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***Political Devolution And Wildlife
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Peter Clancy

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POLITICAL **DEVOLUTION AND** WILDLIFE **MANAGEMENT**

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POLITICAL DEVOLUTION AND WILDLIFE MANAGEMENT

Introduction

To discuss questions of wildlife is to tap the well-spring of northern politics. It is by any measure a "valence" issue, which serves to focus attention and energy, and to pose in sharp relief some of the most basic issues of power. Wildlife has been one of the most durable objects of public policy, dating back to the nineteenth century. When the state has intervened, whether in the name of conservation, of protecting native peoples, or of shaping economic growth, its wildlife policies have had a profound impact on northern life. This remains as true today as yesterday. The most basic co-ordinates of wildlife policy are politically contestable: in the Legislative Assembly, at the land claims table, in the community, and in the courtroom.

There are several respects in which the wildlife case differs from other policy fields affected by devolution. First it is evident that with wildlife, a significant degree of devolution has already occurred. Particularly in the case of terrestrial mammals, the GNWT has held jurisdiction through most of the modern period. By studying the record of the territorial game management agencies, we can assess the record of provincial-style control, while comparing the already "devolved" wildlife areas to those which remain with Ottawa. This is not to say that further transfers are not possible. Provincial-style involvement in inland fisheries is presently an element of the devolution agenda formalized in the mid-1980's. An agreement has already been reached with Yukon, and negotiations with the N.W.T. are underway. Nevertheless the experience of the Territorial Game Service to date remains most pertinent to understanding the devolution phenomenon.

The wildlife case is equally important to devolution in a second respect. As much as it has figured as a question of Jurisdictional claim for the Government of the N.W.T., it has also been the object of political challenges within the Territories. Indeed, the last twenty years of policy development, management practice, and political debate reveals an entirely different dimension of devolution. Here it is understood not in terms of jurisdictional transfer, but as an issue of local control. The thrust here is not toward constitutional aggrandizement of existing government authorities but toward bringing control over wildlife decision-making and implementation closer to the people. One version of this might be seen in the GNWT's internal "evolution" initiative of the 1970's. In an effort to de-centralize the delivery of programs wherever

possible, while also involving northern residents in the decision-making process, new advisory mechanisms and administrative arrangements were fashioned. While this second connotation is not commonly invoked in the northern political discourse of the late 1950's, it enjoyed wide currency a decade earlier.

Another intriguing instance of devolution in this second sense involves "co-operative" or "joint" management regimes for wildlife. Several versions of these structures have appeared, ranging from the germinal to the mature. Their overriding thrust is to bring together scientific, administrative, and harvester interests, in a common cause. They can be understood as a product of the encounter between native hunter-trappers and state-sponsored conservation programs. The general principle of co-operative management has won wide acceptance in a very short period of time. The N.W.T. Game Management Service has played a pioneering role in this movement, leading the continent in devising management systems for polar bear, and caribou. Today the principle is being invoked in a wide variety of settings, including the management of wildlife in crown-owned parks and the wildlife regimes established by aboriginal claims settlements. It finds additional support in fields where federal agencies retain statutory authority for such species as migratory birds (Canadian Wildlife Service), and fish and marine mammals (Department of Fisheries and Oceans). The co-operative management concept has also found acceptance as part of the current international reappraisal of conservation and development planning. In Canada, this has spawned several efforts by national and territorial jurisdictions to devise "conservation strategies" as a basis for co-ordinated action.

The aboriginal claims arena provides yet another opportunity for addressing the process of local empowerment. At every claims table, negotiations over wildlife have assumed central importance. Whether by defining harvesting rights or guaranteed claimant participation in public decision-making bodies, the settlement packages transform the basis of wildlife management in profound ways.

In sum, the sustained analysis of the wildlife field will throw the devolution phenomenon into sharp relief. It allows the comparison of wildlife management programs which are already devolved (in the Jurisdictional sense) with those programs which are not. In the case of devolved activities, it highlights not only the strengths but also the limitations of Territorial power. At the same time we can consider fundamental political claims for direct popular control of wildlife management. It seems clear that political processes beyond jurisdictional transfer affect the distribution of authority and the capacity to effectively manage the resource. These too must be considered.

To this end, our discussion will proceed as follows. The first section will examine wildlife as a policy area, identifying its legal, political and administrative foundations. The next section will examine terrestrial wildlife management by the Government of the N.W.T. Since Jurisdictional "evolution implies a further build-up of this authority, its record to date is of considerable relevance. The discussion then turns to the claims question. It will survey the key provisions affecting wildlife in the agreements completed or presently under discussion. The fourth major section will address the inland fisheries field, which is presently a candidate for jurisdictional devolution. A final section will explore the overall findings and offer some conclusions on the questions posed above.

"Wildlife" as a Policy Area

The term wildlife naturally includes all the members of our native Canadian fauna...Strictly speaking, it would include the game, non-game, and fur-bearing mammals, the game and non-game birds, the fishes and other members of our fauna.¹

The impressive scope of this definition is accepted in principle by virtually all who study or harvest wild species. Yet the self-evident unity of the subject has almost never been sustained conceptually, or practically, in Canadian public policy. Even in the volume cited above, Hewitt went on to limit his discussion, for purposes of the book, to large game mammals and birds. He thereby excluded fur-bearers, fish, and marine mammals. Half a century of subsequent wildlife policy has if anything accentuated this tendency, to the point where today, a unified system of wildlife management seems an entirely remote prospect for any part of Canada.

In contrast to the segmentation which prevails in science and administration stands the unity of perspective associated with the subsistence oriented hunter-trapper-fisherman. For such harvesters, the widest possible range of species knowledge is required. This extends to faunal habitats and behaviours, and techniques of harvesting. To be sure, differences of seasonal round mean variations in staple products, in combinations of harvestable species, and in compatibilities of location and season. This results in harvesters possessing differential levels of expertise across the wildlife spectrum, as some social groups rely more on fish, others on big game, and still others on marine

1 C. Gordon Hewitt, The Conservation of the Wildlife of Canada, New York: Scribners, 1921, p.2.

mammals. But the necessity of utilizing multiple species to sustain both the commercial and the domestic sides of the hunting-trapping enterprise places a premium on global expertise regarding wildlife.

This paper will suggest that the discrepancy between the special ~~ized/segmented~~ tradition, and the holistic/integrated tradition, constitutes one of the most striking and fundamental animating forces in the wildlife policy field. However before we examine concrete instances of this encounter, it is necessary to document the jurisdictional and administrative field on which it operates. This jurisdictional grid will provide us with a backdrop for the analysis of devolution politics.

1) Game

The ~~British North America Act~~ effectively conferred jurisdiction over land-based wildlife to the provinces! under section 92(16) , covering "matters of a merely local or private nature in a province."² Statutes commonly applied the term "game", in order to emphasize land-based animals and birds. The principles of common law are fundamental to the regulatory system. It holds that wildlife cannot be owned in nature, but can be reduced to private property by capture, or possession. In so far as the crown holds the title to land in Canada, it holds certain proprietary rights, including the regulation of harvesting practices for purposes of conservation. These are not unqualified, however. For example, the harvesting rights of native peoples, to take game for their own consumption! are confirmed in treaty and in law.

In contrast to the provinces, land title in the north has continued to rest with the crown in right of Canada. However in 1875, Ottawa amended the ~~Northwest Territories Act~~ to include "game" among the titles placed under the jurisdiction of the Northwest Territories Council. This constituted a statutory delegation by the Dominion Parliament to the Territorial Council, though its jurisdiction applied only to the Provisional Districts on the prairies. Not until 1894 did Ottawa exercise its residual authority by enacting the ~~Unorganized Territories Game Preservation Act~~ for the balance of the N.W.T. Given the tenuous patterns of communication, the virtual absence of a field staff, and the blanket exemptions written into the Act, its significance

² G.V. LaForest, ~~Natural Resources and Public Property Under the Canadian Constitution~~, Toronto: University of Toronto Press, 1969, pp. 176-182.

lay more on paper than on the ground.³ In fact the first regulatory statute of consequence came into effect in 1917, when in response to the accelerating influx of white hunter-s and trappers, the Northwest Game Act was thoroughly revised. The first Northwest Game Regulations were proclaimed the following year. Since the regulations could be readily amended by order in council, they became the prime instrument for setting open and closed seasons, bag limits, licenses, territorial reservations, and conditions of trade and commerce. For the next thirty years, this constituted the regulatory framework for the harvest of terrestrial wildlife, both big game and fur-bearing.

In the Yukon Territory, the Council acquired jurisdiction over game in 1900. This statutory delegation followed the pattern established in 1875 for the "organized" N.W.T. Despite the curtailment of Yukon Council jurisdiction following the collapse of the Klondike Gold Rush, its control over game remained intact.⁴ Not until 1948 did the N.W.T. acquire the same status. At that time Ottawa amended the Northwest Territories Act to add game to the section 13 powers delegated to the N.W.T. Council. The Council passed a Game Ordinance in 1949, consolidating most of the provisions of the former federal law, while adding some new measures such as a system of trap line registration. It should be noted that Ottawa has retained one very important lever over northern game. The N.W.T. Act authorizes the Governor-in-Council to designate any species deemed in danger of extinction. In such cases, the GNWT can regulate any form of harvest in that species.

The immediate impact of the 1949 change was less dramatic than in the earlier cases. By eliminating the role of Cabinet and Parliament, the decision-making sequence was shortened. Yet by virtue of its appointed character, the Council of the day amounted to an inter-departmental committee of federal bureaucrats, with no direct representation from the north. This situation began to change in 1951, when the first three elected seats were created on Council. Though confined to the Mackenzie District until 1966, the elected representatives did expose the game legislation and bureaucracy to scrutiny by those it affected. Since the elected contingent included both trappers and fur traders during the 1950's, wildlife proved to be one of the most lively and durable subjects to come before the Council during those years.

³ Unorganized Territories Game Preservation Act, 57-58 Victoria, Chapter 31, 1894. Exempted were: Indians, other inhabitants, explorers, surveyors or travellers in need, and any person with a permit under the Act. In 1905 it was re-named the Northwest Territories Game Act.

⁴ See Robert G. McCandless, Yukon Wildlife: A Social History, Edmonton: University of Alberta Press, 1955.

A rudimentary field agency, the N.W. T. Forest and Game Management Service (GMS) had been created within the federal Department of Mines and Resources in 1946. While the Service enforced the game law in the Mackenzie Valley, the R.C.M.P. detachments assumed this function for the rest of the N.W.T. The GMS also established two resident research stations to provide scientific support to the management program. Further biologists were engaged on a contract basis. By contrast, the warden service was staffed by generalist outdoorsmen, often former trappers with extensive northern experience but no training in biological science. Consistent with a predominant policing orientation, the wardens were expected to spend most of their time on patrol.

Since the 1930's, arguments had been made for the value of biological science to wildlife policy. In 1947 Ottawa consolidated its residual role in wildlife matters into a single agency, the Dominion Wildlife Service. Increasingly it was the DBS (soon re-named the Canadian Wildlife Service - CWS) which promoted a scientific approach to wildlife research and management. It took over existing field research in the N.W.T., provided technical advice to the federal co-ordinating committee on wildlife legislation, and administered Canada's international treaty obligations for migratory birds. This division of labour between territorial wildlife policing and federal wildlife research, persisted for several decades. During this time, the CWS mounted major programs to study caribou, musk-ox, foxes, bears and other northern species. Following Ottawa's decision in 1967 to transfer provincial-type functions to a Territorial Government in Yellowknife, the Game Management Service was one of the first field agencies to be moved. Over the following decade, the GMS grew substantially. Its geographical coverage was expanded to the Keewatin and Baffin regions, while it also developed a substantial research capability for conducting "management studies". Meanwhile Ottawa had begun to trim its wildlife commitments for federal crown lands. Passed in 1974, the Canada Wildlife Act directed the CWS to re-focus its research effort on a contract basis with other jurisdictions.

2) Fisheries

The fisheries situation offers a significant contrast to game. Here the British North America Act assigns the constitutional jurisdiction for "sea coast and inland fisheries" to the federal government. On this basis Ottawa has assumed regulatory authority over both the harvesting and habitat aspects of fisheries. The Fisheries Act constitutes the main

legal instrument, covering fish, marine mammals and crustaceans.⁵ Through the courts, the provinces have established a constitutional position in the fisheries field, beginning with the *Queen v. Robertson* decision in 1882. This recognized a proprietary right stemming from the provincial crown ownership of riverbeds. It conveyed the same power to regulate capture as prevailed on crown land, although it extended to freshwater only. In response to claims by certain provinces to further proprietary rights under the "property and civil rights" heading, the Judicial Committee of the Privy Council ruled in an 1898 reference case (*Attorney-General for Canada v. Attorneys-General for the Provinces*) that Ottawa held complete power to regulate the manner in which fishing was pursued. This left the provinces to legislate in the areas of fisherman licensing and leasing in non-tidal areas.

Over time, the federal government acceded to requests by Ontario and Quebec that they acquire more complete administrative control of the inland fisheries. While Ottawa continued to issue the statutory regulations under the *Fisheries Act*, it did so on a province by province basis, on the advice of provincial authorities. Similar treatment was later extended to all but the atlantic provinces, which showed no desire to acquire them.

None of this carried over to fisheries in the territorial north. Since the territorial governments lacked the constitutional basis for a proprietary claim, Ottawa's jurisdiction remained complete. The Northwest Territories was first mentioned in the *1886 Fisheries Act*, primarily by way of recognizing special rights of Indians to fish for their own use, without restriction by season or method. In 1889 Ottawa issued the first Fisheries Regulations specifically for Manitoba and the N.W.T. Over time the regulations recognized four distinct sectors: the Indian fishery, the domestic fishery (for household consumption), the sports fishery, and the commercial.

Relatively little attention was given to the arctic ocean fishery. Regulations were issued periodically, when commercial pressures posed a risk of overharvesting. This began with the *Walrus Protection Regulations* (1929), and carried over to the *Whaling Convention Act* and regulations (1954), the *Seal*

5 Section 2 of the *Act* specifies "shellfish, crustaceans, marine animals, marine plants and the eggs, spawn, spat, and juvenile stages of fish, shellfish, crustaceans and marine mammals."

Protection Regulations, and Beluga Protection Regulations (1949), and Narwhal Regulations (1971).⁶

By the 1970's federal administrators could draw on a powerful statute to address inland and marine fisheries in the north. Yet its powers were applied selectively. Since the war, Ottawa's leading concern had been the commercial fishery on **Great Slave Lake**. The Department's scientific arm, the Fisheries Research Board, conducted a **series** of studies over the post-war decades tied to this expanding inland **sector**.⁷ For the balance of the north, however, the statutory rules were not supported with either field personnel or research work. None of the basic requirements had been established to allow management of freshwater fish, ocean fish, or marine mammal stocks. The native fishery was virtually ignored, as was the non-native domestic fishery. The impulse for regulation, and to a large extent for research, depended on commercial importance, which carried as its **flip side** the danger of population **depletion**.⁸ The sports fishery was being shaped in effect from the shoreline, through Territorial tourist development programs supporting lodges and parks.

