1982)

The Beverly-Qamanirjuaq Barren Ground Caribou Management Agreement (CMA) was signed on June 3, 1982 by representatives of Canada, Manitoba, Saskatchewan, and the Northwest Territories and was witnessed by several native caribou resource users. Under the terms of the Agreement, a thirteen member Caribou Management Board was created to advise the four governments involved on conservation measures for the Beverly and Qamanirjuaq herds. Canada appoints two members to the Board; Manitoba, Saskatchewan and the Northwest Territories appoint one each. Eight native Board members are appointed by the various communities within the range of the herds. A Chairperson and Vice-Chairperson are elected from among the Board members.

8. YUKON-KUSKOKWIM DELTA GOOSE MANAGEMENT PLAN (1984)

In recent years, biologists have documented a drastic decline in numbers of Canada cackling geese and significant drops in population sizes of whitefront, emperor and black brant geese in the Yukon-Kuskokwim (Y-K) Delta area of Alaska. Loss of habitat, natural predation and excessive harvesting by subsistence and recreational hunters have been cited as the primary causes of this decline. The U.S. Fish and Wildlife Service (USFWS) can do very little to prevent habitat destruction in California or natural predation in Alaska. Consequently, the USFWS decided to seek

reductions in aboriginal goose harvesting activities. The issue is not, unfortunately, so simple.

Traditionally, aboriginal subsistence hunters have been exempted from Alaskan game laws. As early as 1902, legislation prohibiting the taking of migratory birds during the spring and summer contained a clause exempting aboriginal subsistence hunting from the prohibition (Mitchell, 1986). With the passage of the Migratory Birds Treaty Act (MBTA), this exemption was, in theory at least, removed. In practice however, the provisions of the MBTA have rarely been enforced against native hunters (Cook, 1986). Indeed, USFWS efforts to enforce the MBTA in 1961 led to such a political outcry that the USFWS dropped virtually all MBTA enforcement activities in the state. Consequently, Alaskan aboriginals have always hunted in the Y-K Delta area in an essentially unregulated fashion. To arbitrarily and suddenly begin to enforce the MBTA would be politically and logistically difficult to do.

Notwithstanding these difficulties, action was clearly necessary to address the full goose population problem. Consequently, multi-lateral discussions were begun with a view to developing a joint goose management plan for the Pacific flyway and Y-K Delta. These discussions involved the USFWS, the Alaska Department of Fish and Game (ADFG) the California Department of Fish and Game and the Association of Village Council Presidents, a group representing the native villages in the Y-K Delta. These discussions led to the January 1984 signing of the Hooper Bay Agreement (HBA) regarding cackling Canada geese, whitefronts and black brant. The HBA included a closure of the 1983-84 cackling goose hunting season in California and Alaska as well as substantially reduced recreational hunts of whitefront geese and black brant. Alaska aboriginals agreed to cease taking eggs of the goose species covered in the Agreement. Hunting of whitefronts and black brant was also to be stopped during their nesting, molting and rearing periods. A number of other provisions relating to monitoring, information exchange, implementation funding, habitat protection and native involvement in migratory bird management were also included in the HBA.

In 1985, the HBA was expanded to include protection measures for emperor geese and was renamed as the Yukon-Kuskokwim Delta Goose Management Plan (YKDGMP). The prohibition on cackling geese remained in place as did further restrictions on harvesting of other species. Significantly, the Plan also included a commitment to pursue amendments to the Migratory Birds Convention.

An information and education program was also developed as part of the YKDGMP. The program is coordinated by USFWS and includes all signatories to the Plan. Informational materials were

produced and disseminated to publicize the Plan and its objectives. School visits, teacher workshops and use of the media were undertaken. Efforts have also been made to include reference to the YKDGMP in local school curricula. This program is ongoing (Blanchard, 1987).

According to Pamplin (1986) the success of the YKDGMP has been significant. Substantial reductions in harvests of all four species have been effected, particularly for cacklers. Goose egg harvest has been reduced to practically nil.

In 1984 the Alaska Fish and Wildlife Conservation Fund filed suit in federal court to have the YKDGMP quashed. "Simply put, the Alaska Fish and Wildlife Conservation Fund claims that USFWS has acted in violation of MBTA by formally agreeing to allow harvest of geese during the season closed to hunting by the 1916 U.S. - Canada Convention, MBTA and implementing regulations "(Cook, 1986). The suit also charged that the USFWS neither allowed for public comment on the Plan as required by the Administrative Procedure Act nor prepared an environmental impact statement for the Plan as required by the National Environmental Policy Act.

The federal court judge ruled that the Fund's case was raised a series of 'moot' points as the 1925 Alaska Game Law (AGL) superseded the MBTA and allowed for subsistence harvesting of migratory birds by Alaskan Indians and Eskimos. Following this logic, the MBTA does not apply to Native subsistence hunting and it therefore does not matter whether or not it has been violated by Native hunters. The validity of the YKDGMP was, therefore, upheld. "However, in October 1987, the Ninth Circuit Court of Appeals disagreed and found that the AGL did not supersede the MBTA" (Osherenko, 1988). This has the effect of making it illegal for the USFWS to allow closed season hunting to take place - something the YKDGMP explicitly does.

