

## **Appendix 4B: Co-Management Agreements**

### 1. Claims-Based Co-Management

#### ***James Bay and Northern Quebec Agreement: Fish and Wildlife Management Regime***

The 1975 James Bay and Northern Quebec Agreement (JBNQA) established the first claims-based fish and wildlife co-management regime between Aboriginal and non-Aboriginal governments in Canada. Since its establishment, most subsequent co-management systems either have been modelled after the James Bay arrangement or have adopted its specific characteristics; the regime has been the subject of much analysis.

The schedule to section 24 of the agreement outlines the rights of the Aboriginal beneficiaries and non-Aboriginal people to fish and wildlife harvesting, and the management regime for the territory. As described in the companion land provisions (see Appendix 4A), the Aboriginal beneficiaries retained the right exclusively to harvest all aquatic species and furbearers in Category I and II lands and received priority subsistence harvesting rights in Category III lands via a guaranteed level of harvest stipulation. Briefly, this principle means that the Aboriginal beneficiaries will continue to have access to the levels of wildlife resource harvesting they had at the time of settlement, provided the resources are available. In the instance of surplus harvests, the surplus is allocated between Aboriginal and non-Aboriginal users in a manner that will ensure non-Aboriginal access but give priority to Aboriginal harvesters.

A unique element of the agreement is the guaranteed minimum income program for full-time hunters. A hunters and trappers income security board was established to administer benefits that were set initially at \$1,000 per annum for the head of the family, \$1,000 for the spouse, \$400 for each dependent, and \$10 per day, per adult, while fishing, trapping or hunting, to an annual maximum of \$2,400.

The hunting, fishing and trapping co-ordinating committee is the instrument through which the fish and wildlife management regime is administered. The Aboriginal parties and provincial government are represented equally on the committee, while the development corporations attend as observers. Aboriginal committee members are selected by the appropriate Aboriginal authority. (In the case of Inuit, the Makivik Corporation succeeded the Quebec Inuit Association in 1978 to represent Inuit beneficiaries. Crees are represented through the Cree Regional Authority). Committee members may be appointed and replaced at the discretion of the parties. The chairperson is rotated annually from among the parties.

The primary mandate of the committee is to review, manage and, in certain cases, supervise and regulate the regime. However, the committee's responsibilities are defined

in the context of the provincial government's ultimate responsibility for the management of fisheries and wildlife. Thus, the regime is advisory in nature, except that it has the authority to establish an upper kill limit for certain wildlife species in certain zones. Committee recommendations are forwarded to the minister, who may accept, reject or alter them. The sole obligation of the minister is to make known the reasons for decisions before taking any action. A technical secretariat provides support to the committee and is funded and maintained by Quebec. Note that the Aboriginal parties must pay their costs associated with participating in the committee from the agreement's compensation funds.

At the local level, the individual community landholding corporations were established to manage the exclusive harvesting rights of the Aboriginal beneficiaries and to provide a certain level of authority on Category I and II lands concerning sport hunting and fishing, outfitting, and non-Aboriginal access. As the regime evolved, the Aboriginal parties have attempted to resolve flaws in the regime by creating structures and/or processes not originally anticipated by the agreement. For example, in response to the heavy research demands required to establish and monitor Aboriginal harvesting levels and patterns, Inuit were compelled to create a research department within Makivik Corporation, which has conducted a significant amount of costly research. Inuit also incorporated Anguvigaq Wildlife Management as a community-level hunters and trappers association specifically to represent Inuit lands and resource interests. In so doing, Anguvigaq established a much-needed link between Makivik Corporation, the Kativik regional government, the communities and the hunters.<sup>1</sup> Unfortunately, because of lack of funding, Anguvigaq was disbanded in 1988. For these and a host of other reasons, commentators have generally concluded that while the regime is an improvement over what previously existed, it has experienced limited overall success as a co-management exercise.

### ***Inuvialuit Final Agreement: Wildlife and Environmental Management Regime***

The Inuvialuit Final Agreement (IFA) between the Committee for Original Peoples' Entitlement and the government of Canada in 1984 established many new institutions to manage renewable resources and the environment in the Inuvialuit settlement region (ISR). The bodies include Inuvialuit institutions and five joint government/Inuvialuit management bodies. As part of a comprehensive claims settlement, the management bodies are constitutionally protected and permanent.

The institutions are founded on the recognition of Inuvialuit harvesting, land and resource rights.

With respect to harvesting, Inuvialuit have the exclusive right to harvest furbearers and the preferential right to harvest all species of wildlife, except migratory birds, for subsistence use throughout ISR. However, while Inuvialuit settlement lands are owned and controlled by Inuvialuit beneficiaries, "the laws of general application continue to apply and the Crown retains ultimate jurisdictional authority for environmental management".<sup>2</sup>

The management mechanisms established under the final agreement are expected to achieve the following objectives:

- integrate the interests of harvesters and government in wildlife, habitat and protected area management;
- integrate wildlife management jurisdictions;
- integrate wildlife and habitat management;
- integrate traditional and scientific knowledge in wildlife management;
- balance wildlife conservation and environmental protection interests with those of development;
- compensate harvesters for actual harvest loss or future harvest loss from development; and
- promote self-management and self-regulation among harvesters, backed by government regulations.

A brief description of the management regime is provided below.<sup>3</sup>

#### Hunters and trappers committees

A hunters and trappers committee (HTC) is based in each of the six Inuvialuit communities. Its members are Inuvialuit beneficiaries who have applied to and been accepted by HTC and registered on a master list. Its directors are HTC members elected by the general membership to represent them. They provide advice to the Inuvialuit game council on issues of local concern, including their wildlife requirements and the sub-allocation of the quotas that IGC has allotted to that community. In addition, they establish by-laws that regulate Inuvialuit harvesting rights in their area, collect harvest data and generally advise on and promote Inuvialuit participation in research, management, enforcement and the use of wildlife resources in ISR. They have been active in the preparation of community conservation plans and assist the wildlife management advisory councils and the fisheries joint management committee in carrying out their duties when requested.<sup>4</sup>

#### Inuvialuit Game Council

The Inuvialuit Game Council (IGC) represents the collective Inuvialuit interests in wildlife. First established in 1979, it is one of the two major umbrella organizations charged with implementing IFA. (The other is the Inuvialuit Regional Corporation.) The council consists of 13 representatives: two from each of the six hunters and trappers committees and a chair. It appoints Inuvialuit members to all joint government-Inuvialuit bodies with an interest in wildlife; advises the appropriate governments about legislation,

regulations, policies and administration involving wildlife conservation, research, management and enforcement; and assigns community hunting and trapping areas and allocates harvesting quotas among the communities. It represents Inuvialuit interests in any other Canadian or international group concerned with wildlife issues in ISR. It also assists the wildlife management advisory councils when requested on matters for which the latter are responsible.

#### Fisheries Joint Management Committee

The Fisheries Joint Management Committee consists of five members: two appointed by IGC, two appointed by the federal government and an independent chair appointed by the committee. It was established to assist Inuvialuit and the federal government administer their respective obligations relating to fisheries management under IFA. It reviews information on the state of fishing in any waters in ISR where Inuvialuit have an interest. It also determines current harvest levels, maintains a registration system for and regulates general public fishing in waters on land owned by Inuvialuit. It allocates subsistence fishing quotas among Inuvialuit communities, recommends quotas for marine mammals and fish to the federal minister of fisheries and oceans, and advises the minister on matters regarding regulations, policy and administration of fisheries and fisheries research in ISR.