The N.W.T. Council had begun to express impatience with the federal fisheries program as early as 1969, when it adopted a motion **directing** the Commissioner to negotiate the transfer at least of inland fisheries management to **Yellowknife**. The Minister of Fisheries responded with a much more modest offer. After several year's delay, the Minister delegated the sale and administration of **sports** fish licensing to the GNWT. This followed a precedent established in **Yukon** in 1972.

Organizationally, the federal Department of Fisheries was always **thin** on the ground in the north. Indeed, the Department has in the past been described as a "two-ocean" program. A 1966 Fisheries Strategy paper aptly captures the operational priorities. After according **fifteen pages** to plans for the

⁶ For historical details on these regulations, see Brief on Inuit Rights in Relation to Fish and Marine Mammals, Submitted by the Inuit Tapirisat of Canada to the Government of Canada, September 1974.

⁷ For a **summary** of these activities, see Studies in Canada's Arctic, Fisheries Research Board, 1970.

⁸ The modest federal attention allotted to freshwater fisheries in the 1960's focused on the prairies and Ontario. Here provincial governments exerted pressure for assistance to low income fishermen. Out of a federal-provincial conference (1964) came the proposal for a Freshwater Fish Marketing Corporation.

Atlantic coast ("the most dynamic sector") and eleven pages to the Pacific coast, the inland and arctic sector merited a bare one page. Plans for the inland area hinged on the creation of the Freshwater Fish Marketing Corporation. As for the arctic fishery, the Department begged off by observing that a joint plan would be advisable "because of the common administrative interest of the Department of Northern Development and the N.W.T. Council, and because marketing channels will be extensions of the inland marketing channels."⁹

Administratively, the N.W.T. fell under the Inland or Western Region of the Department, headquartered in Winnipeg. Given the freshwater (and prairie province) focus of this region, the northern territories (excepting Great Slave Lake) were marginal by both geography and productivity. The enforcement and management aspects of Fisheries administration were run from Winnipeg, with an area office in Hay River. Yukon formed part of the Pacific Region headquartered in Vancouver, with an area office in Whitehorse. While the federal department was extremely thin on the ground, the Fisheries Act provided that GMS and RCMP personnel could be named *ex-officio* fisheries officers.

3) Migratory Birds

As with other wildlife sectors, the jurisdictional basis of bird programs lies in the federal division of powers. The migratory bird category consists of migratory varieties of game birds (mainly waterfowl, but including cranes and pigeons), non-game birds (auks, loons, murre and the like) and insectivorous birds (perching birds). All of these fall under federal jurisdiction, while non-migratory birds fall under provincial law. As a consequence, the hunting of ducks, geese, and swans is regulated by Ottawa, while the hunting of game birds such as pheasants, grouse, and partridge are handled by the provinces.¹⁰

The key legal developments for migratory birds occurred early in this century. Alarm was being raised over the impact of commercial hunting of migratory species and of habitat loss through land reclamation. By 1918, "the Eskimo curlew, Labrador duck, passenger pigeon and great auk had become extinct; the whooping crane and wood duck were on the verge of extinction; and

⁹ Department of Fisheries, Trends in the Development of The Canadian Fisheries Background Document for Fisheries Development Planning, April, 1967, p.48.

¹⁰ For the federal regulatory framework, see the Migratory Birds Convention Act, Revised Statutes of Canada, 1985, Chapter M-7; Migratory Bird Regulations, Consolidated Regulations of Canada, 1978, Chapter 1035 with amendments.

the long-term survival of most other species of migratory game birds was in doubt.¹¹ This coincided with the mounting North American movement to enforce conservation practices. Given that two countries and multiple jurisdictions were involved, an international treaty offered a means to facilitate co-ordinated legislation covering the entire migratory range. The Migratory Birds Convention was initiated by Canada, the United States and Mexico in 1916. Following its ratification, Parliament enacted the Migratory Birds Convention Act in 1919.¹² The treaty, statute, and regulations combined to create a powerful legal basis to protect migratory species. In Canada, the courts have upheld its protective provisions against the Indian Act rights of subsistence harvest.

The Convention was a product of the same federal conservation bureaucracy which promoted the Northwest Game Act of 1917. As a result, the administrative responsibilities associated with the Convention and Act were discharged by federal officials, initially in the National Parks Branch and after 1947 in the Canadian Wildlife Service. Indeed, migratory birds constituted the leading management (as distinct from research) responsibility of the CWS.

So far as northern hunting was concerned, the Convention and the Act contained a blind spot which would later assume critical importance. Relecting the predominantly southern frame of reference, the eligible period for local open seasons on migratory game birds extended from September to mid-March. This reflected the time when the birds were in prime condition along the flyway and available to hunters.¹³ The fact that the obverse condition applied to the far north was not acknowledged. As a consequence the spring season, in which birds are accessible and perhaps even indispensable to Dene and Inuit hunters, was effectively closed. While Parliament could normally amend a statute to correct such an oversight, the overriding authority of the Convention necessitated its modification first. Over the past seventy years, this has proved impossible to achieve. While

11 Dan Gottesman, "Native Hunting and the Migratory Birds Convention Act: Historical, Political and Ideological Perspectives", Journal of Canadian Studies, 18(3) (Autumn, 1983), p.70.

12 For details on the history of the Convention and Act, see Janet Foster, Working for Wildlife, Toronto: University of Toronto Press, 1973, chap. 6,7.

13 A permanent closed season was declared for insectivorous birds, while natives could take migratory non-game birds for their own use. The Convention is printed as a Schedule to the Migratory Birds Act.

northern native people continue to rely on the spring hunt as a source of fresh food during a transitional season, they do so illegally. This discrepancy is generally recognized by management agencies, but they remain heavily compromised, whether they enforce regulations of questionable legitimacy or turn a blind eye to the wholesale violations of the law. It is significant that the need for a legal and managed spring hunt has been raised at each comprehensive claims table, with Ottawa promising its "best efforts" to bring this about as soon as possible.

The most promising remedial effort occurred in the late 1970's. Canada and the United States initialed a protocol to amend the Convention, by recognizing the existence of aboriginal harvests in the spring season, and bringing them under regulation. Despite executive support in both states, the draft protocol failed to gain ratification in the American Congress, where a coalition of hunter lobbies perceived the aboriginal harvest to be a danger to sustainable populations.

Ironically, certain migratory bird species experienced severe population crashes during the 1970's, attributed largely to loss of critical habitats along the flyways. This has prompted a major new initiative in co-operative management under the auspices of the North American Waterfowl Management Plan. Developed at the technical level and endorsed at executive levels, it brings together national, provincial/state, and non-governmental agencies in joint efforts at habitat renewal. The basic framework of action is the "Joint venture", a working plan under which the co-operating parties undertake discrete but related projects. The first ventures, focusing in western and eastern Canada, are now entering their third year while new ventures on the Pacific coast and in the western arctic have reached the planning stages. Significantly, the "print-iplas" of the plan assert the desirability of "managed subsistence harvests", and the co-operative involvement of subsistence users in this effort.¹⁴ This may serve to open the way to future legal changes.

We have now briefly surveyed the basis of both devolved and non-devolved wildlife programs in the north. However, it is one thing to claim a jurisdiction and quite another to exercise it. The discussion now turns to a detailed examination of the performance of one devolved jurisdiction.

DEVOLUTION IN THEORY AND PRACTICE

¹⁴ Environment Canada, North American Waterfowl Management Plan, Ottawa, 1986, p.2, 16.

We have seen that the field of **wildlife** management is particularly **complex**, embracing several **jurisdictions** and a plethora of **agencies** and **programs**. It is also evident that the **wildlife** field at large can **never** be **transferred** wholesale to territorial authorities in the north. **In this sense, the** classic form of **devolution** will at best extend partially to the northern **territories**. **Nevertheless,** the past significance and **future prospects** of **wildlife devolution** should not be underestimated. It is extremely important to consider what the **devolved** arrangements to date can reveal about the **performance** of a resident administration operating under Territorial statutes and accountable to a Legislative Assembly of elected **residents**.

In this section, we will examine some **prominent** initiatives by the **N.W. T. Wildlife Service** in the modern period. It is without doubt the leading agency in the **field**, measured by **size**, **scope**, or **magnitude** of initiative. **Moreover** it was one of the first **agencies to be transferred** to the **GNWT** in 1967. Based on two decades of experience, the **Wildlife Service** offers an invaluable **case study** of a jurisdictionally devolved administration. It also offers a **baseline** reference against which non-devolved **wildlife** programs (such as **ocean fisheries**, **sea mammals** and **migratory birds**) can be **compared**. Equally, it provides a standard of comparison for assessing **alternative** styles of **political devolution** which are part of northern politics today.

Over the past twenty years, the **Wildlife Service** has become one of the most politicized agencies within the **GNWT**. Its operations have been subject to intensive legislative scrutiny and sustained political criticism. There have also been times when it enjoyed the confidence and support of the **Assembly**, which has translated into expanded fiscal **appropriations**, and a general priority in policy and legislative **terms**. The **Service** has been closely observed by the aboriginal organizations in the north, which have questioned, by times, its **technical** competence, statutory basis, and popular legitimacy, in many issue **areas**. All of this suggests that in its administratively devolved form, the **Wildlife Service** has figured prominently, and vitally, in the contemporary political scene. The question must be posed how far jurisdictional **factors** have shaped this situation, and to what end? More specifically, how have factors such as spatial proximity, legislative **oversight**, and political **exposure**, shaped the policy initiatives within the **wildlife field**?

Developments After 1967

As one of the few agencies already headquartered in the north, the Game Management Service simply moved its office from Fort Smith to Yellowknife in 1968. It joined the **GNWT** as one branch of the newly formed Department of Industry and Development. The match was more than a little incongruous. The

Department's overriding mandate was the support of small commercial business enterprise, stressing the provision of finance, counseling, and market promotion. This encompassed arts and craft, forest and fishery projects, and assorted small ventures which previously had been the concern of Northern Affairs's Industrial Division. The tourism sector drew special recognition as a growth area.¹⁵ To the extent that the Wildlife Service supported commercial production, through its embryonic programs for trapper loans, fish and bush camp ventures, and fur marketing, it shared in this thrust. Indeed the Commissioner's Annual Reports in these years gave special mention to the "development" programs provided by the GMS. Further evidence of a business approach to wildlife is seen in the fact that the GNWT Fisheries unit was part not of the Game Service, but of the Industrial Development Branch. This commercial appreciation of game did not go unchallenged. Arraigned against it were the traditional principles of wildlife conservation, which took for granted the need to curb commercial harvesting. This formed the historical basis of northern game protection, going back to the early measures covering musk-ox, caribou, and migratory birds. While some tension between commerce and conservation was inevitable, past policy had always accorded primacy to the latter. Though it may not have been immediately evident, this fragile compromise of opposing tendencies was jolted by the reorganization of 1967. A potent contradiction was embedded in the wildlife program.

The term "game management" was arguably a misnomer in these years. The Game Ordinance was a restrictive statute, and given the fact that its major provisions were twenty years old, due for a major revision. The field staff, on which depended enforcement, covered the Mackenzie District only, while the balance of the Arctic fell to the R.C.M.P. The research function in wildlife lay not with Yellowknife, but with the Canadian Wildlife Service, which, despite sizeable contributions to northern biology, was constrained by the competing claims of its national mandate. Thus there was neither an integrated capacity to take informed decisions or to enforce them. All of these matters would draw extended attention in the years to follow.

In spite of its limitations and contradictions? the Wildlife Service did not seem inappropriate in the newly established administration. In fact, at a time when the overriding imperative in Yellowknife was to become operational, the Service seemed better equipped than most. It had been in the field since the 1940's, and had worked with the N.W.T. Council for several decades. This deprived the Service of one of the common

15 For details on the organization of the Department of Industry and Development, see Annual Reports, by the Commissioner of the N.W.T., beginning in 1968.

rationalities of an infant bureaucracy. **Indeed**, its very experience might have yielded a more acute appreciation of the **changing socio-political** context of game policy. **For example** a surprising deficiency, in light of its continuing importance to much of the population, was the neglect of game as a subsistence (as opposed to a commercial) product in the native household.

Without question, 1974 stands as a watershed year in the development of the GMS. The most dramatic and revealing incident arose in September, with a **controversy** which struck at the very heart of the program. It began with public allegations of irregularities in big game licensing and sports hunt financing.¹⁶ Not only did this draw sensational attention to the practices of the Service, and endanger its political legitimacy in the process. It also precipitated **an extensive review of the game programs.**

At issue were **charges** that the Superintendent of Game had taken game himself in violation of the law, misrepresented public funds, and **exercised** powers contrary to the **Ordinances**. Significantly, these disclosures originated from the headquarters staff of the Service in Yellowknife, apparently a product of **accumulated** frustrations with certain sports hunt initiatives promoted by the Superintendent. Most of the alleged cases involved support for trophy hunts by visiting notables (European businessmen and politicians), through the expenditure of Service funds and the use of licensing authority. There were also charges of illegal hunting by the Superintendent, **and** the manipulation of scientific and complimentary licenses after the fact to cover illegal kills.

These issues were referred to the Assistant Commissioner for investigation. After interviewing most of the headquarters staff, and examining some eleven hunts between 1971 and 1974, he reported no illegal acts, but found the Superintendent to have displayed "a marked lack of judgment."¹⁷ Looking beyond the specific incidents, the report contended that "the present game management policies and practices have failed to keep in pace with current thinking". It further reported "an appalling lack of staff morale." The recommendations, accepted in full by the Commissioner, called for an Executive Review of the "supervision, philosophy, structure and organization of the Game Management Division". Continuing, he proposed the creation of a council on game to advise the Commissioner on conservation and hunting questions. Its members were to be drawn from politically

¹⁶ News of the North, 18 September 1974, p.1.

¹⁷ The complete text of Assistant Commissioner Sid Hancock's report to the Commissioner appears in the News of the North, 25 September 1974, pp.3-4.

interested organizations **representing** native peoples, tourist operators, **and** big-game hunters.

The impact on game policy was immediate. The proposed **review of the Game Ordinance** was postponed indefinitely. In **fact**, the scheduled Fall Session of the Council was **cancel led** on the grounds of insufficient legislative **business**. The Game Superintendent was **re-assigned** elsewhere in the GNWT, and the groundwork was laid "for the Game Advisory Council (GAC) to be activated. Administrative committees **were** struck to consider the organizational and personnel questions raised by the **report**.¹⁸

The issues revealed by this episode pointed to **some basic** policy choices facing the **GMS**. The priorities implied by placing conservation first, **were** at odds with those associated with expanded commercial harvesting, whether by **sports or professional** hunters, residents or non-residents. This **conflict** was **deeply rooted** within the Service. According to the review, this issue separated the biologists not only from the Superintendent! but **also** from the field **staff, who were** responsible **+or** the harvesting programs. The **fact** that the **wildlife** scientists mounted a challenge to a Superintendent of **European** "game guardian" background, suggests that this conflict may **have been** reinforced by competing professional outlooks.