As a consequence of this decision, the YKDGMP had to be re-written to remove any provisions seeming to condone the illegal spring hunt. Instead of explicitly acknowledging the hunt, the Plan now contains a set of enforcement priorities outlining provisions of the MBTA which will be enforced as a matter of high priority (Rothe, 1989, Personal Communication). These provisions include the prohibitions on commercial hunting and hunting methods which are unsafe. The unwritten assumption is that spring hunting violations will not be considered a high enforcement priority and that spring hunting will not be prevented.

9. WISCONSIN WILDLIFE MANAGEMENT AGREEMENTS (1984)

In the first half of the nineteenth century, the Government of the United States signed a series of treaties with the various

Chippewa Indian tribes living in northern Minnesota, Wisconsin and Michigan. These treaties all featured the establishment of Indian reserves and the ceding of remaining Indian lands to the federal government. Significantly, in each treaty the Chippewa reserved the right to hunt, fish and trap throughout the ceded territory.

Notwithstanding the existence of these treaty rights, Indians in all three states were generally treated no differently than any other state residents insofar as the state governments' regulations of resource harvesting is concerned. Treaty rights, while continuing to exist in theory, were removed in practice. However, in a series of decision beginning in 1971, U.S. federal courts ruled that treaty rights were never extinguished and that they must be acknowledged by today's resource managers in all three states. Subsequent rulings have determined that treaty rights guarantee the Chippewa's right to harvest sufficient resources as are "necessary to provide the Indians with a livelihood - that is to say, a moderate living (Dole Decision, 1982). The courts have further ruled that the state cannot regulate Indian resource harvesting unless it can prove that such regulation is necessary for conservation or public health and purposes or that the Indians are unable or unwilling to regulate their own activities.

In light of these decisions, the Indians concluded that an effective and professional Indian resource management framework was essential. Consequently, in 1984, the eleven tribes affected by the ruling joined together to form the Great Lakes Indian Fish and Wildlife Commission (GLIFWC).

GLIFWC Structure

The Commission is designed to act as a service organization of its member tribes. It provide assistance in managing tribal resource harvesting within the ceded territory. Off-reserve management is carried out by the individual tribes. While the GLIFWC has a major role in tribal resource management, final decision-making authority with respect to tribal activities rests with the tribes.

The Commission receives its general policy direction from the Board of Commissioners, which is comprised of one representative from each of the thirteen member tribes. Three standing committees provide the commissioners with policy advice. The committees are:

- the Voigt Inter-Tribal Task force made up of representatives of the eight Wisconsin tribes;
- the Lake Committee comprised of six tribes with interests in Lake Superior fisheries; and
- the 1854 Committee made up of representatives of each of the three Minnesota tribes.

The Commission staff is organized as indicated in Figure 1. Although a detailed description of each division is beyond the scope of this paper, a brief word about each is appropriate.

The Biological Services Division is the key to the Commission's work. It is responsible for developing data regarding resource stocks, harvest quotas and environmental quality. The Division develops this information for all resource and activities in the ceded territory including the waters of Lake Superior. Finally, the Division is integrally involved in the biological aspects of treaty rights litigation.

The Policy Analyst provides the Commission with advice regarding general policy issues. He is particularly involved in the coordination of the Commission's participation in ongoing litigation regarding treaty hunting rights and the limits to which state governments may regulate them.

The Natural Resource Development Specialist is primarily concerned with economic development program design and implementation. This exercise involves the identification of long and short-term tribal needs and subsequent program initiation to meet these needs. Programs range from training activities through to in situ management exercises such as pest control. Economic development and resource marketing are also key concerns.

GLIFWC has a major public information program which produces a wide variety of high quality documentation of Commission activities and responsibilities. The Commission has devoted considerable resources to this program in an effort to ensure that tribal members as well as non-tribal interests are fully informed regarding the Commission.

Finally, GLIFWC has a significant enforcement component. This division is responsible for enforcing tribal resource management regulations with respect to tribal members hunting off-reserve in the ceded territory. Approximately thirty-two wardens, each with powers of arrest with respect to tribal members, are employed full-time. In peak hunting and fishing season, the warden staff swells to over sixty.

Of considerable interest to Canadian observers is the existence of tribal courts. All tribal members charged with hunting or fishing violations are tried before courts administered solely by the individual tribes. Sentences are determined by the tribal judge. Consequently, the state court system is not involved in the processing of tribal violations.

Management Activities

As mentioned at the outset of this section, from 1971 through to 1987, the courts ruled that Indian treaty rights still exist and that resource managers must acknowledge them in their management schemes. However, the courts did not clearly state how these rights could be exercised and how managers would have to accommodate them. Consequently, no firm mechanism for reconciling treaty rights with state management institutions was identified.

In light of this situation, the tribes in the state of Wisconsin entered into negotiations with the state government regarding the development of resource specific management agreements. On the Indian side, the negotiations were carried out by the Viogt Inter-Tribal Task Force with considerable support from GLIFWC staff. The state negotiating team was led by the Administrator of Enforcement, Department of Natural Resources.