#### Wildlife Management Advisory Council

The Wildlife Management Advisory Council of the Northwest Territories consists of seven members: three appointed by IGC, two appointed by the government of the Northwest Territories, one appointed by the federal environment minister, and a chair appointed by the government of the Northwest Territories with the consent of Inuvialuit and the government of Canada. The council is responsible for addressing matters related to wildlife in ISR in the Northwest Territories. It provides advice to the appropriate ministers, the IGC, the Environmental Screening Committee (see below), the Environmental Impact Review Board (see below), and other appropriate bodies on all matters relating to wildlife policy and the administration of wildlife, habitat and harvesting. It also determines and recommends appropriate Inuvialuit harvesting quotas and reviews and advises on proposed Canadian positions for international purposes that affect wildlife in ISR. In addition, the council is responsible for the preparation of a wildlife conservation and management plan for the western Arctic region.

#### ***Wildlife Management Advisory Council (North Slope)***

The Wildlife Management Advisory Council (North Slope) consists of five members: two appointed by IGC, one by the Yukon government, one by the federal environment minister, and a chair appointed by the Yukon government with the consent of Inuvialuit members and Canada. The council is responsible for that portion of ISR falling within the Yukon, an area known as the Yukon North Slope, which is assigned special conservation status in IFA. The responsibilities of the council largely parallel those of its N.W.T. counterpart, with additional responsibility for advising the appropriate minister on the

planning and management of Ivvavik National Park and Herschel Island Territorial Park and for preparing a wildlife conservation and management plan for the entire Yukon North Slope.

### ***Environmental Impact Screening Committee***

The Environmental Impact Screening Committee consists of seven members: three appointed by the IGC, one each by the federal, Northwest Territories and Yukon governments, and a chair by Canada with the consent of Inuvialuit. The screening committee examines all development proposals in ISR to determine whether they could have significant negative environmental impact or a potential impact on present or future wildlife harvesting (section 11, section 12(20-23) and section 13(7-12)). Proposals deemed deficient are rejected. Proposals considered to have a significant impact are referred to the review board or another appropriate body for public review. This determination of the appropriate referral body for the review is based on the opinion of the screening committee as to the adequacy and the willingness of other public bodies to assess and review the development proposal.

### **Environmental Impact Review Board**

The Environmental Impact Review Board consists of seven members: a chair appointed by the federal government, with the consent of Inuvialuit; three members appointed by IGC and three by the federal government, including at least one member designated by the territorial government in whose jurisdiction the development is proposed to take place. The board conducts public reviews of development projects referred to it by the screening committee (section 11, section 12(3)(d), section 12 (21, 23)). It recommends to the appropriate government authority whether the project should proceed and, if so, under what conditions. Where projects are found to affect wildlife harvesting, the board is required to provide an estimate of the potential liability of the developer, given a worst case scenario, for compensation to harvesters for actual and future harvest loss and for the restoration of wildlife and habitat as far as practical to its original state (section 13(11)(b)).

### **Joint secretariat**

The joint secretariat serves all IFA joint bodies except the wildlife management advisory council (North Slope), whose secretariat is based in Whitehorse. It was established under the *Territorial Societies Ordinance* in 1986 by agreement between Inuvialuit and the governments of Canada and the Northwest Territories to provide administrative and technical support services. It is administered by an executive director accountable to a board of directors representing the chairs of the bodies it serves. In addition to administering implementation funding for these bodies, it provides them with full-time staff support to assist them in responding to issues, carrying out their activities and sharing information in a co-ordinated manner. It also provides the staff support for the Inuvialuit harvest study.

Unlike other comprehensive claims agreements that limit harvest studies to determining basic needs levels, IHS has a much broader application to the work of the co-management bodies, HTC and government agencies. An important requirement is that the harvest information be collected through local HTC and IGC, which guarantees a strong level of harvester involvement in the management process and in improving the information available for hunters and government agencies.

The harvest study underscores the importance of independent research and technical support provided to the IFA management regime. In addition to the harvest study, IFA provided for significant funding devoted to a wildlife research program and placed responsibility on governments to improve their state of knowledge of wildlife and habitat in the region in order to meet their obligations within the agreement.<sup>5</sup>

All decisions of the joint management boards are conveyed by way of recommendations to the appropriate minister. The decisions of the bodies are not final and are subject to ministerial override. However, in practice, no formal recommendation from these institutions has been rejected or ignored. This has been attributed largely to the collaborative relationship that has developed between the parties, in which difficult issues and potential problems are resolved at the board level before a recommendation is made. This approach provides both the ministers and members of the co-management bodies with a satisfactory level of comfort in accepting and implementing board decisions.

The most notable prevailing difficulty with the co-management bodies relates to establishing institutional understanding, support and practices between Inuvialuit and the government that are consistent with the agreement. In particular, achieving amendments to wildlife (including fisheries) legislation, regulations and administrative arrangements to ensure consistency with the provisions of IFA has been a challenge.<sup>6</sup>

The author of a case study prepared for RCAP on implementation of the Inuvialuit management regime concluded that overall the Inuvialuit experience has been largely successful:

[O]n balance it is reasonable to say that a great deal of progress has been made towards achieving the IFA's general goals and specific objectives. The participation of the Inuvialuit in the IFA's management regime is both extensive and substantive, and has had a significant influence on government decision making. The level of management and research activity related to fish, other wildlife and the environment has risen dramatically since the IFA was signed. The effectiveness of this activity and the research associated with it has contributed substantially to an improved understanding of wildlife populations, habitat and the Inuvialuit harvest of wildlife in the Western Arctic. The harvesting rights established for the Inuvialuit under the IFA and the authority held by Inuvialuit institutions to regulate Inuvialuit harvesting have generally created a climate of confidence, certainty and control for the Inuvialuit with regard to the protection of wildlife, habitat and traditional harvesting. The co-management institutions created under the IFA continue to be regarded by the parties to the IFA as important mechanisms for implementing areas of shared Inuvialuit and government responsibilities and assisting

each party to the IFA in the implementation of certain responsibilities for which they hold exclusive responsibility.<sup>7</sup>

### Denendeh Conservation Board

The Denendeh Conservation Board (DCB) was established in 1986 in anticipation of the completion of the Dene/Métis comprehensive land claims negotiations. The board was intended to serve as the pre-implementation tool for the provisions of the wildlife sub-agreement of the Dene/Métis land claim agreement in principle. As such, DCB was modeled on the wildlife management board described in the claim and would have been folded into the management regime resulting from a final agreement.<sup>8</sup> Because negotiations on wildlife and other renewable resources were not finalized at the time of the board's creation, both parties acknowledged that the establishment of DCB would be without prejudice to future negotiations on the substance of wildlife provisions within the final agreement.<sup>9</sup>

A co-management board made up of five Aboriginal representatives from all five tribal regions and five representatives from the government of the Northwest Territories was created. The members were nominated by their respective organizations and appointed by the minister of renewable resources.<sup>10</sup> The board elected its chair, subject to the minister's confirmation.