Additional points raised **by** the **report** showed that the tensions extended beyond the **GMS** alone. It happened that some of the hunts in question **were** initiated **when** the Commissioner **referred prospective trophy hunters to the Superintendent of Game,** with a request that he facilitate their expeditions. It was argued that this higher Executive intervention **left** the Superintendent little choice, and in any event, such ventures remained consistent with "the **established philosophy** by the Territorial administration that the promotion of sports hunting within the confines of the regulations is a desirable thing."¹⁹ Indeed the intervention of senior executives could only enhance the priority of the trophy hunt program. To the **staff biologists,** this may **well** have signified that **a select, well** -connected, non-resident minority commanded **staff support, scarce funds, and even** **legalsleightofhand,at** the expense of wildlife protection, and the resident community. **Atthesametime,** it could have suggested that the **battle** needed to be waged on a wider field, including the Executive offices and the Council.

This controversy **clearly** anticipated many of the basic political conflicts which would animate wildlife policy for the next decade. However, one fundamental debate remained latent for

13 News of the North, 2 October 1974.

19 News of the North, 25 September 1974, p.3.

the time being. This concerned the distribution of wildlife rights and products among resident interests in the north: native and non-native; General Hunting License and Sports License holders; subsistence and recreational harvesters. By scale, resident hunters impinged more heavily on the game stock than non-residents, and the growth of harvester assistance programs to support native peoples' return to the land, could only intensify it. These cleavages would underlie some key issues in the late 1970's, such as the revision to the Game Ordinance, the caribou protection program, and the negotiations over land claims. Among other results, it would set scientific advocates of conservation management against native peoples defending their legal and cultural claim to harvesting rights.

This general politicization of wildlife policy, and the crisis of credibility for the GMS, set in at a moment critical in other ways. The spring of 1974 saw the appointment of Mr. Justice Thomas Berger as Commissioner of the Mackenzie Valley Pipeline Inquiry. As Berger held public hearings over the next two and a half years, the wildlife service was both participant and protagonist. On another front, the summer of 1974 saw the federal Department of Indian and Northern Affairs establish its Office of Native Claims, to serve as the focal point for future comprehensive claims negotiations in the north. In the years to follow, the northern native groups undertook documentary research on land occupancy and use, and mobilized their memberships toward formulating their settlement goals. In this, wildlife would inevitable play a leading role.

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In such a complex political context, the GMS could not afford to drift. Early in 1975, a GNWT review proposed that the agency be re-located to a new Department of Native and Cultural Affairs (NCA). The Fish and Wildlife Service (FWS), as it was renamed, accounted for the bulk of the new department's personnel, and of its operational expenditures. (See Tables 1 and 2). Other branches in the department dealt with Recreation, Libraries and Museums programs, which absorbed significant capital funds. Yet there was no question that the political focus of the department would be the FWS, which was now able to regroup in a more autonomous setting. There remained, however, the larger challenge of re-establishing the internal administrative coherence and political legitimacy of the wildlife program.

Organizing the Constituency

Of the several challenges facing the Service, some were inherently political, while others involved more the technical side of administration. It is debatable whether the Service's

political credibility was in any worse repair than its program capacity. Politics here involved the state of the relationships between the agency and its public, both organized and unorganized. This included, in no particular order, native political organizations, the N.W.T. Council, the Berger Commission, the environmental lobby, and the hunter-trapper constituency.

In the years to follow, the Service laid particular stress on cultivating a relationship with its hunter-trapper *clientele*. This involved a positive program to organize the harvesters *qua* harvesters. For this, no existing organization would suffice. The basic approach had already been set in the early 1970's. Within each community the GMS encouraged the local organization of a Hunters and Trappers Association (HTA). These were intended to be non-governmental organizations, whose field of interest and expertise would focus on wildlife drawn broadly. Essentially, the HTA's were allowed to define their own membership by local agreement. Incorporated under the Societies Ordinance, each association would select its own leadership, which would hopefully include the most respected and active hunter-trappers. The GMS provided token financial support, initially set at \$500 per year per association.

The pattern of growth for HTA's was of necessity uneven. By 1973 the Service reported 28 functioning associations, which ranged in health "from very excellent to marginal".²⁰ Nine more were added in 1974. In 1975, one FWS officer observed that "they are progressing rather rapidly, in fact much more rapidly than we had expected or had even hoped."²¹ By 1979, the total had increased to 53, of which ten were Dene Band Councils recognized as HTA equivalents. In the early years, the formal activities of these bodies were left vague. They were described in 1973 as rendering assistance, most likely in advising the wildlife officers, on all locating the harvesting programs.²² The existence of hunter forums at the local level, tied directly into the GMS, offered several advantages. To begin with, the HTA's were the only local groups (of the many supported by the GNWT) whose prime field of interest lay beyond the settlements. For the Service this meant that "we have it much easier dealing with a group of people who are genuinely interested in the management of natural

211 N.W.T. Council, Debates, 51st Session, 7th Council, 29 January 1974, p.508.

21 N.W.T. Council, 54th Session, 7th Council, Debates, 20 January 1975, p.524.

22 N.W.T. Council, Debates, 12 June 1973, p.35.

resources" .23 The potential uniqueness of the associations went beyond wildlife matters, to include the wider issues of land use and environmental protection. Thus to the extent that their objectives coincided, the HTA's offered the GMS an invaluable network of field intelligence, along with a specialized channel of political advice. This advisory function was readily acknowledged: "The GNWT recognizes these groups as official community spokesmen on all matters concerning the renewable resources of their area" .24

A critical factor in consolidating local support for the HTA's was their capacity to provide discrete benefits to their members. From an early date, the GMS planned to delegate them the delivery role + or harvester assistance programs. By 1977 an initial package, consisting of trapper assistance loans and funds for community hunts and outpost camps, was well along. This dovetailed with a government-wide initiative announced by the Commissioner in 1976, to devolve and de-centralize as many programs as practicable to the local level. The HTA network was being transformed into an advisory network to an administrative one. The eventual logic was "to increase administrative operating grants to these associations to allow them to ultimately hire secretary/managers to handle their business."25 It is arguable whether this has yet occurred. By 1979 the annual grant to HTA's in good standing had grown to \$2000, which was expected to cover both administrative costs and the costs of travel for local delegates to regional conferences. Funds were not yet sufficient to hire even a part-time manager. Indeed, one evaluation acknowledged that "HTA's have been consistently underfunded since their inception, thus they have not been able to function effectively."26 More recently, the annual grant has been converted to a formula, by which the base funding is supplemented according to the size of local membership (number of GHL licensees, and number of trapper selling fur).27 One option enables a bloc grant for the three assistance programs to be dispensed to the HTA, which then determines the dispersement locally. They are also encouraged to seek support for locally chosen "projects", financed from a variety of federal and

23 Ibid., 40.

24 Commissioner of the N.W.T., Annual Report, 1974, p.50.

25 Commissioner of the N.W.T., Annual Report, 1977, p.67.

26 E. Bowden, "Devolution Plan for Wildlife Service Programs", 28 April 1981.

27 Department of Renewable Resources, Hunters and Trapper Association- Secretary-Manager's Manual. Yellowknife, 1986. The maximum level of administrative funding would be \$20,000.

territorial government programs. For example, one of the early projects adopted by some HTA's in the Baffin and Fort Smith regions involved marketing country foods.

The HTA's have also "assumed roles in certain public decision-making processes. Following the revision of the Wildlife Ordinance in 1979, it was possible for the Commissioner to delegate to any consenting local association a wide range of powers under the Ordinance. The federal Department of Fisheries took advantage of the HTA network to consult on the setting of marine mammal regulations in the arctic. In another field, the HTA's acquired a place in the land use planning system, when they were given the opportunity to comment on applications which affected their areas of operation.

The role of an organized clientele was not confined to the local level. In the early 1970's, the GMS began supporting regular regional conferences to which all HTA's were entitled to send delegates. By 1973, conferences were being held in the Keewatin and Baffin regions, "for the interchange of ideas and formulation of new plans among the Associations."²⁸ Eventually, annual conferences were adopted in all five regions, with funding for delegate travel budgeted in the basic HTA grants.

In 1979 the FWS took this logic one step further, by supporting the formation of a N.W.T. Hunters and Trapper's Federation. This was intended to serve as an umbrella group for the HTA's in dealing with governments not only in the north but also south of 60. This idea, which emerged at a regional HTA meeting at Igloolik, was aimed primarily at external issues such as humane trapping and fur marketing, in which northern harvesters had a critical stake, but no organized voice.²⁹ There was also some thought that it might evolve into a replacement to the GAC, whose role became uncertain after the new Ordinance was enacted. The federation experiment failed to catch on and the initiative was subsequently abandoned. A second attempt was made several years later, in the face of collapsing fur markets and potent anti-trapping campaigns in Europe.

The question of who could or should speak on behalf of wildlife harvesters, was never self-evident. The GNWT strongly endorsed the HTA structure because it encompassed, in principle, virtually all active harvesters regardless of race or intensity of effort. To this end it promoted the three tiered structure of involvement. While the official support of the Government was

²⁸ Commissioner of the Northwest Territories! Annual Report, 1973.

²⁹ N.W.T. Legislative Assembly, Debates, 6 February 1979, p.602.

unequivocal, the priority of the HTA's was not universally accepted. Within the Territorial civil service, for example, the Department of Local Government harboured misgivings about the growth of funded bodies parallel but outside of the Municipal Ordinance. The charge was frequently levelled that the small northern communities were "over-organized" by special purpose bodies for education, housing, social services, health and wildlife, over and above the local government program.

The GNWT was ambivalent on the question of regional wildlife organizations. They drew support from the Inuit claims groups, which saw the three regional organizations playing a role in the "pre-implementation" of a wildlife settlement. The concept was also consistent with the GNWT's regional council experiment for municipal governments, which began with the Baffin Regional Council in the late 1970's. By 1980 the Baffin Regional Hunters and Trapper Association, and the Keewatin Wildlife Federation, had been formed. The Kitikmeot Wildlife Federation followed in 1982. Despite requests for ongoing financial support, the FWS did not provide formula funding to the regional groups in the same way it supported local HTA's. It was willing to allocate any end-of-year surpluses in its regional budgets, but such ad hoc aid was unpredictable, and scarcely met the expectations of the groups. One concrete form of recognition and finance came from the harvest statistic research projects which were contracted to the regional wildlife groups in the early 1980's.³⁰ Lacking a priority commitment from the GNWT, the regional groups still await the settlement of claims before they can assume a stronger policy position.

The HTA program came under challenge from another direction, as the native political organizations contemplated the role of wildlife in their claims settlements. There was a potential rivalry for representative status between the HTA's at various organized levels, and the Dene, Metis and Inuit organizations. The Dene Band Councils in the Mackenzie District enjoyed a strong basis in law. In the first instance, this led many elected Band Councils to challenge the municipal government programs of the GNWT. This was most forceful in the Dene communities along the Mackenzie Valley. Faced with the prospect of separate community bodies staking control over wildlife and land issues, most Band Councils preferred to claim this role for themselves. By 1981 the FWS recognized ten Band Councils in this capacity, although they did not qualify immediately for administrative funding.

³⁰ For details see Peter J. Usher et al., An Evaluation of Native Harvest Survey Methodologies in Northern Canada, Environmental Studies Revolving Fund, Report 004, Ottawa, 1985.

For the FWS, the cultivation of an organized clientele served important strategic objectives. It provided a network for the delivery of field programs, and for the potential delegation of local regulatory matters. It also provided a precedent which was adopted by the aboriginal claimant organizations in negotiating the wildlife institutions in their settlements. If it did not automatically bolster the agency's political legitimacy, it certainly helped lay the groundwork for future gains. The revision of the Game Ordinance offers a timely case in point.

Modernizing the Ordinance

Between 1975 and 1979, one of the most urgent matters to come before the N.W.T. Council was the proposed revision of the Game Ordinance. That the legislative process occupied the 8th Council from its first to its penultimate session is a testament both to the political complexity of the issue, and the political chemistry of that elected body. There is no question that, by the mid-1970's, rights in wildlife had become charter concerns for native peoples. Alarm was triggered automatically by any legislative or regulatory amendment which threatened to encroach on those rights. Given that nine of the fifteen members of this first fully elected Council were themselves native people, such concerns were bound to be articulated in the legislature. These politicians were part of an intensely rivalrous triangle of influence. Although this Council pioneered the practice of elected members on the Executive, the legislative program was still largely shaped by the Commissioner and the civil service. Splits within the Council could fracture its coherence even further, as white and native members showed themselves sensitive to separate constituencies and traditions.

Throughout the 1970's the Ordinance remained the central legal instrument of wildlife policy. As such, any amendments took on a symbolic as well as a substantive importance. The prospect of its wholesale revision, for the first time since 1960, heightened the stakes considerably. Furthermore, the process revealed much about the competing agendas of the many interests which made up the policy community for northern wildlife. Political organizations such as the Dene Nation, COPE, and the Inuit Tapirisat, which viewed the wildlife field as integral to their land claims settlements, understandably resisted any legal changes aimed at upgrading or modernizing the regulatory role of the state. As the central forum for legislative changes, the N.W.T. Council also revealed its contradictory representative character. Anxious to assert its prerogatives, yet sensitive to the grass roots reservations with any form of change, the Council tended to be reactive rather than directive. This seems especially revealing since the subject sat squarely within the Council's jurisdiction.

That the new Ordinance was proposed in the aftermath of the **Kwaterosky** affair, "enhanced its political **salience** to all parties. The issue became one of the first political trials of the Wildlife Service, as it struggled to **repair** its badly **damaged** prestige. Its eventual passage, with the advent of many innovative provisions suggested that a **more** sophisticated policy capacity was emerging in wildlife management.

A decision to review the Ordinance was made as early as 1972. That the revision would be wholesale was **dictated** by the antiquity of its core provisions. Most of these dated from 1949, although a consolidation had been done in 1960. The terms of the existing statute were unusually elaborate, necessitating a formal legislative amendment for each proposed change, no matter how minor. A more flexible set of statutory regulations was planned to cover, among other matters, the details of seasons, **bags** and zoning. In other respects the Ordinance had to confront entirely new problems, such as the environmental impact of **industrial mega-projects**. To this end, provisions were needed to **manage special impact zones**, and to **control hunting by non-resident project personnel**.

It was originally thought that a **draft** Ordinance would be brought before the Council in the Fall of 1974. Already the Wildlife Service had consulted informally with the HTA's. However both the Indian Brotherhood and the **Inuit Tapirisat** refused to participate in any discussion about an Ordinance which, they argued, did not apply to native peoples. Despite this, the Superintendent of Game reported "good input from native peoples in the **settlements**."³¹ In the event, the **GMS** controversy necessitated that the matter lay over for a time.

When the new Council met in May 1975, the overriding political importance of this issue was clear. It was equally apparent that an early debate was ill-advised. In addition to the already tense atmosphere surrounding wildlife, note must be taken of the government's experience with a proposed Education Ordinance. It had been roundly **condemned** by native organizations and Councilors for the lack of advance consultation on so important a matter. To ensure a systematic round of consultations, the **GMS** hired Mr. Frank Bailey, a retired northern **wildlife officer** and former regional superintendent of wildlife. His task was to solicit community views on the existing statute and any suggestions **for change**, reporting back on the main themes and variations which arose in the course of the meetings.

In both its scope and its informed status, Bailey's consultation provided an indispensable input for the revision.