Negotiations were begun in 1984 and led to the development of a series of agreements relating to fisheries, trapping, deer, small game, bear and migratory waterfowl. These agreements were generally one-year arrangements and were re-negotiated yearly. In some cases, longer terms were agreed to. The agreements identify specific quotas for tribal and non-tribal harvesting. Each side is left to allocate resources amongst its own constituents. State officers may detain tribal members but must transfer them to tribal wardens to be formally charged. Tribal violations are then processed through the tribal court system. Tribal wardens cannot enforce regulations against non-tribal hunters or fishers.

These agreements are interim arrangements only. The courts have been asked to rule upon the extent to which the state may regulate the exercise of treaty rights. A series of cases, each dealing with a specific resource, was scheduled to be heard throughout 1989 and early 1990. These decisions were expected to lay down procedures by which tribal resource harvesting will be managed in future. Once these decisions were handed down, it was expected that the various resource specific agreements would no longer be needed.

At the time of this writing (July, 1989) only one such ruling has been made. It relates to the harvesting of muskellunge and walleye. Essentially, it states that the Chippewa tribes are free to regulate their own fishing for these species as long as their activities do not endanger the long-term health of the populations of these fish in the lakes of the ceded territory. The state cannot restrict Indian harvests unless it can prove that restrictions are necessary for conservation purposes or that the tribes are not adequately managing their activities.

10. NOVA SCOTIA MICMAC WILDLIFE AGREEMENTS

In 1985, the Supreme Court of Canada recognized the Indian Treaty of 1752 as containing a right for the Micmac tribes of Nova Scotia to hunt in the treaty area. The Bands have taken the position that this decision renders provincial wildlife legislation inapplicable to Micmacs. The provincial government does not agree. This disagreement has led to extensive media coverage of the dispute in recent hunting seasons. In an effort to forestall repetitions of this situation, the parties came to an interim agreement for managing the 1990 hunting season.

Identical agreements were concluded between the two Micmac organizations in Nova Scotia and the provincial Ministry of Natural Resources. The provisions of the agreements allow status Indians who are experienced hunters to continue to hunt. The identification these hunters must provide is also stipulated. Micmac may hunt on all Crown lands except in specified areas in which hunting is to be prohibited. Harvest quotas and hunting seasons for moose, furbearers, bear and small game are laid out in the Schedules to the agreements. The agreements also specify permissible hunting equipment and methods. The Micmac agree to report the number of animals killed pursuant to the agreement. The hides or pelts of all animals taken can be sold by hunters but meat cannot be. The province undertakes to consider the feasibility of wildlife farming. The Bands are to be responsible for monitoring Indian harvesting but the province retains the right to enforce the agreements and charge violators. Finally, to implement the agreements a Joint Management Board consisting of two Indian and two government representatives is established.

Figure 1

NORTH AMERICAN CWMAS - A Summary

<u>CWMA</u>	<u>Location</u>	<u>Species</u>	<u>Parties</u>
Yukon Agreement-In-Principle (AIP)	Yukon Territory	All	Canada (3) Yukon (3) YFN (6)
Dene/Metis AIP	Mackenzie Valley	All	Canada (5) NWT (1) Dene/Metis (6)
Tungavik Federation of Nunavut (TFN)	Eastern Arctic	All	Canada (3) NWT (1) TFN (4)
Inuvialuit Final Agreement	Mackenzie Delta/Beaufort Sea	All	Canada NWT, YTG Inuvialuit
James Bay & N. Quebec Agreement (JBNQA)	Northern Quebec	All	Canada (3) Quebec (3) Inuit (3) Cree (3)
Porcupine Caribou Management Agreement	Northwestern Arctic	Caribou	Canada Yukon NWT Yukon Indians Dene/Metis Inuvialuit
Int'. Porcupine Caribou Management	Cda. - U. S.	Caribou	Canada United States
Beverly-Qamanirjuaq Caribou Agreement	Eastern Arctic	Caribou	Canada NWT Manitoba Saskatchewan
Yukon-Kuskokwim Delta Goose Management Plan (YKDGMP)	Yukon-Kuskokwim Delta (Alaska)	Geese	United States Alaska California Yu'Pik
Wisconsin Wildlife Management	State of Wisconsin	All	Wisconsin Chippewa
Micmac	Nova Scotia	All	Nova Scotia Micmac

APPENDIX II - WORKSHOP SUMMARY

Introduction

The Canadian Wildlife Service (CWS), a division of the federal Department of the Environment, is responsible for the protection and management of migratory birds through the development of appropriate regulations, habitat management and the undertaking of related research. With the provinces and territories, CWS undertakes programmes of research and management related to other wildlife where there is a national interest and advises other federal agencies on wildlife matters. In the context of these responsibilities, CWS has been involved in the development and implementation of Cooperative Wildlife Management (CWM) systems involving Aboriginal user groups and appropriate government agencies. This involvement has generally taken the form of assistance to the federal spokesperson in various Aboriginal land claim negotiations. However, CWS has also played a role in the development of more specific management systems such as the Porcupine and Beverly-Qamanirjuaq Caribou Management Agreements. More recently, CWS has been involved in several sets of negotiations with First Nations regarding joint migratory bird management and habitat protection on Indian reserves in the provinces. Lastly, the Service has been exploring the possibility of implementing potential Migratory Birds Convention Act amendments through a series of regional Cooperative Wildlife Management Agreements (CWMAs)

With this wide-ranging interest in CWM, it became apparent to the Service's management, that a fuller understanding of the development of CWM theory and practice in North America could help CWS and other agencies to avoid errors made in earlier CWM situations and to emulate successes achieved to date. Consequently, the author was retained on contract to prepare an inventory and analysis of CWMAs in North America.