The objectives of the Denendeh Conservation Board were to conserve and protect all renewable resources and habitat in a manner that would ensure their future availability for use by the Dene/Métis in the settlement area; to provide for the direct involvement by the Dene/Métis in renewable resource policy, planning and management; to ensure that non-Aboriginal persons were treated equitably; and to respect and protect the harvesting and management practices of the Dene/Métis.<sup>11</sup> The board was to address the issue of renewable resources throughout the Denendeh region of the Northwest Territories. DCB was strictly advisory in nature, as reflected in its overall mandate:

The Board will have the responsibility of providing advice to the Minister on renewable resource policy and legislation which are within the mandate of the department. It is recognized that the Board may wish to provide advice on other renewable resource matters that are not presently within the mandate of the department but are of importance to GNWT and residents of the Mackenzie Valley.

The advice on policy and legislation may include but is not limited to wildlife, habitat, forestry, environmental protection, land-use planning and water.<sup>12</sup>

The board's mandate was phrased so as to allow the board to provide input on matters such as forestry, habitat and the environment, which are in the jurisdiction of the federal government but also are the subject of intergovernmental working arrangements with the territorial government. (With respect to forestry, this area has subsequently been transferred to the territorial government.)

To carry out its mandate, the board was to reach consensus on issues such as commercial and subsistence wildlife quotas, scientific research results and recommendations to the territorial minister of renewable resources. Although DCB accepted these provisions as guidelines for its operations, it became increasingly apparent as comprehensive claims negotiations proceeded that the Dene/Métis wanted to develop a much stronger agency in which “Dene/Métis would play a dominant role in the management of wildlife, fish and habitat of wild creatures through the claims settlement”.<sup>13</sup>

With the demise of the Dene/Métis comprehensive land claim, the board lost its *raison d’être*. In the absence of a final agreement setting out the final terms of reference under which the board would function, the board did not develop its own clear focus or mandate. Although the Denendeh conservation board continued to operate, government commitment to the board diminished and the resources and authority required to ensure smooth operation did not materialize.<sup>14</sup> Eventually, in the spring of 1993, the Denendeh Conservation Board was dissolved.

Before dissolution, a consultant undertook an evaluation of the board’s performance. Key among the problems identified was the lack of communication between the board and the public, particularly with people at the community level. According to the consultant’s report, the board lost the support of the Aboriginal people that it was intended to serve. Thus, the report recommended that the body make a concerted effort to involve communities by using existing local and regional management structures, for example, hunting and trapping associations, and by increasing its communication with communities.<sup>15</sup> The report also found that the board had not established its own agenda, but instead was viewed as an extension of the territorial government. Further, inadequate resources were allocated to the conservation board to carry out its responsibilities.

While the consultant’s report noted that the board was relatively successful in providing a forum for local involvement in resource management compared to what previously existed, the author of a research study prepared for RCAP concluded that the main reasons for its failure were

- the lack of legal decision-making authority vested in the board;
- the perception that the board was an extension of the territorial government; and
- the absence of any independent fiscal, research and planning capacity.<sup>16</sup>

### ***Yukon Umbrella Final Agreement: Fish and Wildlife Management Regime***

Chapter 16 of the Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon sets out a comprehensive framework to guide and integrate the management of fish and wildlife within the entire settlement area.<sup>17</sup> The management regime is organized into three major sections with responsibility for a particular geographic area. At the broadest level, a fish and wildlife management board is to be established with responsibility for fish and wildlife



management within the settlement area. Within each First Nation's traditional territory, the First Nation will be responsible for fish and wildlife management, and a renewable resource council will be established to play an advisory role. As the regime is part of a comprehensive claims settlement, the management bodies created are both permanent and constitutionally protected.

The broad objectives of the proposed management framework are to conserve wildlife resources and their habitats, to guarantee Yukon First Nations' rights to harvest and manage renewable resources on settlement land, to ensure the full participation of Yukon First Nations members and their traditional knowledge in resource management, and to ensure the involvement and fair treatment of other Yukon resource users.<sup>18</sup>

Inside their traditional territory, each First Nation will have the authority to allocate and regulate harvesting quotas for Aboriginal and non-Aboriginal residents and to manage local fish and wildlife populations. The First Nation may participate in the broader management regime governing the entire settlement area. However, the nature of their participation is not clearly defined in the umbrella agreement and likely will be the subject of further discussion as these bodies are established.

Renewable resource councils are to be established to act as "the primary instrument for local renewable resources management" in the First Nation's traditional territory. It appears that the renewable resource councils are to be the venue through which non-Aboriginal resource users provide input and influence resource management, since the agreement states explicitly that the councils are to act in the public interest and to ensure public involvement in the development of their decisions.<sup>19</sup>

Each council is to be made up of six members, of whom three represent the First Nation and three the Yukon government. Although community representatives are nominated by the First Nation, the minister appoints both the council members and a mutually agreed chair. Appointments are for a five-year term, with staggered initial appointments: one-third for three years, one-third for four years and the final third for five years. This method should allow for continuity as the councils develop experience and expertise.

The renewable resource councils are meant to encourage and ensure input into and some control over resource management decisions at the local level. The overall responsibility of a council is to develop and make recommendations to the minister, the individual First Nation and other resource management boards set up under the final agreement. The councils will deal with matters related to the management and conservation of fish and wildlife inside the traditional territory of each First Nation.<sup>20</sup> Recommendations may pertain to the following broad areas:

- management plans, harvesting plans and requirements, and the allocation of harvests for fish and wildlife;
- local management concerns;

- the management of furbearing animals and the use and assignment of traplines;
- priorities and policies related to enforcement of legislation;
- the granting of research permits; and
- the allocation and terms for commercial uses of wildlife and fish (except salmon).

The councils are also empowered to establish by-laws under the *Wildlife Act* concerning the management of furbearing animals and are granted status as an interested party in relevant public proceedings. With the exception of the by-law provision, the renewable resource councils are advisory in nature. While the minister and the council must attempt to reach consensus, in the event that the council and the minister disagree on a council recommendation, the minister retains final authority.<sup>21</sup>

To support their work, each council is to prepare a budget setting out estimates for remuneration and travel for members, for reviewing research, and for informing and consulting with the public. Specifics about administrative requirements and staffing are the subject of individual First Nation implementation plans. The Yukon government is to cover costs associated with the set-up and operation of the councils. Administrative support for councils does not include technical support for gathering independent data because the territorial government is responsible for providing necessary information to councils as requested.<sup>22</sup>

The fish and wildlife management board will be charged with the joint management of fish and wildlife resources throughout the settlement territory. The board will be made up of twelve members: six representatives of the Yukon First Nations and six nominees of the Yukon government, with a mutually acceptable chair selected from its membership. Board members are appointed by the minister.

The fish and wildlife board will be responsible for making recommendations to the minister, the affected First Nations and the renewable resource councils on all issues related to fish and wildlife management, legislation, research, policies and programs.<sup>23</sup> Recommendations may relate to management plans recommended by the councils, total allowable harvest, adjustments to basic needs levels and restrictions on harvesting methods. The board may also provide assistance to or delegate its duties to the renewable resource councils.

All decisions of the fish and wildlife board are subject to the approval of the minister, who may accept, vary, set aside or replace the recommendation or decision. In the event that the minister proposes to vary or replace a recommendation with respect to total allowable harvest, the territorial government is expected to reach consensus with the affected First Nation. If, however, they are unable to reach any resolution, the minister's decision will stand as long as it is consistent with the principles of conservation. In turn, the board is to communicate to the renewable resource councils the decisions of the minister.