31 N.W.T. Council. **Debates**, 29 January 1974, p.513.

Yet at the outset, the magnitude of the task was far from apparent. A process which was originally expected to take three months ended up requiring seventeen. In its course, Bailey visited virtually every settlement in the N.W.T. In length, the meetings ranged from a single evening to several days duration. Each session was taped, and interpreters were constantly on hand. The degree of community response varied depending on time of year, the presence of hunters in the settlements, and the broader political climate. In some communities the native peoples' involvement was diminished by the Indian Brotherhood's position that no changes should be made prior to claims settlement. Early calls by the Metis Association for a boycott were later withdrawn. Often a good part of the agenda was devoted to outlining the terms of the existing law. In other communities people attended in large numbers but offered few proposals for change. Many times the prime community concerns were with issues lying beyond the scope of the Ordinance.³²

Bailey's report anticipated most of the major issues which later figured in the review. He pointed to the very low level of knowledge of the existing Ordinance, the overriding opposition to any curtailment of native harvesting rights, the call for more natives in the wildlife administration, and the difficulty of drafting adequate general rules for so varied a jurisdiction as the N.W.T.³³

Far from exhausting the consultative process, Bailey's initiative was merely the first phase of three. The Commissioner's Game Advisory Council claimed a necessary role, bringing to bear the views of organized interests in wildlife. It began by receiving Bailey's final report, and went on to consider draft versions of the new ordinance and regulations as they emerged in 1977. A third phase followed from the Government's decision to circulate the drafts for public discussion before they received formal legislative consideration.³⁴ During the summer, the local game officers met with HTA's to explain the proposals. Not surprisingly, this multi-track procedure began to sow confusion. The advance version consisted not of the legal draft, but a "simple english version" and native language translations. In mid-process the regulations were released also, and since successive drafts (nine in all) were under study in Yellowknife, consistency was further clouded as different drafts found their way into circulation.

³² Frank Bailey, Personal Interview. 16 December 1983.

³³ Frank S. Bailey, Consultations on the Proposed Wildlife Ordinance, November 27, 1976; and Further Report, February 23, 1977

³⁴ N.W.T. Council, Debates, 24 January 1977, p.55.

Convening in the fall, the Council displayed a caution verging on reluctance in coming to grips with the legislation. It chose to discuss the bill only in its general terms, while sitting in Committee of the Whole. The understanding was that formal scrutiny would be postponed until 1978, to allow more time for constituent feedback.

The terms of the proposed statute indicated some new directions in management thinking which were taking hold in the FWS. Substantively, there were new provisions dealing with eligibility, permissible hunting practices, commercial ventures based on wildlife, and the use of zoning as a conservation measure. According to the FWS, they shared a common logic. The entire Ordinance "was based on the premise that the native people of the Northwest Territories have the first claim on the use of fish and wildlife resources."³⁵

Another striking feature opened the way for local input to the-regulatory process. The HTA's were encouraged to get involved across a broad front. For example, they acquired a role in the GHJ licensing procedure, enjoying the right to screen and recommend new applicants for the most important harvesting rights in the N.W.T. At the same time, the waiting period in qualifying for a resident hunting license was lengthened to two years. It was in this sense that the Ordinance was described as positive discrimination in support of native hunters.³⁶ HTA's could also secure group trapping licenses, and allocate the territories amongst their members. The entire zoning system, used for setting open seasons and harvest quotas was redesigned in a more flexible fashion, which enabled the HTA's to advise on the detailed terms for their local areas. As far as commercial ventures were concerned, not only did the Ordinance liberalize the terms for marketing country products. It also offered new opportunities for HTA's and other GHJ holders to engage in outfitting ventures. Finally, the Ordinance created the new position of "wildlife guardian", by which knowledgeable local persons could act as advisors to the field staff, without getting involved in the enforcement side of patrolling. All points considered, it was no doubt correct that "under this new Ordinance there is more power wielded by the HTA's and Band

³⁵ Fish and Wildlife Service, "A Review of the Proposed Wildlife Ordinance", Department of Natural and Cultural Affairs, April 1977, p.6.

³⁶ N.W.T. Council, Debates, 66th Session, October 1978, p.58.

Councils, quite a lot more power, than in the current Ordinance." 37

As in the past, the clauses on permissible hunting practices were perhaps the most controversial in the entire bill. Particularly unpopular among hunters was the "twelve hour wait rule" before big game hunting could occur and standing at a remote location in an aircraft. Throughout the legislative debate, members directed criticism at selected clauses, but no broad coalition threatened to reject the total package. After minor amendments, the new Wildlife Ordinance was approved by a vote of 9-4, and was enacted early the following year.

Ultimately, this protracted process of legislative revision yielded impressive results for the FWS. As an experiment in public education, it was an unprecedented success. Not only were the communities offered repeated opportunities for input, but the overall level of awareness of the Ordinance, old version and new, leaped a quantum. No doubt this process was burdened with too many consultative channels, though on this issue, all parties preferred to err on the long side rather than the short. Furthermore, it set an innovative precedent for the handling of such "value" policy issues in the future. In the cases of the subsequent Education and Local Government policies, discussion papers and draft legislation were similarly previewed. More substantively, the Wildlife Ordinance gave legal sanction to a more flexible, community sensitive regulatory regime. This, it turned out, was only one coordinate of the new management strategy, which became further evident when the GNWT launched its own "evolution" initiative after 1976.

Devolution and De-Centralization

Repeatedly over the past decade, the GNWT has announced initiatives aimed at internal de-centralization and devolution of program control toward the communities. This needs to be distinguished sharply from the issue of provincial style devolution from Ottawa to Yellowknife or Whitehorse. The latter has, of course, figured prominently in Territorial Government priorities since the late 1960's. By contrast, the de-centralization and devolution initiative addressed the question of increasing local and regional input to existing territorial programs. In part this acknowledged that the expanding civil service tilted excessively toward the headquarters establishment, with a corresponding weakness in the regional and field structure. In another sense it constituted the GNWT's leading

37 Norm Simmons, Superintendent of Wildlife, Debates, N.W.T. Council, 63rd Session, 8th Council, 21 October 1977, p.241.

political initiative to win legitimacy for itself in the "turbulent climate of the late 1970's.

Several distinct options were bound together here. De-centralization entailed the shift of administrative control from Yellowknife to regional or even local community offices of the GNWT. Decisions formerly made at headquarters or the regions could be made closer to the point of delivery. This implied a significant re-allocation of personnel, job tasks, and authority levels, but was confined to the civil service. By contrast, devolution suggested that control over the actual formulation and design of policies could move closer to the ground. This went beyond the bureaucracy, and raised the prospect of expanded power at the community level.

By the manner of its unfolding, this initiative left unresolved the proportions of de-centralization and devolution which would be pursued, or the balance between them. Commissioner Hodgson outlined a general proposal to Council in January 1976. This dealt principally with the transfer of territorial programs in the social work, game, economic development, recreation and other areas, to the local government authorities. It also held out the prospect of local school boards and community development corporations, which implied direct community control. The Commissioner left no doubt as to the scale of initiative? describing it as an unprecedented "wide-sweeping [sic] transfer of authority and responsibility to a lower level of government".³⁸ To this end, a Committee on Devolution was struck within the GNWT, with the task of consulting with local communities, reporting the results, and implementing the necessary measures to facilitate transfers. This group consisted of eight senior administrators from the regions and the Executive. Its work would be demand-driven, according to the responses of communities. It professed no prior agenda, and dismissed the need for universal standards for "not all communities will react in the same way: the devolution process may have to allow for variations in program development and control between regions and between communities".³⁹ During 1977, the Committee met with 24 community governments.

This premise of variability sensibly acknowledged that the priorities, inclinations and capacities of communities varied enormously. To have any chance of success, the program would have to harness these differences. At the same time, it was clear that the local government offered not only the prime consultative

³⁸ N.W.T. Council, Debates, 58th Session, 8th Council, 26 January 1976, p.11.

³⁹ Sessional Paper 1-61, Devolution - A Discussion Paper, First Session, 1977, p.6.

-- channel, - but the natural **recipient**, for devolved activities. The 1977 Sessional Paper pointed out that:

The pattern of municipal responsibility that **has** become accepted in the **north is** for communities to manage their **own** physical growth, municipal **services**, and maintenance of their roads, buildings and equipment; to co-ordinate all matters affecting the **life of** the community; and to represent **the** community in many (but not all) of its dealings with external authorities and interests. If **communities** are to **take on more** functions, such as the management of social **services**, either more resources may have to be **provided** or some existing **tasks** may have to **be** withdrawn. Also, the relationship between municipal **councils**, band **councils**, native associations, hunters and trappers associations? educational advisory boards etc. could with benefit **be clarified**.⁴⁰

The Committee **was** always seen as the first phase in a **process** which would take years to develop. It **would** involve "a mixture or succession of **consultation**, confidence building, training, negotiation and continuing support by those government officials **closest** to the scene" ⁴¹

One constant denominator, which would **be** compatible with any and **all** such initiatives, was program decentralization. As was seen above, its **key** policy initiatives left the **wildlife service** well positioned **for** this phase. The degree of congruence between **FWS** priorities, and the "d & d" exercise, **is** evident in considering the Service's published program goals, formulated to guide its work for the next five years. Of the 17 points listed, **six** dealt directly with strengthening the **field administration** in areas of: enforcement practices, **training new officers**, **in-service training**, **review of field officers workload**, and job structures in the field, and increasing regional office capacities. Three **additional** objectives addressed program **delivery**, through fostering new **HTA's** and harvester organizations, transferring administration of the assistance programs **to the HTA's**, and developing the Outpost Camp program in anticipation of its similar transfer ⁴²

40 *Ibid.*, 6-7.

41 Ray Creery, "Towards Decentralized Government", Commissioner's Annual Report, 1977, p.10.

42 N.W.T. Fish and Wildlife Service, "1977 Statement of Sub-Objectives" in Goals, Objectives and Policies, Yellowknife, n.d..

Since the **devolution** initiative -stressed --insti tuti onal experimentation , and **acknow 1** edged **the** uniqueness o+ **program** needs, it found in the **FWS** one of its most willing **participants**. **At** the same time, this commitment **forced** a new **set** of considerations **to** the **fore**. **Staffing** and personnel practices offered a case in point. **Clearly** fundamental to any form of **devolution**, they have also posed **spec i** al problems in the game field. Since the early 1970's the Game Service supported its **own** modest game officer training program to **recruit** northern residents. It reported 7 trainees in 1972. The **GMS** also designed a new position of "Assistant Officer", to be **filled** by local people, most often **native**, who could serve **asliason** between the Game Officer and the community. In 1980 there were 12 such **positions**.⁴³ A more formal training program was inaugurated at **Thebacha** College in 1977, in **the** field of Natural Resource Training. By 1980, **four** members of the initial graduating class were employed in the Service. However modest these measures **taken** separately, their cumulative impact coincided with the buildup of the field service between 1968 and 1980. **At** the outset, the total field **staff** numbered 22, consisting of four Regional Superintendents, nine officers and nine patrolmen. **By** 1980, each region **was** **staffed**, in addition to the Superintendent, by a biologist position, a development **officer**, and administrative **staff**, while 28 game officers and twelve assistants were **employed** in 25 communities. **By** 1986/87, the total field **staff** had grown to some 79 authorized **positions**.⁴⁴

Not all parties accepted that **devolution** should be limited to the harvester programs. Virtually from the outset, **Members** of **the** 9th Legislative Assembly launched a frontal critique of the Wildlife program. **An** early **motion** called for the Minister to "examine the feasibility of delegating responsibility and management of wildlife to the regions and communities of the N.W.T."⁴⁵ The Assembly had already met with an ITC delegation, which **requested** that the **devolution** **process** be halted and that the Assembly **begin** the transfer of wildlife management to "the people of Nunavut". Opinions in the Assembly varied **from** those content with the existing **devolution** trajectory to those looking toward complete local control over the wildlife program. The Renewable Resources Minister, Richard Nerysoo, **encouraged** a wide-ranging discussion on the subject. He held out the prospect of:

43 Hugh J. Monahan, "Renewable Resource Management in the N.W.T. : A Proposal For Change", Practicum! Natural Resources Institute, University of Manitoba, 1980.p.137.

44 Government of the N.W.T. , **Estimates** , 1986-87.

45 N.W.T. Legislative Assembly, **Debates**, March 1980, p.1094.

changes in the way services are delivered, the process by which major decisions are made, the distribution of responsibilities between the government and the hunters and trappers organizations, and most definitely in the number of native people employed in the wildlife service .46

In this position, he both endorsed and accelerated some leading initiatives of recent years. Yet embedded in the devolution debate of the early 1980's was a fundamental difference of approach. It turned on the precise degree of decision-making power to be retained by the Department of Renewable Resources, and the period of time appropriate to its retention. Arguments could be made for a standstill for the duration of the claims negotiating process, for a management devolution to the HTA's as a provisional step compatible with future claims settlements, or for a formal demarcation of residual government responsibilities irrespective of devolution or claims. Within the FWS, there was significant support for the latter. A 1981 review expressed this succinctly:

In general, people programs can go completely or in limited manner to the HTA's/Band Councils, as they are concerned with resource utilization. However wildlife research, wildlife management processes, wildlife administration and enforcement functions must largely remain within the Service. Some parts of each function can be devolved, but without firm control, the Service would lose control of wildlife management in the N. W. T.47

Subsequent administrative developments within the Department of Renewable Resources are interesting in this light. In 1982 the Department established a new division for Field Services, which combined responsibility for the harvester assistance programs, an expanded commitment to conservation education and special attention to enforcement practices. Not only did this elevate community relations and liaison to official programme status within the Department, and underline the political priority they had assumed. The formal separation of Field Services from Wildlife Services also set the parameters for future devolution initiatives. Furthermore it preserved the scientific research and management functions as the heart of the Wildlife Program. This found symbolic confirmation in 1983, when the Wildlife Service was re-named the Wildlife Management Division. This did not put

46 N.W.T. Legislative Assembly, Debates, 3rd Session, 17th Assembly, 11 June 1980, p.15.

47 Devolution Plan for Wildlife Service Programs, Yellowknife, n.d. p.4.

to *rest* the question of community or harvester participation in the management function. Even as these arrangements were taking place, a new and extremely significant set of initiatives were developing on the subject of "joint management" or "co-management" of wildlife.

Joint Management Regimes for Wildlife

One of the most innovative policy initiatives of the late 1970's involved the joint decision-making body. Versions of this concept were advanced from many directions: the Berger Report, the aboriginal claims table, the national parks service, and the FWS. On the one hand joint management addressed the question of power sharing in claims settlements. On another, it offered a means to extend popular involvement in the wildlife regime, beyond its previous limits. This became particularly pressing as the very foundations of conservation policy came under political scrutiny, in the context of the "new" caribou crisis. Subsequent to this, joint management arrangements have won wide acceptance as institutional mechanisms for bringing wildlife users together with scientists and managers in common cause. While many different arrangements fall into this category, ranging from the pure advisory body to the delegated decision-making body, the practice seems omnipresent today in the N.W.T. It is evident in two caribou management boards, the Wildlife Management Advisory Council and the Joint Fisheries Management Committee in the Western Arctic Settlement, the Nunavut Wildlife Board, the Denendeh Conservation Board, the Great Bear Lake Fisheries Committee, and joint wildlife bodies operating in two northern National Parks. The present section will focus on the origins and evolution of the concept. The claims-related joint bodies will be discussed in greater detail in a subsequent section of this paper.