During the preparation of this inventory, it became apparent that very little information is exchanged among agencies and jurisdictions with CWM experience and responsibilities. Indeed, there is a significant networking void with respect to cooperative wildlife management. To begin to address this void, the Service hosted a small workshop on CWM. This paper summarizes the proceedings of the workshop. It begins with a discussion of the workshop's purpose and organization. The key points to emerge from the presentations and discussions are then identified. Finally, a set of general conclusions is presented. Workshop participants are listed at the end of the paper.

Purpose

The purpose of the workshop was to provide a forum for the exchange of ideas and experiences among government officials with direct involvement in CWM. The workshop was also intended to serve as a mechanism for developing a network of individuals with interests in CWM. A final purpose was to produce a resource document for the use of others working in the CWM area.

The workshop was not intended to serve as a forum for problem-solving or performance evaluation. While a great deal of the workshop discussion focused on how to avoid certain pitfalls and how to deal with commonly occurring difficulties in CWM, specific issues or questions were not put forward for participants to resolve. Similarly, while all speakers commented on the various successes and failures of CWM to date, no attempt was made to focus the workshop on any sort of objective measurement of success.

It is important to note at the outset that the workshop was not structured to fill a government-public liaison function. The workshop was seen very much as a preliminary gathering designed to increase governmental understanding of CWM activities in North America. Consequently, with the exception of three academics, invitations were extended only to government officials at the federal and state/territorial levels in Canada and the United States. However, all workshop participants agreed that a similar gathering should be held in the future with broader participation.

Format

In organizing the workshop, attempts were made to invite representatives of all jurisdictions in which CWMAs are currently in place. Individual participants were selected on a somewhat ad hoc basis, usually at the suggestion of other individuals working in the field. In the end, a wide range of agencies was represented.

The workshop was held on June 1-2, 1989 at the Chateau Laurier Hotel in Ottawa, Ontario, Canada. The meetings were convened from 08:30 - 16:30 on both days and an evening session was held on June 1. The individuals denoted with an asterix in the participants list made brief presentations. Following each presentation, the floor was opened to general discussion. Approximately one hour and fifteen minutes was allocated to each presentation.

The workshop discussions were not formally recorded. Consequently, this paper does not attempt to provide verbatim or highly detailed summaries of the workshop proceedings. Rather, it addresses several subjects of discussion in the workshop and notes the key points made with respect to each.

WORKSHOP DISCUSSIONS SYNOPSIS

1. Legal Underpinnings and Origins of CWM

Throughout the course of the workshop, many of the participants argued that the most important feature of CWM is that it leads to better resource management. For example, the Alaskan Goose Management Plan has led to significant increases in two of the four goose populations. Likewise, the joint fisheries management exercises in Washington have increased fishery productivity and general health. Following this logic, governments and user groups should be inclined to voluntarily enter into CWMAs simply to ensure that a particular resource is managed more effectively. However, as all participants have noted, this has generally not happened. Instead, governments have, to one degree or another, responded to legal factors stipulating that Aboriginal peoples have legal rights to hunt, fish and trap and that these rights must be acknowledged in resource management decision-making.

In Canada, Aboriginal peoples derive these rights from two sources. First, in large parts of the country, Aboriginal people have never formally surrendered title to the lands they have traditionally occupied. Consequently, an aboriginal title still exists with respect to these lands. While the precise nature of this title has never been defined, it clearly entails the right to hunt, fish and trap.

Second, in much of the remainder of Canada, Indian bands signed treaties with the Crown extinguishing their title to their lands and establishing Indian reserves. With few exceptions, the Indians reserved the right to hunt, fish and trap within the ceded territory. The validity and continued existence of these treaty rights has been affirmed in the Canadian courts on several occasions.

In the United States, aboriginal title to land does not exist as all Indian tribes have had their title extinguished through treaties or by conquest. However, in many of the treaties, the Indians reserved the right to harvest wildlife as they had traditionally done. The courts in Washington, Wisconsin and Michigan have emphatically ruled that these rights continue to exist. Federal courts and the U.S. Supreme Court have upheld these decisions, firmly supporting the existence of treaty rights. In addition, these decisions have dealt specifically with allocation issues, ruling that treaty rights include the right to a certain percentage of the total harvest of a particular resource. Further, the rulings have stated that treaty rights do not necessarily refer only to subsistence harvesting. Commercialization is clearly within the context of the rights. While the courts in Canada have

not yet made such definitive decisions, similar cases are now before them and similar rulings may be made.