An executive secretariat is to be established to provide the board with administrative support and to act as a liaison with renewable resource councils. However, the board must rely upon existing government agencies for technical support. To ensure a link between the board and government, the director of fish and wildlife for the Yukon is to serve in an advisory capacity.

One community — the First Nation of Na-cho Ny'a'k Dun — set up its renewable resource council at the pre-implementation stage in 1992. Experience has been mixed. The council has enabled the community to generate information and expertise at the community level while exposing local resource use and management knowledge. However, the council has experienced difficulty in gaining departmental acceptance and integration of its work and is thus attempting to insert itself into the bureaucratic network.

The issue of integration and co-ordination will likely become more important as more management bodies come onstream. The umbrella agreement is vague and rather confusing in defining the actual working and reporting relationships among the renewable resource councils, the fish and wildlife management board, and the First Nations within the overall management scheme. All three share, to varying degrees, similar responsibilities over the same geographic area. It is not clear where one body's jurisdiction ends and another's begins. For example, while the First Nations retain authority over harvesting and management for their traditional territory, the renewable resource councils are also charged with preparing resource management recommendations for the same area. Moreover, the fish and wildlife management board makes recommendations affecting the entire settlement area. On the basis of the text, it appears that First Nations retain a degree of decision-making power, but this is couched within a broader management framework. To avoid duplication of effort and interjurisdictional conflict, implementation of the management regime will have to address these concerns clearly.

### ***Nunavut Final Agreement: Wildlife and Environmental Management Regime***

A fundamental principle guiding the creation of the new territory of Nunavut is that Inuit of the region are traditional and current users of wildlife with legal rights flowing from this use. In recognition of this principle, article 5 of the Nunavut Final Agreement establishes a wildlife management system that will reflect the harvesting rights and priorities of Inuit within the Nunavut settlement area. The regime is also centred on conservation principles and government's ultimate responsibility for this area.

The Nunavut Wildlife Management Board (NWMB) is to be the main instrument of wildlife management, access to hunting and regulation in the Nunavut settlement area. The board will be established as follows: each of four designated Inuit organizations (DIO) will appoint one member, the territorial government one member, and the federal government three members. The chair is appointed by the federal government on the basis of recommendations received from DIO. Members are appointed for a four-year term. NWMB is advisory in nature because the minister retains ultimate authority to manage wildlife. The board is charged with the following functions: to participate in

research; to conduct the Nunavut wildlife harvest study (document levels and patterns of Inuit use to determine basic needs levels); to establish and monitor levels of total allowable harvest; to determine and adjust basic needs levels; to allocate resources to non-Inuit residents and interests; and to recommend allocations of surplus. NWMB is also vested with the discretionary authority to approve the establishment of or changes to conservation area boundaries, identify zones of high productivity, and approve management and protection plans for wildlife habitats. Decisions of the board may be rejected, with reasons, by the minister (federal or territorial, depending on the issue).

Generally, Inuit have the right to harvest up to the full level of their economic, social or cultural needs throughout the Nunavut settlement area. Non-Inuit may also harvest wildlife subject to laws of general application, after total allowable harvest and basic needs levels have been established for Inuit. Inuit may dispose of wildlife freely, which includes the right to barter, trade or exchange wildlife inside or outside the Nunavut settlement area.

In addition to NWMB, Inuit harvesting will be overseen by hunters and trappers organizations (HTO) and regional wildlife organizations (RWO). Each community and each outpost camp may choose to establish its own HTO. Each region will have its own RWO. HTO will be responsible for regulating the harvesting practices of members, allocating and enforcing community basic needs levels, and assigning to non-members any portion of these allocations. RWO will be responsible for regulating harvesting practices among HTO members, allocating and enforcing regional basic needs levels, and assigning to non-HTO (persons or bodies) any portion of regional needs levels allocations. The board of an RWO is made up of representatives of the region's HTO. To avoid duplication and facilitate smooth operations, two or more RWO may join together to discharge their responsibilities. Neither organization may unreasonably prevent Inuit from meeting their personal consumption needs. HTO and RWO are funded by NWMB, which is funded by government.

With respect to land and resource management, the agreement establishes a number of public institutions charged with overseeing particular elements: the surface rights tribunal, the Nunavut Impact Review Board, the Nunavut planning commission, and the Nunavut water board. The Nunavut Impact Review Board (NIRB) is responsible for the environmental and socio-economic impact screening process established through the agreement. NIRB will be responsible for screening development project proposals; determining whether projects should proceed, and on what basis; and for monitoring projects.

The board is to be composed of nine members: four appointed by the federal minister responsible for northern affairs on nomination by DIO; two appointed by one or more federal ministers; two by one or more ministers of the territorial government; and, from nominations agreed to by the above members, the chairperson of the board, appointed by the federal minister of northern affairs. A member sits on the board for a term of three years. To carry out its duties, the board may establish by-laws governing procedures and conduct public hearings with the power to subpoena witnesses and require documents.

The cost of operations will be funded by government based on an approved annual budget.

NIRB may review projects that are forwarded to it from the Nunavut planning commission. The board may recommend to the minister that the project go ahead without a review. The minister, however, retains final authority with respect to environmental review matters. If the board decides to undertake a project review, its findings are to be forwarded to the minister, who may accept or reject the board's recommendations. The minister is to supply NIRB with written reasons for every decision. Likewise, if the minister decides to refer a project for public review by a federal environmental assessment panel, the panel will conduct its review in accordance with the provisions outlined in the Nunavut final agreement. Finally, the board is responsible for monitoring the effects of projects having to do with the ecosystem and socio-economic environment of the Nunavut settlement area.

## 2. Crisis-Based Co-Management

### *Beverly-Kaminuriak Caribou Management Board*

The Caribou Management Board was established in 1982, for a 10-year term, in response to a widely perceived crisis in the management of two caribou herds — the Beverly and Qamanirjuaq<sup>24</sup> barren ground caribou — that range between three jurisdictions: the Northwest Territories, Saskatchewan and Manitoba. During the 1970s, biologists working for natural resource management agencies in those jurisdictions believed that both herds were declining rapidly, and attributed this primarily to overharvesting by Dene and Inuit harvesters in the area. Aboriginal communities are virtually the sole users of the resource because the area is remote.

Government managers saw curtailing the harvest as the most appropriate response to the crisis. Aboriginal harvesters, however, viewed the problem as one of habitat protection and were becoming increasingly hostile to government initiatives that largely excluded their participation. In this climate, and because of media attention surrounding the caribou crisis, several initiatives were introduced to improve communication and understanding between the managers and users of the resource. The most significant initiative was the new board, established in the course of a 10-year management agreement between the governments of Canada, Manitoba, Saskatchewan and the Northwest Territories to co-ordinate management of the two herds.<sup>25</sup>

Aboriginal communities are not an actual party to the agreement, which covers a vast area of land comprising the herds' migratory range, which extends from Great Slave Lake in the western part of the N.W.T., east to Hudson Bay and south of the tree line in northern Saskatchewan and Manitoba. Membership of the board consists of five government and eight user members. The governments appoint members of their respective resource management departments while user appointments are made by the appropriate ministers on the basis of the recommendation of the communities or regional Aboriginal organizations.