In the increasingly politicized climate of northern wildlife management, the concept of joint decision-making had an obvious relevance. It looked beyond the conflicting bids for exclusive control by government agencies and native claimants, proposing instead a collaborative form of control. Thomas Berger advised in his final report that "the government should ensure meaningful involvement of native organizations in all aspects of wildlife management in the region."⁴⁸ The battle over the meaning of "meaningful", not to mention the extent of "all aspects", was soon joined. While the original Nunavut claim proposal had been withdrawn by this point, the concept of a joint wildlife body reappeared with the Inuvialuit Game Council which formed part of the COPE claim. Submitted to Ottawa virtually simultaneously with

⁴⁸ Thomas R. Berger, Northern Frontier, Northern Homeland, Volume 1, Ottawa: Supply and Services Canada, 1978, p. 107.

Berger's report, the COPE proposal stressed "joint management regimes" for wildlife, parks, and land management.

One of the first federal agencies" to formally embrace the principle of joint management was Parks Canada. Berger's chapter on conservation lands touched directly on the parks program, which was then in the process of finalizing a major proposal on new northern parks. Its 1979 policy statement declared that "an agreement will be negotiated between Parks Canada and representatives of local native communities prior to formal establishment of [a] national park, creating a joint management regime for the planning and management of the national park".⁴⁹ By bringing the entire park management plan under joint management, this went well beyond the question of wildlife alone. In actual fact, Parks Canada spent the next several years trimming this formal statement toward a more restrictive focus on wildlife, on northern parks, and on subsistence users. After internal review, which revealed considerable misgivings about the workability of this new scheme, the agency expressed its preference for maintaining "the existing park management and operational structure with some decision-making responsibility regarding resource harvesting devolved to a committee."⁵⁰ This closely coincides with the arrangements subsequently struck in Wood Buffalo Park, covering the Fort Chipewyan Cree in northern Alberta.⁵¹ By contrast, the new Yukon North Slope Park, authorized by the Inuvialuit Final Agreement, included a Wildlife Management Advisory Council with equal native and government representation, and responsibilities equivalent to those applying in the western arctic region as a whole.

In fact, questions of institutional design and process lay at the heart of this dispute from the outset. On the one side, some wildlife managers seemed to view joint management as a stepped-up form of consultation with local HTA's. This could be done by further de-centralizing the local advisory roles already authorized by the new Wildlife Ordinance. On the other side, native claimant groups were advancing proposals for decision-making bodies, to which ministers of the crown would delegate de

⁴⁹ Parks Canada, National Parks Program, Ottawa, 1979, p.40.

⁵⁰ National Parks System Division, "Joint Management Regimes: A Proposed Management Guideline for Native Peoples' Participation in Planning and Management for Northern Parks", Parks Canada, September 1982, p.5

⁵¹ Ken East, "Joint Management of Canada's Northern National Parks", 1988, mimeo, 14pp. Two additional wildlife agreements will be required in the Wood Buffalo area: one with the Little Red River Band in Alberta and one with the Dene-Metis at the north end of the park.

facto control to the Boards. This triggered major bureaucratic resistance at precisely the point that guaranteed rights to be consulted and to advise gave way to guaranteed rights of final decision.

This deadlock might have continued throughout the claims negotiating era had it not been for the new caribou crisis. This forced the issue into tangible terms. The controversy was triggered by the results of caribou population surveys of the **Beverley** and **Kaminuriak** herds. For some time it had been assumed that the major herds were of **stable size, at close to peak** post-war numbers. Beginning in 1976 and 1977, the new results suggested that the **Kaminuriak** herd, which migrates from northern Manitoba to the central **Keewatin**, had declined by 4% per year since 1970. For the **Beverley** herd, which moves between the northern Saskatchewan forest and the eastern Mackenzie barren lands, the rate of depletion was slightly lower, but still serious. Given the continuing importance of these herds in supporting the domestic needs of native peoples across such a wide section of the northern "Canadian mainland, any decline which jeopardized the herds would be calamitous. The experience in **Alaska**, where the **Western Arctic Herd** fell precipitously in only a few years, pointed both to the danger and the need for prompt action. For the **N.W.T.**, the biologists attributed the population declines to the excess of mortality (natural and hunter kill) over recruitment.

These conclusions coincided with a campaign by **Keewatin Inuit**, against the disruption which mineral exploration activities visited on the caribou herds. This included losses on the calving grounds and interruption to migration routes. In April 1977, the Minister of Northern Affairs imposed a one Year exploration freeze on a 70,000 square kilometer area which included the calving grounds. The following year the **Baker Lake Inuit** and the **Inuit Tapirisat** launched a legal action which culminated in a Federal Court injunction on land use in critical areas. In response to these actions, Ottawa responded with a set of Caribou Protection Regulations, prohibiting exploration in calving and post-calving areas at critical times, and monitoring the herds from their arrival until their departure from the areas.⁵² According to this alternative perspective? industrial disruption posed the prime threat to population growth and herd movement.

It was in this context that native hunters received the biologists' reports on population declines. Their reactions

⁵² For a description of the measures, see Keeping Track: Caribou Protection Measures for the Beverly and the Kaminuriak Caribou Herds, Yellowknife: Department of Renewable Resources, GNWT, 1986.

ranged from cautious to cynical, particularly where the data failed to square with local experience in encountering caribou on the land. To the extent that the numbers were accepted, they could as easily be attributed to exploration crews as hunters. The caribou conferences confirmed that the analytical gulf between hunters and biologists was wide. There were undoubted merits to calving ground protection which the biologists shared in principle. Yet for them, the Baker Lake protest "overshadowed the main problem with caribou - their decline for reasons unrelated to the activities of the mineral industry."⁵³

The political complications of any management response were delicate, to say the least. Not only were the survey instruments under fire from native hunters, but the results were being challenged and the population models dismissed. Tightly restrictive regulations were legally possible in the N.W.T., but virtually unenforceable on the ground. In any case, no such measures could be applied to treaty Indians in the provincial north. Further concern was directed at the official harvest data which game agencies were collecting, since the returns from the past decade could not be reconciled with the survey estimates.

The dimensions of the crisis pointed out how far the existing management controls were failing, while the urgency of solutions opened the way for innovations. By 1981 the concept of joint management was under active consideration in the GNWT, and in Ottawa.⁵⁴ In an attempt to bridge the gulf of understanding? and to bring harvesters and managers together, the governments proposed a joint board concept to native groups. The formal agreement was signed in June of 1982. Of the thirteen members appointed to the Beverly and Kaminuriak Caribou Management Board (BKCMB), five represented the co-operating government agencies, while eight represented the harvesters of the 17 native communities accessible to the range. The user positions were allocated geographically in pairs, to the Great Slave Lake area, northern Saskatchewan, northern Manitoba, and the Keewatin. With core funds supplied by the five governments, the Board would meet 3-4 times per year, "to co-ordinate management of the Beverly and Kaminuriak herds in the interest of the traditional users and their descendants . . . to establish a process of shared responsibility for the development of management programs . . . [and] to establish communications amongst the traditional users

⁵³ N.M. Simmons, D.C. Heard and G.W. Calef, "Kaminuriak Caribou Herd: Inter-Jurisdictional Management Problems", Progress Report, No.2, Yellowknife, N.W.T. Wildlife Service, n.d., p.18.

⁵⁴ J.P. Kelsall, "Report on Co-operative Management systems", for the FWS, Department of Renewable Resources, Victoria, 1981.

and the parties hereto, and amongst the parties hereto in order to ensure co-ordinated caribou conservation and caribou habitat protection. 55 High among its concerns was the design of a management plan, an information program, and an educational program. It could "recommend" policy changes to Ministers, who were obliged to respond, and to offer reasons where advice was not accepted.

It is fair to say that the Beverly and Kaminuriak Caribou Management Board served both as precedent and advertisement. Springing to life under crisis conditions, it demonstrated the value of joint approaches for future management problems. Where the "parks" model addressed a fixed spatial area, the "caribou" model focused on a single (albeit critical) species. In either case, the principle of joint decision-making had been established, and would provide a floor for future action. Concealed within the structure of the BKCMB were some key questions of institutional design. Answers would be worked out over the next decade of wildlife programming. For example, who appoints delegate to such authorities, and to whom do the delegates answer? To whom do the authorities convey decisions, and what is then done with them. Where is the authority positioned relative to the wildlife management agency? Each new joint initiative was obliged to confront such issues. But in so doing, they confirmed that the joint body had become a fixture in the new wildlife era. Nowhere was this more clearly illustrated than at the land claims table.

ABORIGINAL CLAIMS SETTLEMENTS AND DEVOLUTION IN WILDLIFE

Whether devolution is viewed in terms of jurisdictional transfer or in terms of local self-determination, it is clear that the terms of aboriginal claims settlements will necessarily shape the process. The early claims proposals by the Dene and Inuit called for the creation of new political institutions in each of the settlement areas. While they differed in some key respects, both strategies presumed that the new institutions would supplant functions of the federal and territorial governments in the north. Some of what followed could reinforce a classical jurisdictional devolution. This occurred, for example, when in its wildlife section the Nunavut document called for the early transfer of management powers over fish and sea mammals to the Nunavut Territorial Government. This would emphatically advance the cause of integrated wildlife management, under public government in the north. At the same time, it was equally clear that the successful conclusion of such settlements would mean the

55 "Beverly-Kaminuriak Barren Ground Caribou Agreement",
3 June 1982.

end of the Territorial governments as conventionally found. This the Territorial authorities resisted, by asserting their own political development plans.

Out of this grew a triangular tension, with claimant organizations, Ottawa and the two territorial governments facing one another on a complex field laced with tensions. Ottawa faced two expansionist adversaries, although it continued to hold the key constitutional powers of initiative. During the 1970's, the Yellowknife government embraced political devolution as a road to provincial status. The 7th Council established a Committee on Provincial Style Responsibilities, which developed a timetable for a host of transfers. This set the GNWT on a collision course with the claimant groups, which aspired to supersede the territorial authorities. The 8th Council acknowledged this contradiction by supporting the prompt conclusion of outstanding claims, whereupon the more pressing task of province-building could proceed. Frustrated at being marginalized in the prime policy forums shaping pipeline and claims issues, the Council held up motions of supply for several months in 1977, demanding the appointment of a Carrothers style of inquiry into political development.

Ottawa responded with the Drury Inquiry, and a definitive policy statement dividing claims resolution and constitutional development onto separate tracks. Initially, it appeared as if two hi-polar relationships would evolve, with Ottawa as the common link. However the election of the 9th Legislative Assembly, in which native organizations for the first time attained organic representation, ensured that both the claims table and the northern constitutional forums would be politically linked.

The GNWT's role in the claims process remained ill-defined for most of the 1970's. Despite the fact that key territorial jurisdictions such as local government and wildlife were necessarily on the table, Ottawa rejected Yellowknife's claim for equivalent standing. Instead the federal government offered a place within the federal team. In the initial stages, the native groups viewed a Territorial presence as a retrogressive factor. Slowly this began to change, starting with the key role played by the GNWT in the Working Group on Wildlife, which revived the stalled COPE talks late in 1977. The following year, Ottawa and Yellowknife signed a formal Memorandum of Understanding, clarifying the GNWT's role at future claims tables. Then in 1979, the 9th Legislative Assembly lost no time replacing its predecessor's claims policy with a more supportive statement. Thereafter it was increasingly common for the GNWT to support claimant proposals at the table.

Regardless of whether a final settlement has yet been reached, there is no doubt that the negotiation of aboriginal

claims has transformed the terms of government in the north. At stake are innovative economic and political institutions with a powerful legal foundation. Nowhere is this more evident than in the field of wildlife management.

Aboriginal Rights in Wildlife:

In so many respects, their hunting, trapping and fishing activities shaped native peoples approach to claims. What Ottawa termed a "traditional interest in land", and the aboriginal organizations described as "aboriginal title" amounted ultimately to a dispute over the same thing: the land rights of a culture whose material basis lay in wildlife harvesting. In the years before 1973, when the native groups were still struggling to win formal recognition of their position, their legal strategy aimed to demonstrate that certain rights arising from occupancy had never been extinguished. Once Ottawa acknowledged the principle of outstanding ("comprehensive") native claims, a condition for entering negotiation was that the claimants document their land use and occupancy. Thus it was hardly surprising that the predominant land based activities - hunting, trapping and fishing - would be fundamental to all of the northern claims. Indeed they served to distinguish the latter from the narrower "specific" claims arising out of unfulfilled treaty provisions.

Ottawa's 1973 policy statement announced its goal to extinguish outstanding claims by exchanging these ill-defined rights for concrete compensation and benefits. A set of continuing rights to harvest wildlife were always seen as one of the negotiable elements. Perhaps it could not be otherwise, in light of the statute and case law which recognized the rights of Indians to take wildlife for subsistence use at any time. Moreover, versions of special harvesting rights were already being enshrined in the Alaska Native Claims Settlement of 1970, and in the James Bay and Northern Quebec Agreement, which was in the advanced stages of negotiation by 1975.

Native harvesting rights, defined in settlement documents based in federal law, would take precedence over territorial wildlife legislation under the N.W.T. or Yukon Act. Key questions remained on how best to define these rights. One broad area of concern was harvesting rights, or rights to bring wildlife into personal possession. The point of departure was the Indian Act, which guaranteed the right to harvest for food on unoccupied crown land. Claimant groups looked to the terms of settlement to strengthen and clarify their rights of access. This could be done on the basis of species, land class, or type of user. The rights of harvest could be exclusive, thereby preventing non-claimants from taking part in a harvest. Alternatively, the rights could be preferential, thus guaranteeing claimants the first right of access. This was particularly significant in the face of the quotas commonly imposed by the state for conservation purposes.

While the exact terms vary, certain generic concerns are reflected in virtually all settlements. In addition to harvesting rights on native lands owned in fee simple title, certain exclusive rights could be declared throughout the settlement region for species critical to subsistence or commercial livelihoods. Where preferential benefits were defined, the subsistence requirements of claimants drew first priority, commercial requirements (with a native preference) came next, while recreational users (non-claimants) came third. This classification was particularly important in cases of wildlife population decline, one of the few situations in which controls could be imposed on the general rights conferred above. Where quotas were required to control the rate of depletion, their incidence would reflect the order of preference. Much hinged on the definition of key terms. For example, "subsistence" harvesting was generally defined to include exchange, barter and sale among claimants, while "commercial" harvesting referred to market transactions involving non-claimants.

The acknowledgement that no harvesting rights were absolute was far from new. The prevailing judicial view of aboriginal hunting and fishing rights held that the rights of Indians to harvest for food on unoccupied crown lands was subject to limits on conservation grounds. Even for lands which passed into native ownership by settlement, public laws of general application would apply, thereby preserving for the state a role in wildlife conservation. This made more pressing the question of who would control the regulatory levers. Given the political pressures reviewed earlier in this study, it seemed evident that the existing public management regime would not be sufficient. Various mechanisms began to emerge around the concept of native participation in public management regimes.