The existence of these rights has several implications for CWM. First and foremost, they have acted as a catalyst for the development of CWMAs. In the United States, government agencies have been ordered by the courts to develop such agreements. This has forced governments to allocate resources to the negotiation and implementation of CWMAs.

In Canada, governments have not been specifically ordered to enter into CWMAs. However, as the James Bay situation of 1975 indicated, the continued existence of aboriginal rights precludes unfettered exploitation of natural resources. The Canadian government has entered into a series of land claim negotiations, all of which focus to a considerable extent on wildlife management.

Although the workshop participants identified the catalytic effect of court decisions as a generally positive influence, they tended to argue that litigation is generally something to be avoided at all costs. Several reasons for this were cited. First, it was noted that many agencies and Aboriginal groups tend to become entirely focused on the litigation itself. They become primarily concerned with winning in court and the resource being fought over frequently gets ignored. Furthermore, the litigation consumes so many resources that the parties cannot manage effectively even if they wanted to.

Litigation also tends to polarize parties. This, of course, is nothing new. However, in the United States at least, it poses unique problems with respect to CWM. Generally speaking, following long, emotional hard-fought court battles, the courts have ordered the litigants to work together in managing the resource! Thus, long-time adversaries are in effect ordered to become allies. For many, this transition is difficult indeed.

Adding to this difficulty is the fairly common tendency of the winning party to refuse to compromise once the court has ruled in their favour. Prior to the completion of litigation, all parties operate under a cloud of uncertainty that stimulates compromise and facilitates successful negotiation. This disappears following definitive judgements making mutual flexibility more difficult to engender.

Third, in the words of one participant, "the courts are lousy resource managers". Courts are designed to objectively determine the facts of a particular issue and then compare them against the law in order to decide whether or not a given situation should be allowed to persist. As a consequence, they attempt to deal in absolutes, something which rarely exists in resource management

decision making. While individual judges may attempt to be flexible, they have neither the training nor the experience to factor all the various nuances of a resource management issue into decisions to be made. Leaving resource management decisions to the courts means forcing a set of issues into a decision making apparatus into which it simply does not fit. Thus, decisions the courts make, though correct on points of law, are often not the best decisions from the point of view of management of the resource.

Returning to the positive aspects of court involvement in CWM, the courts can be useful as ultimate arbiters. There may well be instances in which the parties simply cannot agree. In Wisconsin for example, the state and the tribes negotiated a solution to ninety percent of their harvesting disputes. The remainder are before the courts for resolution.

The threat of litigation can also be a useful factor in negotiations. Most parties prefer to stay out of court. Therefore, the knowledge that issues will end up in court can often precipitate action. Similarly, the possibility of court action can help build public support for a negotiated settlement. Indeed, in Minnesota public fear of decisions similar to those laid down in Wisconsin gave state negotiators strong support in dealing with its aboriginal peoples.

2. Biology

The participants agreed that biology is clearly of central importance to wildlife management. CWM attempts to bring together two systems of understanding wildlife biology. The first, described in the literature by Usher as the state system, relies heavily upon formal training in universities, standard methods and procedures, careful documentation of information and generally operates within a fragmented, bureaucratic management system. The second, referred to as the indigenous system, is less formal in nature, and features training through experience, reliance on social customs and traditions, local knowledge, less formal information recording and functions in a flexible, horizontally organized management context. Much of the workshop discussion focused on efforts made to unite these systems in CWMAs.

Several participants noted that as a starting point for discussion regarding CWM, it must be recognized that the two systems will have disagreements on matters of biology. These disagreements may include disputes regarding methodologies, information reporting, data analysis, population predictions, or even basic underlying scientific principles and assumptions. Consequently, those who expect that the two sides will easily agree on matters of biology and that the negotiations or litigation need

only focus on issues of management, policy or jurisdiction are mistaken.

Recognizing this situation as a given, several approaches can be taken to bringing the sides together. First, it was strongly suggested that to the greatest extent possible, technical people should not be directly involved in negotiations. Several reasons for this were cited. Perhaps most importantly, it was noted that it is the technical people that ultimately have to implement whatever is agreed to. Therefore, any personal animosity developed during the negotiations will have a longer lasting and more direct effect on technical staff in the performance of their duties than it would on policy people who can, to some extent, step back from the agreement once it is concluded. It was further noted that biologists simply do not have the training to play lead roles in negotiations. Finally, direct participation in negotiations could cause people to lose their scientific objectivity as pressure mounts to provide technical information and opinions which support negotiation positions.

While the bulk of the workshop discussion of biology concerns focused on the role of biology in CWMA negotiations and litigation, several more specific points were made as well. First, it was noted that CWM ultimately leads to better biological information gathering and analysis. This is due to the increased access each party has to each other's information sources. In addition, biologists can focus more on the resource without worrying about jurisdiction or allocation issues. Ultimately, this leads to better resource management. Nowhere was this more graphically illustrated than in Alaska where significant turnarounds have been made in declining goose populations following the implementation of a CWMA in the Yukon-Kuskokwim Delta.