Although the Aboriginal communities pushed for the establishment of a board made up entirely of users, the governments were not prepared to delegate their management authority and opted instead to include their own managers on the board. The agreement is not based on recognition of Aboriginal or treaty rights to hunt and/or manage the resource. Instead, the agreement recognizes the priority of subsistence hunting by traditional users who are defined within the agreement as those persons “recognized by the local population on the caribou range as being persons who have traditionally and/or currently hunted caribou for subsistence”. The virtual absence of third parties (non-Aboriginal people and private interests) in the region was a key reason for the importance given to subsistence harvesting in the agreement and the composition of the board.<sup>26</sup>

The board is responsible for developing and making recommendations to governments and users for the conservation and management of the herds and their habitat to ensure that the population is sustainable for traditional harvesting. The recommendations include limitations on the annual harvest; regulations; user participation; research proposals and data collection; the development and monitoring of a management plan; monitoring habitat; and conducting information programs. While governments have generally accepted the recommendations of the board, it remains advisory in nature, as the governments retain ultimate authority for management of the resource.

In practice, the caribou management board is generally viewed by both government and users as a success within the limits of its mandate. From a government perspective, the board has been quite successful in co-ordinating research and management of the herds among different jurisdictions. It has provided a single and comprehensive venue through which to address management initiatives and to consult those using the resource. Community representatives have viewed the board as a vastly improved management instrument in which they may directly incorporate their interests and concerns. It has afforded Aboriginal harvesters the opportunity to communicate with each other and to learn of developments on the range, and has been successful in promoting public and hunter education. The board members have developed a good working relationship and operate effectively as a team.<sup>27</sup> This point was cited in our public hearings as a crucial element in successful co-management:

[T]he users and management agencies must agree on the same goal in order to make a management decision or recommendation ... Users and managers must trust each other in order to work together. Honesty and patience are required as it can take time to develop that trust.

Joe Hanly  
Deputy Minister of Renewable Resources Yellowknife,  
Northwest Territories, 9 December 1992

The board’s mandate was renewed for another 10-year term in 1992. However, the Aboriginal communities are still not signatories to the agreement, and the structure of the board has remained the same. The distinction between users and managers remains fundamental to the board’s structure, and, in this sense, the caribou management board is not a full co-management arrangement.

### *Auyuittuq National Park Reserve, Baffin Island*

The Auyuittuq National Park Reserve was established in 1976 as part of Parks Canada's overall policy of completing a northern park system to preserve selected eco-regions. The park covers 22,000 square kilometres on Baffin Island. Initially, Parks Canada faced opposition from Inuit in the region, as the entire area was still under claim and the proposed boundaries of the reserve impinged on two adjacent communities, Pangnirtung and Broughton Island.

Following consultation with the communities affected, the park reserve was established without prejudice to the comprehensive claims negotiations and on the understanding that the boundaries might change subsequent to any land settlement. An advisory committee was formed of community members to provide input into the operation of the park reserve. Since that time, the committee, whose representatives were originally appointed by government, has evolved from a public consultation initiative into a substantive co-management body overseeing the management and administration of the park reserve.

The park management committee is the product of local relationship building between park staff and the two communities. Consequently, there is no defined time frame that guides the initiative nor is there a formal agreement setting out the terms of reference or function of the committee. Technically, the committee does not possess any decision-making authority, but in practice the decisions of the committee are accepted and implemented by park staff. Thus, the committee represents a community-based and community-accepted approach to land and resource management in which local needs and objectives are integrated directly into the park management system.<sup>28</sup>

The committee consists of members from the two communities as well as representatives from the local hunters and trappers associations. Members are elected directly by the communities while the associations appoint representatives. At the time of writing, four members are from Broughton Island and five are from Pangnirtung. Three Parks Canada staff sit on the committee but act as advisers only, providing information and assistance to committee members as required.

The committee is responsible for providing overall policy direction for the management of the park as well as for addressing other issues of concern (ranging from wildlife harvesting to interpretation programs for tourists under park operation). The committee meets twice a year as a group and holds two community-based meetings within their respective communities. Committee decisions are incorporated into park administrative practices. Financing for the committee's operations is provided by the park's internal budget.

The work of the committee has had a positive impact on park management and overall community relationships:

The result of this change in management structure is that it has allowed the community more direct say in the direction of the Park. The intent is to develop a management

regime in which local communities feel strongly that Auyuittuq is their park, and the messages which are presented by the park to visitors and residents alike accurately reflect community views.<sup>29</sup>

A major factor in the success of Auyuittuq's co-management committee is that all but one of the park's employees are Inuit from the local communities. Therefore, not only does the committee guiding policy represent community needs but so do the internal decisions and administration of the park reserve. Consequently, the potential for problems experienced by other co-management regimes in developing collaborative relationships between government staff and community members may be diminished.

Pursuant to the final agreement with the Tungavik Federation of Nunavut, Auyuittuq will become a national park. Inuit will retain the right of access to the park for the purposes of harvesting, subject to any restrictions developed during the negotiation of an Inuit impact and benefits agreement (IIBA). In addition to defining any required limitations on resource access and use in the park, the negotiated IIBA is to address matters related to the establishment of the park, such as ensuring that Inuit obtain employment and economic benefits, determining zones requiring environmental protection, and establishing joint Inuit/government parks planning and management committees.<sup>30</sup>

Since the Auyuittuq co-management committee is an informal body that has evolved to conform with the specific needs and concerns of the communities, it is not clear what the relationship will be between the committee and the formal co-management structures envisioned in the Nunavut final agreement. Given its success, the committee will likely continue to play a central role in park management.

### ***South Moresby/Gwaii Haanas National Park Reserve, British Columbia***

One of the longest-standing and best-known resource use conflicts in Canada is that involving the South Moresby area of the Queen Charlotte Islands in British Columbia. Throughout the 1970s and '80s, members of the Haida Nation and environmentalists joined forces to lobby for permanent protection of this wilderness area from commercial logging. Following several unsuccessful petitions to the British Columbia Supreme Court to prevent renewal of a forestry licence in the area, the Haida Nation submitted a formal land claim to the federal government based on unextinguished Aboriginal title and their inherent responsibility to manage the resources within their traditional territory.

Although the federal government accepted the claim for negotiation in 1983, logging within the claimed territory continued unabated. The Haida decided to take matters into their own hands and created their own 'tribal park', designating Gwaii Haanas and Graham Island as protected areas. Since the mid-1970s, the Haida have been managing and operating their own program for the protection of significant sites on South Moresby, such as the village of Ninstints, which UNESCO designated a world heritage site in 1981. As the number of tourists steadily increased, the Haida expanded the program to include information services, escorted tours and community feasts. A fee charged by the Haida was considered illegal by Parks Canada, but they did nothing to stop it.<sup>31</sup>



In 1987, the federal and provincial governments signed a memorandum of understanding to turn the area into a national park reserve. The Haida Nation, however, was not a signatory of the agreement, because they were unwilling to participate as joint managers with only an advisory role. Eventually, an agreement was reached between the federal government and the Haida, without prejudice to the Haida Nation's land claim, recognizing their divergent positions on ownership.

The Gwaii Haanas Agreement between the government of Canada (department of the environment) and the council of the Haida Nation is unique in that it contains parallel statements on sovereignty, title and ownership to the archipelago and affirms the parties' willingness to work together, without placing the Haida under the authority of the *National Parks Act*.<sup>32</sup> The Haida have been successful in obtaining a substantive role in management that respects their rights and responsibilities. The agreement further recognizes the continuing traditional harvesting rights of the Haida and their identification of significant spiritual and cultural sites within the region. All other resource extraction activities are prohibited. (The agreement makes an exception for 'essential activities' in support of fishing in adjacent waters, consistent with the guidelines to be developed for the protection of the archipelago.)