Wildlife Negotiations: 1973-1989

For native claimant groups, the process of defining concrete and lasting benefits in relations to wildlife was cumulative. Each new claim proposal added to the domain of negotiable items. With several claims "tables" in operation for most of the last fifteen years, a dialectical sequence ensued, whereby each new concept or newly initiated sub-agreement rebounded on all other tables.

This sequence began with the first formal submission of claim north of 60° by the Council of Yukon Indians (CYI) in January 1973. While the wildlife provisions were far from central to that document, it outlined a set of "harvesting rights" in detail. These sought to formalize the legal rights of native people to hunt, trap and fish. This could be done by awarding the claimants "exclusive" rights to certain species, or to working

certain classes of land. In the case of the Yukon claim, the CYI sought the right to hunt and fish for personal needs on all Yukon lands, and to trap on all unoccupied crown lands. It was also clear that claimants would enjoy exclusive rights to hunt, trap and fish on native lands arising out of the settlement. Without providing many supporting details, the CYI submission introduced a second set of issues, centering on the institutions of wildlife management under public government. It proposed a joint authority representing the Fish and Wildlife Service, the Yukon Territorial Government, and the Yukon Indian General Council.⁵⁶ It would have jurisdiction over all aspects of wildlife on public land, as well as conservation practices on native lands. While it remained sparse on detail, and did not accord wildlife matters the centrality they would later assume in the N.W.T. claims, the CYI proposal anticipated the two main thrusts of future wildlife sub-agreements.

By contrast, the first comprehensive claim to be finalized in the Canadian north, the James Bay and Northern Quebec Agreement (JBNQA) offered a very detailed prototype. It focused on policy-making *per se*, relying for the most part on departmental bureaucracies for implementation. The key body was the Coordinating Committee on Hunting, Trapping and Fishing (CCHTF), described in the agreement as "an expert body made up of government and native members . . . established to review, manage, and in certain cases, supervise and regulate the hunting, trapping and fishing regime."⁵⁷ Composed of equal delegations representing the Cree, Inuit, Government of Quebec and Government of Canada, it was designed as a Joint decision-making body for wildlife matters within the settlement region. The concept originated with government negotiators as a solution to a deadlock over management roles. The key to the Committee's importance lay in its legally specified powers. It was "a consultative body to responsible governments" which could investigate and advise the appropriate ministers and departments on any matter. More specifically, the law stipulated mandatory advance consultation on "all regulations regarding the hunting, trapping and fishing regime", after which Ministers enjoyed "discretion to act upon such regulations".⁵⁸ In one key respect, the Coordinating Committee enjoyed final decision-making power which bound Ministerial decision. For three species, moose, caribou and black bear, the Committee held the power to set aggregate quotas for native and non-native hunters. The Committee

⁵⁶ Council of Yukon Indians, Together Today for Our Children Tomorrow, Whitehorse, 1973, p.68-69.

⁵⁷ Province of Quebec, James Bay and Northern Quebec Agreement, Montreal : Editeur officiel du Quebec, 1975, p.367.

⁵⁸ Ibid., 371.

al so held a power of veto over any proposed changes to the list of species reserved for exclusive native harvest.

The JBNQA went one step further, by inserting a statement of conservation principles to guide future decisions within the settlement area. This entailed:

The pursuit of the optimum natural productivity of all living resources and the protection of the ecological systems of the Territory so as to protect endangered species and to ensure primarily the continuance of the traditional pursuits of the Native people, and secondarily the satisfaction of the needs of non-native people for sport hunting and fishing.⁵⁹

The imminent disruptions associated with the hydro-electric project brought intense pressures to bear on these negotiations. This was not the case when the first detailed proposal was tabled in the N.W.T. In its wildlife provisions, the Nunavut claim contemplated two distinct yet related levels of decision-making: one governmental and one, the Nunavut Game Council, emerging from the claims settlement itself.⁶⁰ On the NGC, delegates from local Hunter and Trapper Committees would hold a majority of positions (7 of 11) while government agencies (federal and Nunavut Territory) shared the balance. To the Council fell three main roles, the most important of which involved the power of decision on the "sub-allocation" of quotas, where endangered status required the regulation of species or populations. This entailed parcelling out the total permissible harvests among three classes of user - subsistence, commercial, and recreational, with priority to subsistence claimants. By contrast with the James Bay provisions, the public government authorities control led the decision on overall quotas. Once the sub-allocations were made, the NGC would delegate local allocation to community HTC's. On all other wildlife issues, the NGC was guaranteed an advisory role.

Although the original Nunavut proposal was withdrawn for review later in 1976, a great many of its provisions were adopted by the COPE organization when it decided to submit a separate western arctic regional claim. It is interesting to note the role of wildlife issues in opening the way to the eventual agreement in principle. After negotiations broke down in the fall of 1977, a group working away from the table put together a "position paper" on wildlife. The contribution of the GNWT, through FWS

⁵⁹ Agreement, p.359.

⁶⁰ The wildlife provisions made up section 5 of the Nunavut Proposal, Submission to the Government of Canada, February 1977.

representatives! was crucial to re-starting the talks.⁶¹ The package of harvesting rights represented a variation on the principles established in the James Bay Agreement and the Nunavut talks. The Joint Paper reflected a carefully worded compromise on management powers. Without detailing their respective powers, it referenced a Land Management Commission, Game Council, local HTC structure, and a Research Board. While the paper anticipated the delegation of powers to these structures, it declared that "at this time, the role of the structures must be advisory, excepting certain subsidiary, delegated functions such as the sub-allocation of subsistence quotas."⁶² Over the next year, these provisions were developed more formally.⁶³ With an Agreement in Principle signed in October 1978, the Inuvialuit were well along in the process of land selection when the Clark government froze all talks in 1979, pending a review of the claims process.

Following the re-election of the Liberals, efforts were made in the summer of 1980 to revive the Inuvialuit table and to commence detailed negotiations with the ITC. Although the former soon broke off, the ITC talks moved ahead. In the fall of 1981 a sub-agreement on wildlife was initially led. With this document, the Inuit table re-defined the parameters of wildlife negotiations. The historic departure turned on the respective powers of the joint body (now named the Nunavut Wildlife Management Board) and the responsible Ministers. Consisting of four Inuit and four government members plus a Chairman, the NWMB would become the first line of decision-making for most of the matters presently exercised by Ministers under law. For terrestrial wildlife, this included protective sanctuaries, management zones, species and habitat protection, and education. It also extended to federal regulations for migratory birds, fish and sea mammal. By contrast to the past models, which allowed the Minister discretion in accepting "advice" of the joint bodies, the onus now was reversed. In order to reject or vary a decision of the Board, the Minister was now obliged to take specific action setting it aside. Otherwise administrative implementation of Board decisions would be expected.

⁶¹ B.A. Hubert, "Commentary on Events Leading to the Agreement in Principle between the Minister of DIAND and the Inuvialuit of the Western Arctic", Boreal Ecological Services, December 1983.

⁶² COPE - Government Working Group, "Joint Position Paper on Wildlife", December 2, 1977, pd.

⁶³ "Inuvialuit Land Rights Settlement in Principle", Communiqué, Ottawa: Indian and Northern Affairs, 31 October 1973.

The initialing of this sub-agreement immediately triggered a complex bureaucratic conflict within the federal negotiating team. Officially, Ottawa questioned the finality of the draft agreement. Ottawa's coordinating agency, the Office of Native Claims argued that its federal Chief Negotiator, Robert Mitchell, "agreed to include certain provisions that had not been fully approved by the Departments of the Government concerned".⁶⁴ The problem was attributed to the excessively detailed terms of the text, and Ottawa further pointed out that the necessity of further review was explicitly acknowledged in the document. The Inuit denied that these terms exceeded Mitchell's negotiating mandate, and blamed the reversal on efforts by the Departments of Fisheries and Oceans and Environment to overturn the the federal position after the fact.⁶⁵ The TFN resisted Ottawa's efforts to re-open negotiations' on this agreement, with the result that its status as an accepted Agreement in Principle was not recognized until 1986. Furthermore, the TFN called on Ottawa and Yellowknife to establish the Wildlife Board in advance of a final settlement. This "pre-implementation" demand is still on the table today.

The TFN Wildlife Agreement had a mixed impact on the revived COPE talks. The ambiguity surrounding the disallowance provisions ensured that they would not be reflected directly in the Inuvialuit Final Agreement. However COPE's earlier wildlife agreement was modified in the final (1984) version by the creation of several joint bodies rather than the single Land Use Planning and Management Board of 1973. This reflected the difficulty in reconciling jurisdictional tensions. On the one hand, the Inuvialuit claimed wildlife rights in the Yukon (North Slope) as well as the N.W.T. On the other, they sought to merge land and marine wildlife management! which as we have seen, would require the harmonization of quite different philosophies and traditions. Three joint structures emerged in the Final Agreement: two Wildlife Management Advisory Councils (WMAC) for terrestrial species in the Yukon and N.W.T. sections of the western arctic region, and the Joint Fisheries Management Committee (JFMC) for fish and sea mammals. While each was based on parity in claimant/government representation, the unified design was lost. The IGC, which COPE had already convened on its own initiative? remained but as an exclusively claimant body.

While the Western Arctic Settlement passed into the implementation phase by the summer of 1984, negotiations at the Dene and Metis claims table were just beginning to accelerate. From the outset nearly ten years earlier, the Dene-Metis claim was complicated by the challenges of co-ordinating two quite

⁶⁴ Nunavut Newsletter, "Guest Editorial by the ONC", 15 June 1982, p.s.

⁶⁵ "Guest Editorial: Geoff Lester", Ibid., 6.

As in any area of wildlife management, the fisheries field relies on a mix of policy instruments! including legal regulation, scientific research, and habitat protection. Here we will focus primarily on the inland or freshwater segment of the northern fishery, with only secondary reference to the ocean fishery as it bears upon management in general. From an early date the law has focused on regulating those who fish, with a concern for limiting the total harvest as well as the means by which it is taken. This has meant distinguishing the harvesting constituency according to type of use, acknowledging the fact that the behaviour, not to mention the needs, of fishermen varied widely. This also pointed to one of the most intractable problems of fisheries management, namely determining the respective shares of the harvest to be allocated to the different sectors. The subsistence sector includes both native fishermen and non-native "domestic" users, who utilize fish for their household needs (food and dog rations). The commercial fishery involves harvest for sale on the market, while the sports fishery was a recreational pursuit for anglers (those who fish with a hook, line and bait). Since the late 19th century, regulations issued under the Fisheries Act have required the licensing of all northern fishermen under one of these categories. Within them the volumes and instruments of harvest can also be controlled.

The two Territories offer quite a contrast in the structure of both their fish resource, and its exploitation. In the Yukon the freshwater stock is the largest component, although a most significant anadromous (sea-run) presence occurs as salmon travel inland to spawn. By far the predominant sector in the Yukon fishery is the sports sector, accounting for as much as 95% of all fish taken. It embraces almost three-quarters of the resident population, as well as an extensive tourist traffic. The expansion of the sports sector is reflected in the near doubling of the number of anglers since the 1970's. This renders the remaining sectors rather small by comparison, with current estimates setting the non-native domestic catch at approximately 1% and the aboriginal harvest, without reliable figures, is estimated at similar levels. Domestic licenses stipulate the area, the techniques (net size, etc.) and allowable level of harvest. Aboriginal licenses are issued without charge, and carry no enforcement conditions since Indians hold the right of unrestricted fishing for their own use. As a consequence, most native fishermen do not choose to take out licenses. The commercial fishery serves primarily local markets. Licenses are only issued on lakes for which a freshwater commercial quota has

ished. In aggregate, only about 10% of the total catch was being taken in the mid-1980's.⁷²

The Northwest Territories presents a different picture. By the minority position of aboriginal peoples in the native majority in the NWT has meant that the fishery ranked much higher in significance. Seasonal bands, Metis and Inuit band and camp groups is a mixture at hundreds of locations across the north. In the District the freshwater staples are found primarily in lakes and rivers of the Mackenzie drainage system. In the outlands it is anadromous fish such as char that are of importance. The commercial sector of the NWT fishery began and has continued to be based on Great Slave Lake. While with relatively few people, by the 1970's it accounted for 40% of the total territorial harvest. While precise figures remain lacking for the subsistence fishery, it clearly has a more prominent role in the NWT than in the Yukon, and the sports sector is considerably smaller than its Yukon counterpart. The following table sums up some of the relevant information in a comparison between the inland fishery in the Yukon and

comparing performance YT/NWT fisheries about here

With the Fisheries Act, the federal Department of Fisheries has been Ottawa's administrative agent for the north since the nineteenth century.⁷³ While regulations pertaining to the Northwest Territories were issued at an early date, they were on paper than on the ground, given the lack of field experience and indeed any serious commitment to managing the fishery in the distant frontier. The 1886 Fisheries Act was the first to mention the NWT, primarily by way of confirming the rights of Indians to fish for their own use, without restriction by season or method. The first set of regulations

for details, see Peter H. Pearse, Turning the Tide, A New Strategy for Canada's Pacific Fisheries, Final Report, Commission on Pacific Fisheries Policy, Vancouver, 1982, Chapter 4.

Canada's fisheries administration possesses an complex history. For much of this time a distinct Department of Fisheries administered the Act. With the creation of the Department of Environment in 1970 the key agency became its Fisheries and Marine Services Branch. In 1979 it was elevated to full status in the Department of Fisheries and Oceans (DFO).

covering the region were issued in 1889. Over the next half century many versions were issued, as a result of which native fishing rights underwent continuing modification. They became subject, for example, to domestic licenses which entitled the holders to fish for personal use with a stipulated length of gill net (normally less than 100 yards). Over time Fisheries Officers were equipped with a set of powers, some of which applied to native fishermen. Officers could prohibit the setting of nets in designated locations, for example, and could likewise prevent the use of illegal instruments. The 1944 regulations provided, for the first time, that natives could barter or sell fish taken for their own needs but surplus to them, under the supervisory discretion of Fisheries officers.⁷⁴

It was not the inland fishing of the Dene and Metis, but the hunting of arctic marine mammals, which triggered the first restrictions on the size of harvest under the Act. Of chief concern was the mounting kill of walrus, attributed to commercial demand for tusks. This prompted the first Walrus Protection Regulations to be issued in 1923. While the first version authorized only Inuit to hunt the animals, a 1931 revision imposed quotas on Inuit hunters (four to seven walrus per year) while extending the minimum quota allotment to non-Inuit for the first time. Other marine mammal regulations under the Fisheries Act appeared subsequently: Beluga and Seal in 1949, and Narwhal in 1971. A separate Whaling Convention Act and Regulations came into effect in the 1940's, to further Canada's commitment under the International Whaling Convention.

Although the Fisheries Regulations had long allowed for a class of commercial licenses, the first significant fishery of this type emerged on Great Slave Lake after the Second World War. With this came a decisive change of perspective. The native subsistence fishery, had never really been a candidate for management, in part due to the open season and harvest rights, but also because the annual catch was never perceived as a danger to sustainable stock. However the introduction of commercial fishing changed the stakes considerably in large part due to the vastly expanded catch it entailed. A scientific assessment of the Lake in 1944 provided the basis for an annual quota on the commercial fishery, taking into account the continuing subsistence catch as well. The initial quota fell "far below the estimate of available sustained production".⁷⁵ However the 1948

⁷⁴ For a detailed survey of the evolution of the Fisheries Act as applied to native peoples in the NWT, see Inuit Tapirisat of Canada, "Brief on Inuit Hunting Rights in Relation to Marine Mammals", September, 1974.