Second, CWM has led to several innovations in resource management science. In the fisheries area in particular, government has been forced to develop new methods of monitoring and regulating harvesting activities. New mechanisms for allocating resources have also had to be developed. Innovative systems for joint stock enhancement have also arisen. These developments will benefit resource management generally as well as in the specific situations in which CWMAs are in place.

3. Communications

A common focus of discussion throughout the workshop was the subject of communications. Each workshop speaker touched on the central importance of effective inter-party dialogue. This theme was also picked up in the more general discussions.

It was noted that while communication is important during the development of CWMAs, it is crucial to the implementation of whatever is agreed to. The fundamental tenet of CWM is that user groups and government work together. This cooperation is impossible if communication links between the parties are poor. Indeed, it was argued that CWM is doomed to failure if all members of both parties do not clearly understand CWM objectives and operations. It was stressed that these communications links must involve a two-way flow of information. It is essential that user groups understand the nature and purpose of biological research, management techniques and so on. Conversely, government managers must have a clear picture of the socio-cultural context of the management initiative.

Although all participants underscored the need for communications, the Alaskan delegation provided a particularly good example of the information and education aspect of CWM. The Alaskans have developed a wide range of posters, pamphlets, comic books, newsletters, videotapes and so on to get information regarding their Goose Management Plan out to the communities. Conversely, government officials meet regularly with the Waterfowl Conservation Committee to obtain information from the communities.

Information exchange is not limited to the parties to a CWMA. Indeed, in the view of one participant, the best way to ensure the success of a CWMA is to convince the general public that CWM is a better way to manage resources. Without public support, government parties to CWMAs will face a continued uphill battle in negotiating and implementing CWMAs. The only way to instill this support is to provide the public with the information necessary to illustrate the merits of CWM. Participants were quick to add that the onus for doing so should not be exclusively on government. Aboriginal groups must also take the initiative in explaining their situation to the public at large.

Directly linked to the point made above, is the need to keep the general public informed of the progress of negotiations with Aboriginal groups. Generally speaking, the negotiations are held in secret. There was a general consensus amongst participants that to depart from this approach to include representatives of non-governmental organizations at the table is not appropriate. However, as several participants explained, completely shutting the public out from negotiations threatens to undermine public support for CWM and can make the political position of the negotiators untenable. In the province of Ontario for example, Indian fishing negotiations were suspended as a result of public backlash against positions taken by the Indian group involved and the secrecy cloaking the discussions with them.

The means to address this problem can vary. In Washington, efforts were made to enlist the support of the local media. In Wisconsin, Public Advisory Groups were established in each affected community. These groups then provided the state negotiating team with advice regarding the positions to be taken. In Ontario, an Indian Fishing Advisory Committee made up of local NGOs was struck to serve the same purpose.

4. Political Will

The previous section drew attention to the need for public backing for CWM. Part and parcel of such support is political support. The participants were unanimous in their views that without sufficient direction and encouragement from the political level, it is clearly impossible for government officials to enter into negotiations regarding CWMAs. The question then becomes "how is this political support engendered and sustained?"

The workshop participants gave considerable attention to this issue. It was generally agreed that to date, CWMAs have only been developed in response to a particular crisis. The crisis may be in the form of a court decision ordering the development of CWM as was the case in Washington in 1975 and to a lesser degree in Quebec in the same year. Alternatively, the crisis may involve a precipitous decline in the population of a species as occurred in Alaska with respect to geese in the early 1980s. In any event, there does not appear to be a CWMA currently in place which was developed purely as a result of a desire to improve resource management or to involve Aboriginal resource users in decision-making.

While all participants agreed that response to various crises inspired the development of CWMAs, they were equally unanimous in their view that crisis response is not a desirable motivation for concluding CWMAs. They argue that agreements concluded on this basis are frequently flawed in design, tend to polarize the parties involved, tend to lack public support making them difficult to implement, and can distract attention from areas in which there is no perceived resource problem. Given these difficulties, the participants argued that it is vastly preferable to have CWMAs developed for their own sake and not simply as crisis management tools. The workshop was not successful in identifying means for engendering the necessary political support and bureaucratic momentum for this sort of initiative.

5. Financial Costs of CWM

The workshop participants agreed on the duality of the financial costs of CWM. On one hand, participants pointed to the tremendous increase in agency financial and personnel requirements for CWM development and implementation. Staff size in

the Washington Department of Fisheries, for example, has tripled since 1978. The cost of developing joint resource inventories, producing information and education materials and programmes, funding Aboriginal institutions, enforcing CWMA provisions and so on can be quite high.

On the other hand, it was noted that CWM reduces the cost of managing conflict. It allows parties to stay out of court. Further, in some areas, it has enhanced resource productivity and expanded employment opportunities and the economic base in many communities. These benefits are difficult to quantify making an assessment of the net cost of CWM quite difficult.

A further difficulty in assessing the cost of CWM arises when one attempts to determine the costs of not entering into CWMAs. The participants all agreed that CWM leads to better wildlife management generally. The corollary of this point is that the absence of CWM will result in lower quality wildlife management. The cost of this poorer management in terms of less productive resources, loss of employment opportunities, heightened conflict and so on are very difficult to tally.