The objective of the agreement is to protect and preserve the archipelago's natural environment and Haida culture for the benefit and education of future generations. To achieve these objectives, the agreement establishes an archipelago management board (AMB) responsible for planning, operation and management. The board consists of two Haida representatives and two Parks Canada representatives, with co-chairs designated from each party.

The board is responsible for developing a joint management plan; establishing regulations and guidelines concerning Haida traditional resource harvesting activities; identifying spiritual-cultural sites and managing these sites; producing guidelines for permits and licences for commercial, research and recreational activities; communicating with existing private and government agencies involved in activities affecting the area; and developing economic and employment strategies for the Haida

Nation associated with the joint management process. To carry out these activities, the board prepares annual work plans setting out work, staffing requirements and budgets for both parties.<sup>33</sup> The agreement does not state how the board will be financed, although Parks Canada is responsible for financing all aspects of tourism development, including the Watchmen program initiated by the Haida.<sup>34</sup>

Neither party may take actions to manage or develop the park reserve without the consent of the other. Decision making is based on consensus, and if members disagree on any matter, the decision will be delayed until resolution is reached by the council of the Haida Nation and the government of Canada. A mediator may be requested to participate in resolving any disputes. The board must reach agreement before it can proceed, and its approval is mandatory for any legislation.

Two years after the agreement comes into effect and thereafter every five years, the parties must conduct a joint review that is to be finished in a six-month period. Following the six-month review period, either party may terminate the agreement subject to six months' unconditional notice.<sup>35</sup>

The Canada-Haida agreement represents an important achievement for Aboriginal people with respect to land and resource management — the Haida were successful in negotiating an understanding that respects their position on title and without Parks Canada retaining full decision-making power. Moreover, as the history leading up to the agreement illustrates, the Haida were instrumental in bringing about the creation of the National Park Reserve by establishing and operating their own tribal park to which the government was forced to respond.

### *Wendaban Stewardship Authority, Temagami, Ontario*

In the late 1980s, conflict over resource use in the Temagami region of northeastern Ontario dominated national headlines. At the centre of the dispute was Canada's — some say the world's — largest old-growth red and white pine forest. Protests by logging interests, environmental groups and the original inhabitants of the land — the Teme-Augama Anishinabai — occupied media attention, captured the interest of the public (as measured by public opinion polls), and caught the attention of the provincial legislature. As leader of the opposition, Bob Rae became involved and was arrested at an environmentalist blockade on the controversial Red Squirrel forest access road. The provincial government of Premier David Peterson decided it had to take action to resolve the impasse.

In April 1990, the province of Ontario (represented by Lyn McLeod, minister of natural resources, and Ian Scott, minister responsible for Aboriginal matters) and the Teme-Augama Anishinabai (represented by Chief Gary Potts and Second Chief Rita O'Sullivan) signed a memorandum of understanding, which set up negotiations for a treaty covering 10,000 square kilometres of land. The area had been the centre of a long-standing dispute between the Teme-Augama Anishinabai and the Ontario government over title to the land, one that culminated in a 1991 Supreme Court of Canada decision that the Temagami people had adhered to an 1850 treaty (and at the same time holding that the Crown had breached its fiduciary obligations to them).

In addition to treaty negotiations, the agreement included a bilateral process whereby the Teme-Augama Anishinabai were guaranteed an advisory role in the Ontario ministry of natural resources (MNR) timber management planning process for the Temagami district; and there was a commitment from both parties to establish a 'stewardship council' for part of the area. This council was announced as the answer to the dispute by those at the signing.

The NDP government, which took office in the fall of 1990, continued the policy of its predecessor. An addendum to the memorandum of understanding, signed in May 1991, brought the council into existence as the Wendaban Stewardship Authority (WSA). At a

news conference in Temagami, Chief Gary Potts and Bud Wildman, the minister responsible for Aboriginal matters and minister of natural resources, heralded the signing as a positive development in shared jurisdiction between Aboriginal and non-Aboriginal people.

The authority was given jurisdiction over four townships (roughly 400 square kilometres) northwest of Temagami and within the traditional homeland of the Teme-Augama Anishinabai. While most of the area is Crown land, it includes a few patented mining claims and privately owned cottage lands. The Wendaban stewardship area includes the Wakimika Triangle, where much of the old-growth forest is located, as well as the extension to the controversial Red Squirrel forest access road. (The authority was named for Wendaban, who was head of the principal Aboriginal family that traditionally occupied the stewardship area. *Wendaban* means 'whence the dawn comes'.)

The authority was set up as a decision-making body that would report to Ontario and the Teme-Augama Anishinabai, rather than as an advisory body to a government minister. However, while the Teme-Augama Anishinabai sanctioned WSA as a decision-making body through a general assembly resolution, the authority did not obtain the promised legislative jurisdiction over the four townships from Ontario. The jurisdictional vacuum was temporarily alleviated through the tacit agreement by all parties to act as if the authority possessed the appropriate legislative base.

While useful, this strategy caused some difficulty in practice. On more than one occasion, authority decisions that were contrary to policies of the local planning board were challenged by district staff of the ministry of natural resources because of WSA's lack of legislated decision-making authority. Although the situation was resolved by the minister directing his staff to acknowledge the authority's jurisdiction, it illustrates the problems of operating without a clear legislative base. Indeed, if challenged by a third party, it is unlikely that a court would have favoured the WSA position.

According to its terms of reference, the Wendaban Stewardship Authority is responsible for monitoring, regulating and planning all uses and activities, ranging from recreation and tourism, fish and wildlife to land development and cultural heritage on the land within its jurisdiction. The approach emphasizes holistic land and resource use based on four principles: sustained life, sustainable development, coexistence between Aboriginal and non-Aboriginal peoples and public involvement in the activities of the authority.

The authority has 12 members: six appointed by the Teme-Augama Anishinabai and six by the province of Ontario, and a non-voting chair appointed by mutual agreement. Representatives to the board were selected by both sides with a view to incorporating the diversity of local interests in the planning and management process. None of the members is a provincial public servant. Ontario's representatives included a local township reeve, the manager of a nearby sawmill and a local environmental activist; the Aboriginal representatives included the owner of a contracting business, a trade unionist and the manager of a craft co-operative. The authority built some aspects of traditional

Aboriginal protocol into their procedures, such as reaching decisions on the basis of consensus.

There were initial doubts about the potential for success using a consensus approach to decision making, given the diverse cultures and backgrounds of the members, the previous level of conflict over resource management issues, and the fifty-fifty split in representation. These doubts seemed to be backed up by conventional wisdom on resolving conflict: consensus is suited for situations where the level of conflict is low and groups have much in common. Once the members and chair formed a comfortable rapport, however, the authority established an informal routine for decision making.