⁷⁵ Department of Fisheries, "Expansion of the Fisheries in the NWT", Pamphlet, 1961, p.1.

completion of the Mackenzie highway connection to Hay River brought new entrants to the industry, requiring an expanded quota though still well within stable limits. By contrast to the subsistence fishery, increasing amounts of staff time were allotted to Great Slave Lake, with an area office located in Hay River.

Anticipating the further expansion of the commercial sector, the Department overhauled its regulatory framework in 1961, while at the same time expanding its coverage to much of the Mackenzie District and part of the Keewatin. Eight control areas were demarcated, as the basis for more discriminating regulation. Within each area, certain lakes were set aside exclusively for angling or domestic fishing, while for the others a quota was applied based on the conservative formula of one-half a pound round-weight per year per acre of water surface. While such a low quota was clearly uneconomical on an annual basis, the permissible catch was to be condensed into an open period of two years, to be followed by a closed or "fallow" period. In this way, six years of quota could be concentrated into two years time, yielding a more viable 3 lbs. per acre.⁷⁶ On this basis the smaller lakes became candidates for commercial fishing as well. In the 1960's commercial projects were begun in the Keewatin, and in several parts of the northern Mackenzie District.⁷⁷

As the framework for commercial regulation expanded, the demands for scientific surveys grew commensurately. This responsibility fell to the Fisheries Research Board. Its northern work began with D.S. Rawson's 1944 survey of the Mackenzie District. In the initial years much of the Board's field work was done on contract, by university based biologists (such as Saskatchewan's Rawson) and their students. Later on, the research support for the commercial fisheries of the Mackenzie was provided by the Board's Central Research Station in Winnipeg.⁷⁸ During the first two decades, inland fisheries research constituted one of the Board's major commitments. From the 1960's forward, the Board's fisheries work shifted to the central arctic coast and that of Hudson's Bay, reflecting new research

⁷⁶ Ibid., 5.

⁷⁷ See for example, W.J. Barlshen and T.N. Webber, "A History of Attempts to Commercially Fish the Mackenzie River Delta, NWT", March 1973. See also S. Sinclair, S. Trachtenberg and M.L. Beckford, Physical and Economic Organization of the Fisheries of the Mackenzie District, N.W.T., Ottawa: Fisheries Research Board Bulletin 158, 1967.

⁷⁸ Fisheries Research Board, Studies in Canada's Arctic, Ottawa, 1970.

priorities and--an expanding fisheries frontier. The Board's other **early research** thrust in the north targeted marine mammals in the eastern arctic. After an equally vigorous period of university research, driven by M.J. Dunbar at McGill, the Arctic Research Unit was established in 1955. Under its auspices work proceeded on **anadromous and marine fish**, marine mammals and biological oceanography. Among other things, these investigations provided the scientific input to the marine mammal regulations discussed above. The FRB was disbanded in 1979. Since that time research initiatives have been largely de-centralized to the six regional offices.

Thus far, the Department of Fisheries's management efforts have been classified as regulatory and scientific. Conspicuously lacking was any recognition of the social side of the fishery across the north. The most glaring omission was the aboriginal fishery. Scientific interest tended to be defined in terms of administrative need, and the subsistence fishery was not subject to regulation. Moreover in spite of the lack of data, native harvest levels were viewed as modest, and declining over time, thus posing no threat to long term fish stocks. Consequently, the domestic fishery drew virtually no policy attention from administrators. What modest recognition there was came from other agencies, namely the Indian Affairs Branch for Dene and the Northern Affairs Branch for Inuit. As far back as the late 1940's, there was scattered awareness in scientific and political circles that the man-wildlife relationship bore a critical spatial dimension. While certain populations were put at risk with the changing patterns of human settlement, as in the Mackenzie Delta, other species and population went under-utilized as people withdrew from the more distant hunting and trapping hinterlands. While for some the changing demographics were interpreted to mean the end of a viable hunting and trapping economy, others argued the need for incentive programs to support a more even spatial distribution of harvesting effort, thus a more balanced pressure on wildlife. From this point of view, there were as many under-utilized areas as there were over-utilized, thus the task of public policy was in part one of facilitating adjustment in the man-wildlife relationship. This perspective did not draw much support in scientific management circles. Instead it advocates were the agencies bearing wider social and economic program responsibilities.

Throughout the period of declining fur markets in the 1950's, the Indian Affairs Branch showed concern to reinforce the economic viability of the Dene hunting and trapping enterprise. On the one hand this took the form of a grub-stake program, offering credit advances to trappers before the season and marketing support following it. While this could help keep trappers in the commercial fur market, the other side of the trapping enterprise was the need to supply most key subsistence products on the land. To this end, the Branch provided nets and

other simple fishing equipment to band members. Through the four Indian Agencies in the Mackenzie District it also endeavored to organize and fund community fish camps each summer.

It fell to the Northern Administration Branch of the federal Department of Northern Affairs to offer similar support to the Inuit. During the 1950's and 1960's some very innovative programs emanated from first the Arctic Division and later the Industrial Division of this Branch. Unencumbered with a century of bureaucratic tradition, these officials took a more aggressive approach than the IAB in promoting small seal e resource harvesting projects in the arctic. This included local fisheries, both subsistence and commercial. From the perspective of fisheries management, the striking feature is the persistent and complete separation of the research and regulation roles from the "development" programs just described. It would appear that the Department of Fisheries had little responsibility for the unregulated aboriginal fisheries, which were deemed, in any event, to pose little risk to sustainable fish populations. As a consequence, however, little reliable data was compiled on the level of this subsistence fishery. For fisheries officials, the focus, for both research and regulation, was unambiguously on the growing commercial fishery operations. This was particularly true for the Inland and Arctic Program, in the period following the McIvor Commission Report on Freshwater Fish Marketing.

Coincident with this came an increased political sensitivity by the N.W.T. Council. Yet it is clear that, through the 1960's and 1970's, the Council consistently viewed the fishery as an instrument of economic growth pure and simple. From this followed two corollaries: first that its maximum exploitation would more likely result from Territorial Government control, and secondly that the secret to an expanded commercial fishery lay in the economic infrastructures including marketing. The two themes were intrinsically related. Particularly in the era when the GNWT was expanding, it resented the absentee control of a major resource by the Fisheries Department. Winnipeg (the regional headquarters) and Ottawa were not only physically distant, but also lay beyond the Council's capacity to scrutinize. As a result, as early as 1969 a resolution was approved calling for the transfer of a significant fisheries jurisdiction to Yellowknife.

In the interim, if the administration of the powerful Fisheries Act lay beyond its control, the Council could still monitor the GNWT's efforts to support the commercial sector. Here the absentee theme was again reinforced, once the Freshwater Fish Marketing Corporation became operational in 1969. With responsibility for marketing all freshwater fish from the prairie provinces and the NWT, the Corporation was designed as a marketing agency which could bring advantages of scale to many small and rather isolated fisheries. Almost from the outset its operating procedures drew criticism from the commercial fishermen

of Great Slave Lake. Administrative Task Forces were struck in 1974 and again in 1984, to review contentious issues.⁷⁹ The Council consistently provided a sympathetic hearing to the Great Slave Lake fishermen. Indeed their organization, the NWT Federation of Fishermen, was treated by Council in much the same manner as the HTA's in their respective domain, as the expert voice of the harvester. Council members whose constituencies bordered on the lake regularly brought the fishermen's concerns before the Council, which frequently passed motions censoring the federal agencies.⁸⁰

While these efforts tended to focus on mediating the disputes between the fishermen, the Corporation and to a lesser extent the Fisheries Service, wider questions pertaining to the management regime were being addressed in other quarters. A federal-territorial administrative committee began reporting its conclusions in 1972, after a review of the entire framework of fisheries management. As the first comprehensive policy review in the modern period, it reviewed the existing program base while also proposing a five year "development plan". Although the latter was never enacted, the review continues to offer a set of sound proposals on which to base policy. Challenging the premise that northern waters offered unlimited commercial opportunities, the Task Force argued that "sustainable yield from these stocks is small in spite" of what appears to be an abundance of fish. Consequently quotas should be set conservatively in all cases. It advised that the aboriginal fishery be designated the primary sector, while suggesting caution in opening up any new commercial ventures. It documented extensive potential for new sports fisheries which could be tied to tourist programs. Above all lay the need for accurate information as the basis of a management system.⁸¹

In the face of such a wide-ranging report, it is striking that the administrative follow-up was so fragmented. In 1973, the Fisheries Minister answered the Council's concern with an proposal to transfer the administration of sports fishing to the

⁷⁹ See Department of Economic Development, Government of the NWT, "Task Force on Great Slave Lake Fisheries", Yellowknife: June, 1975; and Great Slave Lake Fisheries Task Force, "Interim Report", May, 1984.

⁸⁰ Of perennial concern was the tight monopoly position of the FFMC which prevented the sale of fish to private buyers in the north, and the Department's application of OS quota and net restrictions on Great Slave Lake.

⁸¹ Where To Now? A Federal-Territorial Task Force Report, Volumes 1 & 2. Yellowknife: Government of the N.W.T., 1972.

Yellowknife.⁸² This fell far short of the Council's expectations. Its Committee on Provincial **Style Responsibilities** listed "inland fisheries" as one of nine priority areas for transfer. By offering to negotiate the freshwater sports fishery the federal Minister was offering the NWT no more than he had already transferred to the Yukon Territory in 1972.⁸³ As it happened, the talks continued for several years before the ultimate transfer was effected on April 1, 1976. The order-in-council clearly spelled out that the commercial fishery, the ocean fishery and the research responsibility remained in federal hands, while:

the Commissioner of the NWT will be responsible for printing, distribution, sales, revenue and accounting relating to administration of licensing system for the Sport fishery in the Territory, and any revenue therefrom shall accrue to the NWT consolidated revenue fund, and the Commissioner of the NWT recommends to the Department of Environment, Fisheries and Marine Service, any changes or amendments in the sport fishery regulations that the commissioner deems necessary.⁸⁴

In truth, the sport licenses were becoming a distraction to the federal department, since it was necessary to dispense them in the territory itself. For this, the GNWT was much more effectively positioned. Meanwhile, the Fisheries Service was itself being drawn into a more complex set of policy questions. With the advent of the northern gas pipeline, the Department's mandate was rapidly evolving beyond species management toward a major challenge in habitat protection. While the Act provided powerful tools for the task, the baseline information on which to act was very thin. Commencing in 1971, the Department mounted a major four-year program of field research in the Mackenzie District. Out of this came "data for most species on length-weight relationships? age and growth, food habits and sex ratios. Baseline data on fish contamination levels were obtained in 1971."⁸⁵ The Department was able then to identify rivers with fish resources which would be especially sensitive to pipeline construction.

⁸² N.W.T. Council, Debates, 49th Session, 7th Council, 13 June 1973, p.91.

⁸³ P.C. 1972-1756, 24 August 1972.

⁸⁴ P.C. 1976-535, 9 March 1976.

⁸⁵ C.S. Jessop and J.W. Lilley, An Evaluation of the Fish Resources of the Mackenzie River Valley Based on 1974 Data, Technical Report Series No. CEN/T-75-6, Winnipeg: Fisheries Service, 1975, p.90.

The entire administrative paradigm for northern fisheries research was being transformed by the growing emphasis on northern environmental protection. With hydro-carbon resource projects anticipated for the arctic islands and off-shore areas, the requirements of arctic research knew no bounds. By the early 1980's the Department of Fisheries and Oceans had taken over from the Department of Environment as Ottawa's lead agency offshore. It described its arctic priorities as:

the gathering of biological information upon which to base resource management and habitat protection requirements oceanographic research in relation to industrial proposals and the protection of the arctic marine environment, and nautical charting in support of arctic shipping.⁸⁶

It is likely the case that no agency could have readily accommodated the proliferation of hydro-carbon projects in the early 1980's. In spite of the expanded funding base, a multitude of programs competed for a place in finite research budgets. Two characteristics seem notable in retrospect: the shift in focus from the mainland to the arctic islands and offshore, and the shift from a biological focus to an oceanographic one. This left the traditional objects of fisheries policy competing for catch-up attention at a time of shifting priorities. With the DFO working toward the design of an "oceans policy" in the arctic, the comparatively mundane concerns of fisheries management articulated by the federal-territorial task force in 1972, may well have seemed archaic.

The early 1980's were certainly a time when the DFO found itself politically on the defensive in the north. A series of incidents offer evidence to this effect. We have already seen how the Department blocked the endorsement of the TFN Wildlife Sub Agreement, with its controversial clauses on disallowance. A similar stance emerged on the Dene-Metis interim wildlife agreement. The DFO emerged as the hard-line opposition to anything more than advisory roles for joint management boards. This was revealing in that it indicated Ottawa's reluctance to accept managerial changes within its own renewable resource jurisdiction, as distinct from the rather liberal concessions it was willing to make in Territorial wildlife fields. A broadly based and highly focused critique of the DFO's northern performance emerged from a workshop convened by the Canadian Arctic Resources Committee (on request of the Fisheries Minister). Before the seminar even began, the state of tension

⁸⁶ Department of Fisheries and Oceans, "Brief to the Special Committee of the Senate on the Northern Pipeline", September, 1982.

was symbolized by the withdrawal (on order of the acting DFO Minister) of 15 of the 17 departmental participants. This made even more telling the conclusions of the seminar:

the mandate, roles and approaches of DFO are seriously deficient with respect to the Canadian North. Three broad areas of concern emerged. The first is the inattention of DFO to fundamental changes in the North and its relation to the rest of Canada. Profound changes in the constitutional, political and cultural development are occurring in the North and one ignores them at some peril. The second broad area of concern relates to issues of mandate and management. As result of both oversight and unwillingness to acknowledge change, there are important gaps in DFO's northern mandate. Both the substance and the style of management of DFO programmed needs re-thinking. The third major area of concern is that of knowledge and science in the North as it relates to DFO's responsibilities. . . . the perceived relevance of that work and the dissemination and use of that work in practical contexts is questioned.⁸⁷

The Department was urged to abandon a bureaucratic culture of distance and detachment, and recognize instead the creative roles which partnership with northern interests could bring to management and research. Notable among the many recommendations was the suggestion that "the DFO must pursue the devolution of federal responsibilities through both territorial governments and land claims negotiations. Of particular concern to the workshop participants is the management of inland waters and fisheries."⁸⁸

Some of these themes were echoed elsewhere, as the concept of the "conservation strategy" began to draw attention. As an approach to management, the basic principle of such strategies was to maximize resource use, but within the limits of sustainable yield. The World Conservation Strategy, issued in 1980 by the International Union for Conservation of Nature and Natural Resources, recommended the establishment of an arctic marine conservation area as a high priority.⁸⁹ Several years

⁸⁷ T. Fenge, P. Jacobs, R.F. Keith and S.J. Woods, "Toward a Northern Policy for the Department of Fisheries and Oceans", (Report of a Workshop Sponsored by the DFO, November 17-19, 1985), Canadian Arctic Resources Committee, n.d., p.3.

⁸⁸ *Ibid.*, 26.