6. Implementation of CWMAs

Much of the discussion regarding the implementation of CWMAs was couched in terms of the issues discussed above. For example, it was noted that successful implementation of a CWMA without the political will to support the agreement is virtually impossible. Likewise, poor communication links will scuttle most CWMA implementation efforts.

Two distinct points regarding CWMA implementation were considered. First, it was noted that with respect to agreements currently in place in northern Canada, the secretariats established to support a given management body often play a much greater role in management than was originally anticipated. Management boards established under the Inuvialuit land claim settlement for example, generally do not meet more than once a month. The secretariat, however, functions daily. As a result, the secretariat can acquire a life of its own and can eventually end up guiding the management board rather than the other way around. This phenomenon was not regarded as a necessarily negative development, but rather, as one which requires some thought and study.

Second, the role of enforcement in CWMAs was discussed. On a general level, it was noted that state sponsored enforcement of wildlife regulations does not play a prominent role in CWMAs. The essence of CWM is that it encourages voluntary compliance with management regulations. Clearly, compliance will still not be universal. However, enforcement of CWMAs is generally carried out

by community-based regulatory mechanisms. In Aboriginal communities, peer pressure to comply is particularly important in this regard.

Some attention was also given to the question of whether or not firearms should be carried by wildlife enforcement officers. No firm consensus was reached on this issue.

7. General Discussion

In the closing session of the workshop, the floor was opened to a free-flowing and wide-ranging general discussion of CWM. Although it is difficult to capture the essence of this discussion succinctly, several common points emerged during this session and in other more general talks earlier in the workshop. Consequently, this section presents a series of somewhat unconnected points for the reader's consideration.

In areas where CWM has achieved a measure of success with respect to a particular species, it appears that this success has had spillover effects on the management of other resources. For example, in Washington, the CWM system established for fisheries has been expanded to include the joint management of some forestry activities in the state. In Alaska, requests have been received to expand the Goose Management Plan to cover other birds and perhaps game as well. The Canadian Porcupine Caribou Management Agreement has led to the conclusion of a Canada-United States agreement. Aboriginal self-government negotiations across Canada are making similar linkages.

This spillover effect can, in some respects, be a double-edged sword. On one side, it can serve to build upon success and to integrate resources management in a particular area. On the other side, it means that in entering into specific CWMAs, parties may be opening the door to requests for the development of CWMAs in other areas.

The participants also noted that increasingly, a linkage is being made between wildlife management and habitat protection. Habitat protection has always been a fundamental component of fisheries management in Canada. However, legislation respecting the management of other species has generally not allowed managers to effect habitat protection measures. The Migratory Birds Convention Act for example, does not contain any provisions allowing the Canadian Wildlife Service to promulgate habitat protection measures designed to complement its migratory bird management responsibilities. It was suggested that CWMAs may increasingly be used as a vehicle to forge these links. By way of example, it was noted that habitat protection was used as the

vehicle for including forestry in the Washington fisheries CWMA referred to above.

On several occasions, the participants referred to the key role of individuals in CWMAs. Regardless of the institutional structures established to develop and implement CWM, it is people that make them work or malfunction. While this may be stating the obvious, the participants suggested that this point is often overlooked when trying to explain the successes or failures of CWM. Participants cautioned against attempting to follow a cookbook approach to developing CWMAs on the assumption that erecting the appropriate institutional structures is sufficient to guarantee the success of an agreement. People with a willingness to listen to each other and accommodate each other's views and requirements are essential.

A recurring theme in the workshop relates to the nature of the cooperation required in cooperative wildlife management. Several speakers stressed the need to remember that cooperation is not exclusively between Aboriginal groups and government. Rather, it also includes liaison between different levels and agencies of government and between different bands and Aboriginal political institutions.

Given the background of the workshop participants, discussion of this point tended to focus on the nature of inter-governmental cooperation. Two primary issues were addressed in this regard. First, it was noted that within a particular government agency there is often a considerable difference of views between the various divisions or branches of the agency with respect to the most appropriate course of action regarding CWM. Resource managers and enforcement staff for example, often differ regarding the best way for dealing with resource management issues involving Aboriginal user groups. Consequently, officials leading a CWM project must be prepared to spend a considerable amount of effort ensuring that their own department is supportive of the initiative. Similarly, different agencies of the same government may have contrasting opinions on CWM and will require consensus building prior to entering discussions or litigation.

Second, the nature of federal and provincial/state/territorial relationships was discussed at length. Not surprisingly, the two levels of government often disagree about CWMA ventures. While there are, of course, many reasons for this, it would appear that a major source of discordance is the federal government's role in supporting Aboriginal interests. In both Canada and the United States, the federal government has a constitutional responsibility for Aboriginal peoples. Consequently, the federal government frequently sponsors Aboriginal efforts to secure hunting, fishing and trapping rights. In Washington for example, the federal

government sued the State of Washington on behalf of the tribes. In Minnesota and Wisconsin, the federal Bureau of Indian Affairs funded the tribes in their litigation against the states. In British Columbia the federal government has pushed for the settlement of Aboriginal land claims contrary to the wishes of the provincial government. As a result, the federal government is often perceived as working against the province/territory or state. The frequently held assumption that there will be a common government position in CWMA situations is, therefore, fallacious.