In fact, in more than three years of operation, not one of the authority's decisions split the membership on Aboriginal/non-Aboriginal lines. The main points of tension were between those in favour of and those opposed to resource development, and there were Aboriginal and non-Aboriginal members in both camps. In June 1994, members reached consensus on a 20-year forest stewardship plan for the area under the authority's jurisdiction, a plan that establishes land use zones and regulates all uses, including recreation, timber, mining, wildlife, water and cultural heritage. That plan was subsequently submitted to Ontario and the Teme-Augama Anishinabai.<sup>36</sup>

The future of the authority is in some doubt. In 1993, Ontario and the Teme-Augama Anishinabai reached an agreement in principle on a treaty of coexistence. That treaty would have provided for a shared stewardship body covering a larger area and having a somewhat different mandate and membership criteria. Difficulties inside the Aboriginal community, however, prevented the agreement from being ratified before the new Conservative government took office in June 1995. Premier Mike Harris has since stated that Ontario would be withdrawing from the agreement in principle. If there is no treaty, the fate of WSA is still very much an open question.

Another difficulty faced by the authority has been the lack of stable funding, since it relies solely upon provincial government funding that is approved on an annual basis. Because of this, the authority has had minimal staff and has not been in a position to undertake long-term planning or to fulfil its mandate effectively. Because the provincial government controls the purse strings, it can control the agenda by withdrawing funds.

Whatever its future, there have been several positive lessons from this experiment in shared jurisdiction. Not only has the Wendaban Stewardship Authority generated support and collaboration among a multitude of often conflicting interests, at both the regional and local levels, it has also proven that Aboriginal and non-Aboriginal people can work together on issues of land and resource management. That in itself is a major accomplishment.

### ***Barriere Lake Trilateral Agreement, Quebec***

The traditional territory of the Algonquin of Barriere Lake in Quebec has long been subject to encroachment by industrial and recreational interests. Earlier this century,

hydroelectric development had adverse effects on wildlife resources and their habitat. Although the province of Quebec established a hunting reserve in 1928 — the Grand Lac Victoria Reserve, for the exclusive use of First Nations people — the construction of a highway through the area increased recreational hunting pressure. As a result, a significant portion of the reserve was turned over to non-Aboriginal use. The reserve became a park, and recreational and tourist use further increased. However, logging operations in the area have been the major source of conflict, exacerbated by the provincial forestry management and land use planning regime, which has made little attempt to address the ecological impact of resource extraction activities.<sup>37</sup>

In the late 1980s, when the province began to lock surrounding lands into 25-year timber supply and forest management agreements (CAAF) with logging companies, the Algonquin decided to challenge the province by seeking a court injunction as an immediate step to alleviate continuing pressure on their traditional land base and to force the federal and provincial governments into negotiations.

The Barriere Lake Trilateral Agreement, between the Algonquin of Barriere Lake, the province of Quebec and the government of Canada, was signed on 22 August 1991. The agreement covers a 10,000 square kilometre territory within La Verendrye Park, in which the Algonquin pursue traditional activities. In a strategic move by the community, the agreement was not based on recognition of Algonquin title or rights to the land and resources within the region. What the Barriere Lake Algonquin sought, rather, was to alleviate immediate resource extraction pressures and force the Quebec and federal governments into “negotiations aimed at a trilateral agreement on integrated resource management which would take Algonquin land use into account”.<sup>38</sup> The Algonquin succeeded in reaching an agreement built on the concept of “sustainable development” as proposed in the Brundtland report (the report of the World Commission on Environment and Development).

The objective of the agreement is to reconcile the forestry operations of the various companies operating in the area with the environmental concerns and traditional ways of life of the Algonquins of Barriere Lake whose home it is.<sup>39</sup>

The trilateral agreement did not establish a board to oversee management activities in the region. Instead, it established a four-year phased process to prepare a draft integrated management plan for renewable resources (defined as forests and wildlife) involving the following activities:

- the design and implementation of interim protection measures for the duration of the agreement;
- the analysis and evaluation of existing data and information and compilation of new inventories and information on renewable resource use, potential impact and interaction of activities related to their exploitation, and development within the perimeter of the territory;

- the initiation of an education process for this comprehensive process;
- the preparation of an integrated management plan for renewable resources based on the above work; and
- the formulation of recommendations for implementing the management plan.<sup>40</sup>

The agreement created two entities, one at the political level (the special representatives) and the other at the field level (the task force). With respect to the former, each party appointed a special representative to oversee the process; ensure continuous communication among the parties and between technical staff and government officials; develop the work plan and financial requirements for the task force; and take primary responsibility for drafting the plan and recommendations. Moreover, the representatives were to be guaranteed sufficient authority to make decisions and to apply the provisions of the agreement.<sup>41</sup>

The task force acts as the technical arm and is made up of eight members selected by the three signatories (three members each for the Algonquin and Quebec and two for the federal government). Included in its responsibilities is the identification of sensitive zones and the development of recommendations to provide protection to these zones from resource extraction.

An office was established to co-ordinate the project. Financing is shared equally by the parties, with the government of Canada reimbursing the Algonquin for all of their expenses. The issue of funding quickly became problematic and remained so for two years, as neither the provincial nor the federal government set aside a specific budget to execute the agreement.<sup>42</sup> Financial problems threatened work at both the management and field level as research and identification of sensitive zones were delayed. A more critical problem for implementation was the province's insistence that the process occur in accord with the primacy of its jurisdiction. As the Barriere Lake special representative, Clifford Lincoln (himself a former Quebec minister of the environment), explained during our hearings:

Quebec views its laws, regulations and jurisdictions as sacrosanct, and the agreement subordinate and insignificant in comparison. Quebec would like to delay any changes until the completion of the integrated resource management plan, at which stage its laws and regulations can be altered if necessary.

In the meantime, it has signed forestry agreements, known as CAAFs, over the agreement territory, and issues under these unrestricted forestry permits, thus giving forestry companies similar rights to those they would enjoy outside the territory as if the Trilateral Agreement did not exist.<sup>43</sup>

Effective interim protection thus became impossible, and a hostile climate developed among the Algonquin, loggers and government over the continuation of timber harvesting. The matter was referred to a mediator, Justice Réjean Paul, whose

recommendations included the transfer of power to the special representatives, the transfer of control of the technical work from the Quebec ministries, and the protection of sensitive zones within the existing timber agreement. In spite of the mediator's report, Quebec unilaterally suspended the agreement and the process nearly collapsed.

During the spring of 1993 the Algonquin carried out an effective public relations campaign, applied pressure at senior political levels, and intensified efforts to build a relationship with the forestry industry. These efforts resulted in a dramatic turnaround: the provincial government consented to give Quebec's special representative full decision-making authority and to establish a special interim management regime for the territory. Cabinet conferred temporary authority on the special representative to suspend and amend regulations under the *Forest Act* and CAAF within the area. This authority has enabled the representative to work directly with the logging companies to assist them in changing their practices to meet interim requirements. The special representative also received full control of the budget, and the provincial government committed \$600,000 for the 1993-1994 fiscal year (to be matched by the federal government).<sup>44</sup> Quebec's special representative is now accountable to the secretariat for Aboriginal affairs, under the purview of the minister of energy and natural resources.

In 1994 work focused on preparing an integrated resource management plan for the area. Recommendations for its implementation were to be developed during the first quarter of 1995. Although the agreement was to expire on 25 May 1995, it has been renewed until December 1996. After that date, the Algonquin will again deal directly with ministerial agencies, and much will depend on Quebec's willingness to participate in some form of co-management. It is doubtful, however, given the gains made thus far, that the Barriere Lake Algonquin will relinquish their influence in any future resource management process.