⁸⁹ International Union for Conservation of Nature and Natural Resources, World Conservation Strategy, Living Resource Conservation for Sustainable Development, IUCN-

later the two Territorial Governments joined together with Ottawa in a Task Force to prepare a Northern Conservation Strategy. Out of this-came a strong recommendation that DFO take the lead role in implementing an arctic marine strategy:

A critical issue requiring consideration is the need for some agency to take the lead in establishing policy for marine conservation, to promote new management initiatives and to serve as an active participant in the northern resource planning process . . . this process is seriously hampered by the inadequacy of the information base required + or integrated marine resource management . . . A much greater effort must be made to bring the state of knowledge required by governments to at least that + or the terrestrial environment, in particular, sustained and intensive research involving complex marine ecological processes and systems is required.⁹⁰

The "hard-line" period for northern fisheries administration began to pass by 1986. The DFO released a proposal on marine conservation late in 1987, which endorsed the principle of "shared responsibility for decision-making" involving all user groups as well as integrated resource planning and knowledge.⁹¹ Even before this the Department had taken the initiative in establishing the Great Bear Lake Fisheries Management Committee (GBLFMC). This brought together representatives of the full range of users (the Fort Franklin Dene Band, the sports lodges) and government agencies (DFO, GNWT-DRR, GNWT-Economic Development). Corresponding to a relatively well-defined area of interest, the Committee functions in an advisory capacity. To date it has addressed the need for an information system on harvest levels and stock size. It has designated the subsistence sector as the first priority, with the sports fishery secondary. Clearly this Committee is quite distinct from a user-based management system under a decision-making board. The fact that it exists at all attests to the distance travelled in DFO perspective! and of course leaves open the future evolution of the system. The fact that it lagged a decade behind Territorial Government thinking on such matters not only served to retard the land claims process, but also to lend support to the advocates of jurisdictional devolution.

UNEP-WWF, 1980.

⁹⁰ Department of Indian and Northern Affairs, Task Force on Northern Conservation, Ottawa: 1984, pp.23-24.

⁹¹ Department of Fisheries and Oceans, Canadian Arctic Marine Conservation Strategy, Discussion Paper, Ottawa: December 1987, pp. 14-15.

The Inland Fisheries Devolution Negotiations

The fisheries issue arose first in the Yukon in 1986. The process was triggered by an exchange of letters between Ministers, setting out a framework for negotiation and specifying the issues eligible for discussion. Ottawa stipulated, for example, that the range of issues eligible for delegation could not exceed those already negotiated with the provinces. It also followed that the instrument of agreement would closely resemble the federal-provincial umbrella fisheries agreement, with sub-agreements serving to authorize discrete project work. With the framework in place, there followed a period of documentation and policy investigation on both sides, as the existing extent of federal program activities were examined. This included the study of personnel and budgetary commitments, capital expenditures and accumulated assets to support the program. It was on the basis of such information that the "specific" terms of the agreement would be based. Particular problems were encountered in the fisheries case, since only part of a program was at stake. In practice it often proved difficult to separate that portion of a field job or office position which was devoted to freshwater subjects from that involving anadromous, or marine fish, or administrative tasks in general. In the case of the Yukon, Ottawa contended that 99% of its previous work had been directed to the salmon (anadromous) fishery. This left only one-half of one person-year eligible for the freshwater transfer. It is widely recognized that considerable administrative energy has been devoted, on both sides of the table, to disguising, uncovering and discovering potentially relevant expenditures and assets.

The Yukon talks stretched over a two-year period. The major sticking point, which accounted for much of the second year's efforts, concerned the size of Ottawa's financial transfer. The negotiating framework specified that the value of existing commitments at the time of transfer establish the floor for Ottawa's budget obligation. This of course posed fundamental problems for the GYT, which argued that any past neglect by Ottawa in meeting its statutory responsibilities could not be ignored in setting an adequate floor for the future. In its eyes, Ottawa was delegating not only the power to manage freshwater fisheries but also the ~~fiscal resources~~ for their reasonable prosecution. Yukon searched for ways of remedying such an obvious deficiency in the fiscal capacity conveyed with the transfer. In the end, this was solved in part through allowance for a separate cost category designated "start-up costs". The final agreement provided for an allotment which the GYT termed a "Conservation Fund". It called for the expenditure of approximately \$1 million over three years, to "enhance territorial control over the management of the freshwater

fishery, including some financial responsibility".⁹² By its terms, Ottawa agreed to provide \$250,000 per year over three years, while the Yukon Government would augment the fund by tripling its level of fish license fees within three years.

Just as the Canada-Yukon agreement was being initialed in June 1988, the Northwest Territories negotiations were getting underway. Letters of intent were exchanged, and the preparatory research work was begun during the summer. As the GNWT's lead agency, the Department of Renewable Resources developed a distinct approach to the fisheries delegation. This stemmed in part from the deficiencies revealed by the earlier processes such as the forestry transfer. It also addressed the need to make explicit and negotiable the discrepancies between past DFO levels of effort and the minimum commitment required for an adequate management regime in the future. The DRR sought to document in advance not only the existing resources eligible for transfer, but also the projected costs of future management. In the first instance this could be brought to the negotiating table. Then, following the drafting of the best possible agreement, it could serve to highlight any deficit costs which the GNWT would face in implementing its own fisheries program. Thus it would serve a second role as an aid to political decision-making at the Executive Committee level.

In the Northwest Territories, the fisheries delegation faced more intractable problems at the political level. Chief among these was the implementation of the GNWT/Dene/Metis MoU on aboriginal involvement. By the terms of the April 1986 agreement, any devolution matter which is also subject to negotiation at the aboriginal claims table, must be deferred until the claims settlement, resolved as part of the claims settlement, or negotiated only with the agreement of the Dene/Metis. Inland fisheries was designated as such a program, since the Lands and Resources sub-agreement initialed in July 1985 dealt widely with these questions. The MoU required that the three parties conclude a "participation agreement" in advance detailing the form of aboriginal involvement in the transfer talks. Although the exchange of letters and the preparatory studies were done during the summer of 1988, no formal notification had been made to the Dene/Metis. Obviously this called into question of procedural correctness of the talks, not to mention their political legitimacy in native eyes.

The Inuit had followed a different tack. The TFN refused the GNWT's offer to enter into an MoU in 1986, declaring its opposition to any form of devolution or delegation of powers prior to the final agreement stage of the claims process. One exception has been made to this policy, in the case of the

⁹² Northern Decisions, 30 June 1989, p.50.

Northern Energy Accord which Ottawa thrust suddenly onto the devolution agenda in the fall of 1988. The TFN justified its involvement in consultations with the GNWT on the grounds that the provisions likely to emerge from such an Accord had been excluded by Ottawa from the framework for the TFN claims talks. Since the Inuit were unable to shape this issue directly at the table, they agreed to participate with the GNWT. However as far as fisheries are concerned, the TFN position remains one of principled opposition to the process of transfer.

Conclusions

Given its still-unresolved status, the case of the inland fisheries delegation is as instructive for the light it sheds on the wider questions of wildlife management, as on the particular fisheries outcomes in their own terms. How positive and creative a development is the fisheries transfer likely to be? The discussion thus far points to several conclusions. To begin, the differential significance of this transfer in the two Territories is amply evident. Save for salmon, Yukon will acquire almost all of its effective fisheries field as a result of the agreement. It will add (to its administrative control of sports fishing) a major research function. Perhaps more importantly, it will gain the capacity to implement new management schemes with the opportunity to co-ordinate all three fisheries sectors. In the N. N. T., the control of inland fishery is much more partial than in Yukon, since it leaves marine mammals and fishes under the DFO. In the first instance, fisheries jurisdiction will be more fragmented as a result. Moreover, the expanded capacities of the GNWT will be of much greater consequence to harvesters in the Mackenzie region than in the arctic region. For the Dene/Metis, resident sport fishermen and commercial fishermen, the freshwater Jurisdiction will be politically more proximate when it shifts to Yellowknife. Despite certain freshwater prospects the Inuit fishery will remain sea-based and therefore federally controlled.

Despite their partial character, each of these delegations offers an advance over past management by the DFO. We have observed the low priority attached to the administration of northern fisheries, and the weak claim on resources. This has become more problematical as the department's mandate has broadened from species protection to ocean protection. In this light, a territorial focus for management and legislation can be positive. It is instructive to compare the degree of legislative oversight for terrestrial game policy, and the level of political responsibility displayed at administrative and managerial levels, in the GNWT. Compared to the virtual neglect of northern fisheries matters in the past, both in the federal Parliament and at the Standing Committee on Fisheries! the prognosis should be quite optimistic.

On the other hand, the delegation of freshwater jurisdiction on its own clearly runs contrary to the cause of integrated wildlife management regimes. This theme, so evident in the thinking of both aboriginal claims settlements and conservation strategies, is not furthered by fragmenting a hitherto unified jurisdiction. Interestingly, the delegation could end up being neutral to the question of joint management arrangements. While the GNWT has shown far greater support for the concept in the past, the DFO appears to have abandoned a principled opposition to the practice, and has initiated some experimental projects in its own right. In any event, it seems clear that the overriding foundation for joint management will come from completing the claims settlement process north of 60. It must be noted, however, that the process of negotiating fishery delegation in latter phase of claims settlements has generated tension and conflict. Particularly when it involves questions of wildlife, which are almost universally acknowledged as pivotal to all claims packages, this can be regarded as either clumsy or mischievous. It appears to be a case where a relatively thin and modest policy stake has been pursued with a vigour unwarranted by its consequence. Only in the absence of comprehensive claims settlements would the fisheries delegation take on more than modest significance.

It is true that the Territorial Governments have, over recent decades, pursued provincial style powers with differing degrees of intensity. In the present decade, these urges have been tempered by the acknowledgement that the claims arena holds equivalent or even paramount importance. The MoU process was designed to affirm this. The mixed results of the process it authorized, plus the renewed concern since 1986 to consolidate the administrative control of territorial government functions, is noticeable in this light. It suggests a new eagerness, at both political and administrative levels, to speed the process of territorial aggrandizement. If so, this will renew the tension in territorial politics, between the two major constitutional processes. Should this happen, then the two concepts of devolution, jurisdictional growth and community empowerment! will once again be at odds.

CONCLUSIONS

There is no question that the two dimensions of devolution which are considered in this paper are analytically and politically distinct. To invoke the cause of jurisdictional transfer is to advance an agenda quite different from the community control version of devolution. In this study we have seen how the two strategies originated with separate constituencies. The most persistent champions of "provincial" type development have been associated with the GNWT, either at the civil service level, or among the resident white politicians

in the Legislature. The early advocates of local control or self-management came from the native movements, harvest organizations and elected native politicians. In contrast to the situation of the 1970's, however, a fragile consensus may be emerging through the synthesis of past alternatives. This has developed to the point that a creative search for new institutional forms now drives the policy process. There can be little doubt that whatever management regimes are produced, with or without further devolution, a strong element of community participation will be part of the final consensus.

The Territorial wildlife management agencies have, since the mid-1970's, occupied something of a middle ground. Far from opposing the participation of the harvesting public, the GMS and its successors facilitated this trend. It supported local involvement in the management regime under law, and seized the initiative in decentralizing the delivery of assistance programs to the community level. One measure of how firmly the HTA structure is now entrenched is its exemption from the rationalizing sweep of the Prime Public Authority initiative today. The FWS also explicitly affirmed the primary place of native harvesters among those with a claim on wildlife resources.

At the same time, the wildlife service moved cautiously, and displayed more than a little ambivalence, on the subject of land claims. Faced with the prospect that the settlements could define entirely new regimes for management, the FWS was not categorically resistant but neither would it abandon or minimize the advances already achieved. Part of this betrayed a reluctance to contemplate a system which seemed to be founded on legal harvesting rights as distinct from conservation programs. There were also fundamental differences of perspective between the scientifically oriented managers, the harvesters, and the native leadership. This reflected complex questions of the design, application, and even possibility of management. It is evident in the debate over research models and knowledge bases, alternative models for enforcing regulations, and recognition of the several relevant publics in the wildlife field. The caribou crisis offers one case in point. The status of regional wildlife organizations offers another.

Even acknowledging these important differences, there remains a striking contrast between the GNWT wildlife authorities and their federal counterparts. This is evident in their respective roles at the land claims tables. Particularly since 1979, when the Legislative Assembly began to swing GNWT support behind the prompt and fair settlement of claims, the FWS has played a facilitating role. This contrasts with the resistance and inflexibility displayed by the DFO and DOE.

In this light, perhaps it is possible to appreciate both the potential, and the limitations of devolution defined in the

jurisdictional sense. One tendency has been to dismiss the relevance of transfers for a field such as wildlife, since the more powerful instrument of claims settlements can establish a new regime with constitutional status. Despite the understandable optimism that the wildlife provisions will transform the field, we have seen that the essence of the emerging wildlife regimes is their co-operative character. What future transfers might determine is whether a public authority based in Yellowknife, Whitehorse or Ottawa forms the governmental partner. Put this way, there are grounds to suspect that Territorial jurisdiction offers advantages relative to Ottawa. Our evidence suggests that this goes well beyond the fact of shorter or longer lines of communication. It also determines the type of political process bearing on wildlife issues. The degree of legislative oversight of game issues in the N.W.T. far exceeds that available in Ottawa. This includes the major statutory overhauls as well as the continuing challenge of ensuring administrative accountability. Contrast the Legislature's record on the Wildlife Ordinance, its monitoring of wildlife service operations and the commitment of impressive funds to key research programs, to the virtual absence of Parliamentary attention to northern fishery and bird issues in either the House or Standing Committees. Even a random survey of the respective legislative records will confirm the contrast. Similarly, the considerable growth in GNWT financial commitments to wildlife research contrasts with the conditions of restraint faced by federal agencies faced with serving national mandates.

A related but distinct question concerns the prospect of a more unified and integrated future wildlife regime. If this implies the gathering of wildlife programs under a single government authority, it would seem that the limits of Territorial development may be reached with the completion of the inland fisheries delegation. On the other hand, integration may well be advanced in the future in ways other than jurisdictional transfer. The latter is not the only way to achieve greater management co-ordination. Here the broad trends of post-war Canadian federalism are especially instructive. Faced with relatively fixed jurisdictional boundaries, governments at both levels sought bridging devices of an administrative sort. This gave rise to the federal-provincial financial arrangements, cost-shared programs, administrative delegations and other practices broadly described as "executive federalism". In the field of northern wildlife the bridging mechanism may well be the management authorities mandated by the final claims settlements. These are the only bodies which bring together representatives of all major sectoral interests with the power to reach authoritative decisions. By so doing these joint management bodies gain the unique opportunity to consolidate information, control overlapping issues, and even harmonize policy standards and practices at a working level. It is much too early to judge such possibilities. However should this come about in the

northern wildlife field, it would carry a decisive advantage over the federal-provincial parallels cited above. This stems from the participation of native (and by political necessity other wildlife user) interests in the deliberations. This pre-empts one serious limitation associated with contemporary federalism, namely that the procedural machinery serves to insulate decision-making from wider political representation and accountability.

Thus one final irony may characterize devolution politics in wildlife. Despite the evident antagonism between the two competing tracks considered here, it may be in the end that each track may be needed to perfect the aspirations of the other.