Several participants referred to the need for government managers to change their attitudes to resource management generally if they are to be effective in CWM situations. While this notion is somewhat difficult to describe concisely, three common points related to it emerged from the discussion. First, it was suggested that government must be willing to share power with respect to wildlife management decisions. This need not involve a transfer of legal authority to manage. However, if CWM is to work, decision makers must provide user groups with more than just a superficial role in the decision-making process. This, by definition, involves a sharing of power, something governments have traditionally not been very good at doing in the wildlife management field.

Linked to this point is the need to abandon the idea that government owns all wildlife and doles out access to it as it sees fit. Aboriginal and other user groups feel that they are at least co-owners of the resource. Again, if CWM is to be successful, government resource managers must recognize this view and reject the mentality which suggests that they are somehow doing user groups a favour by allowing them a role in decisions which directly affect them.

Third, government managers must appreciate the cultural aspects of Aboriginal harvesting practices. This does not mean that all managers dealing with CWM must become amateur anthropologists. Rather, it demands that wildlife harvesting be recognized as a socio-cultural activity that should not be managed as though it is nothing more than a sporting exercise.

CONCLUSION

The highly varied nature of the workshop presentations and discussion illustrated the tremendous complexity and evolving nature of CWM. Notwithstanding this variability, however, several general conclusions can be drawn from the two-day gathering. First, and perhaps most importantly, the workshop clearly indicates that CWM is currently being undertaken in several North American jurisdictions. The participants were pleasantly surprised to find that CWM is not a rarely used, totally new and undeveloped management approach. On the contrary, it is an increasingly

attractive approach to resource management generally and is likely to become a preferred way of dealing with many resource issues and user groups. Further, the theoretical literature regarding CWM, though in its nascent stages, is also developing rapidly as is evidenced by Evelyn Pinkerton's recently released book entitled Co-Operative Management of Local Fisheries².

Notwithstanding the widespread occurrence of CWM, the urge to manage resources jointly does not appear to have come easily to government management institutions or user groups. Unfortunately, it seems that a variety of legal factors combine to force the development of CWM systems. Consequently, CWMs are generally born in the crucible of conflict and are not negotiated in a spirit of well-meaning individuals coming together to develop the best means possible for conserving a particular resource. However, court experience to date indicates that the legalistic approach to resource conflict resolution is not an ideal alternative. Indeed, the workshop participants were unanimous in their view that courts are to be avoided at all costs.

The primary complaint made about the courts is that they tend to impose a somewhat rigid set of rules and requirements upon the management issues at hand and have a difficult time grappling with scientific uncertainty. Furthermore, they are not well equipped to factor in various social and political imperatives affecting the issues at hand. This is particularly problematic for CWM as it is by definition, a fundamentally socio-political decision-making framework based upon a set of biological data. Thus, it is an unusual hybrid of decision-making systems which are typically kept separate.

This characteristic has quite significant implications for government resource management agencies. These institutions have traditionally viewed resource management as an essentially biology based resource allocation exercise. They have generally shied away from entering into legal, political and social arenas. Consequently, in integrating these realms, CWM necessitates a significant shift in the way professionals view wildlife management. These individuals and the institutions they work for, will be forced to confront a much broader range of decision variables and alternatives as CWM grows in popularity. As a result, many of the traditional ways of doing business in the wildlife management field will no longer be appropriate.

² Pinkerton, Evelyn. ed. 1989. Co-Operative Management of Local Fisheries - New Directions for Improved Management and Community Development Vancouver: University of British Columbia Press.

A fourth key conclusion to emerge from the discussion relates to the central importance of information. Biological data is the fuel which keeps the wildlife management machinery running. Those who possess information, possess the power to move the machinery, and conversely, those who do not are powerless. However, not all information will operate the machinery with equal smoothness. Material which has been unilaterally prepared without input from all management stakeholders is bound to be distrusted and will be challenged at every step of the way. While mutual development of data is no guarantee that conflict will be avoided, it certainly increases the chances that amicable solutions can be reached or at minimum, makes major conflicts somewhat easier to resolve.

As the previous four points indicate, much of the workshop discussion focused on the difficulties and challenges associated with CWM. However, lest the reader be left with the impression that the workshop participants were generally negative in their views of CWM, it must be emphasized that very much on the contrary, the participants unanimously endorsed the CWM approach and argued that it should be refined, enhanced and applied on an increasingly broad basis in the future. Indeed, it should be noted in conclusion, that the participants strongly felt that the CWM approach is, in many circumstances, the best way to achieve everyone's mutual objective, namely, the conservation of wildlife resources.

With respect to the workshop itself, the participants were unanimous in their view that it was a very useful and productive session. They stressed the importance of exchanging information and experience and noted that given the relative novelty of CWM, fora of this nature are quite rare. While all participants supported the idea of holding a similar meeting in the future, they were equally emphatic in stating that a somewhat larger gathering involving aboriginal groups and non-governmental organizations is also desirable.

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