A research study prepared for RCAP attributes difficulties to the province's refusal to transfer the required authority from line ministries to the special representative during the first two years of the agreement.<sup>45</sup> With the transfer of power, clear lines of authority and communication were established, and representatives on the technical and political bodies began to work collaboratively toward the same objectives. Credit is also due to the efforts of senior forest industry officials and the Algonquins for building a more co-operative working relationship and accommodating each other's needs.

### ***Interim Measures Agreement between British Columbia and the First Nations of Clayoquot Sound***

On 19 March 1994 the province of British Columbia entered into the Interim Measures Agreement (IMA) with the Hwiih of the Tla-o-qui-aht First Nations, the Ahousaht First Nation, the Hesquiaht First Nation, the Toquaht First Nation and the Ucluelet First Nation. The purpose was to establish a joint land and resource management process covering the Clayoquot Sound watershed on Vancouver Island. IMA was the direct result of an intense and highly public period of protest over clear-cut logging in the Clayoquot Sound area. During the summer and fall of 1993 the Aboriginal communities,

environmentalists and others staged an extensive campaign, including mass protests and a continuous blockade of logging roads into the area. The protesters were successful in capturing national and international media attention, which ultimately forced the B.C. government to negotiate.<sup>46</sup>

The agreement is set within the meaning of the B.C. claims task force report.<sup>47</sup> It is therefore without prejudice to Aboriginal rights and treaty negotiations and recognizes that the First Nations have a responsibility to preserve and protect their traditional lands. Moreover, while recognizing British Columbia's authority to manage the subject lands, the agreement qualifies this "to the extent of its [the province's] interest in those lands".<sup>48</sup> As such, the agreement is intended to act as a bridging mechanism toward the making of a treaty and to begin the process of identifying areas of First Nations land and areas of potential joint management with the province. After two years the parties are to review the process and consider extending the agreement (with revisions as required). The province expects that the bodies established as a result of the interim agreement (or their successors) will eventually form part of a joint management regime created through the treaty process.<sup>49</sup>

The overarching goal of the agreement is to conserve resources for the future benefit of the First Nations within their traditional territories (covering 262,592 hectares of land adjacent to Clayoquot Sound). Within this broad goal are a number of specific objectives: promoting sustainable economic development and employment for the First Nations; restoring and ensuring the ecological integrity of the area; providing a sustainable forest industry; incorporating Aboriginal values and input into the planning process; and reconciling competing concerns about resource use in the region. The agreement contemplates an integrated approach to resource management, which will consider economic, environmental and social factors in decision making.

To achieve these objectives, the agreement establishes a central region board made up of representatives from the First Nations and British Columbia. The First Nations and the province are to appoint five representatives each and a mutually acceptable chair. The First Nations will select their representatives, while the province will officially appoint members to the board.

The board will be charged with monitoring and co-ordinating activities undertaken by existing panels, agencies and ministries responsible for resource management and land use planning in the region. The board will participate in the development and implementation of a comprehensive forestry audit and undertake a feasibility study for the development of ecological zones, including the establishment of tribal parks.<sup>50</sup> Given the intense conflicting interests surrounding resource use in the area, the board's mandate includes hearing public complaints and recommending methods to bring about their resolution. It is through this role that the board may be able to contribute significantly in promoting a broader level of understanding and support at the local level.

A number of additional activities are identified, notably the creation of a co-operative forest management area and a working group on economic development initiatives. This



appears to reflect the fact that the agreement involves five individual First Nations, each of which has its own objectives with respect to land and resource management and economic development within its broader territory. The forest management area is eventually to fall under the responsibility of the board and includes separate funds for training First Nations members in management and field operations.

The board will be empowered to review plans and policy decisions respecting land use and resource management prepared by agencies and ministries and may modify or recommend rejection of any of them at any stage in the process. There must be a majority vote of the First Nations members for a decision to pass the board. While not an explicit veto, this innovation may be useful in establishing parity between Aboriginal and non-Aboriginal representatives. Board recommendations are directed to the appropriate body for implementation and, if not implemented to the satisfaction of the board, may be referred to cabinet.

An interesting innovation is the creation of a central region resource council composed of hereditary chiefs and provincial government ministers. The council will act as a forum for dispute resolution if cabinet does not accept the board's decision. No alternative dispute resolution mechanism is mentioned in case of deadlock. This underscores a potential difficulty with respect to the authority of the board relative to that of the province. The board is not empowered to enforce its decisions because it is framed within existing provincial jurisdiction. However, because the parties contemplate amending legislation to circumvent implementation problems, potential avenues are built in to facilitate increasing the authority of the board during the life of the agreement.

To support the board in carrying out its duties, a secretariat is to be established. The secretariat will focus on co-ordination and the provision of administrative support rather than establishing a duplicate bureaucracy. All information is to be provided by existing government agencies and ministries. This may be cause for concern in practice, as the board may become entirely dependent on the province for information on which to base its decisions. The province of British Columbia is committed to funding the regime's operations based on a budget prepared by the board.

### ***Interim Hunting Agreement between the Algonquin of Golden Lake First Nation and the Government of Ontario***

The Algonquin of Golden Lake are involved in negotiations with the federal and provincial governments over their claim of Aboriginal rights within the Ottawa Valley watershed. That claim covers 8.5 million acres of land in eastern Ontario, including Algonquin Provincial Park. The issue of harvesting rights in the park has been particularly controversial. An ad hoc committee for the defence of Algonquin Park, representing recreational users, tourist operators, anglers, hunters and loggers, has challenged the merits of the claim and has been lobbying the federal and provincial governments against any Algonquin use of the park or involvement in park management.<sup>51</sup> In 1990, in response to moose hunting charges laid against community members, the Algonquin of Golden Lake and the Ontario ministry of natural resources

entered into an interim hunting agreement to resolve the conflict and provide a bridge for resource management pending the completion of the claim negotiations. The agreement is without prejudice to either party's position with respect to Algonquin Aboriginal and treaty hunting and fishing rights.<sup>52</sup>

The objective of the agreement is to allow the management of deer and moose hunting by Algonquin within their traditional territory based on the principles of conservation of wildlife, the preservation of Algonquin Park wilderness values, and respect for Algonquin rights to harvesting. The total area covered, including Algonquin Park, amounts to 36,000 square kilometres. Since 1990 the agreement has been renegotiated on an annual basis. Either party may, upon thirty days' notice, terminate the agreement if they believe the other party has violated its terms or intent. The annual negotiations between Ontario and the Algonquin set out the guidelines for the following year's hunting season, such as harvest quotas, boundaries and seasons for hunting each species, and improving the administrative structures to implement the terms as required.<sup>53</sup>

The agreement is innovative in that Ontario formally recognizes Algonquin authority to regulate hunting activities within the territory in accordance with Algonquin law. This recognition, however, stops short of provincial recognition of First Nation jurisdiction over natural resource use and management. Nonetheless, the arrangement affirms the First Nation's authority to make and enforce its own laws pertaining to methods of community harvesting and use of the resource.

The agreement established a co-ordinating committee made up of three Algonquin and three Ontario representatives. The committee undertakes the technical work required for the implementation of the agreement's terms, such as the planning, reporting and monitoring of hunting activities, including data maintenance. The committee may also make recommendations to the parties with respect to conservation measures to be implemented through the law. As part of its duties, the committee tables an annual report to the ministry of natural resources outlining biological data on the harvest. Although hunters provide harvesting information, the committee has had to rely upon biologists from the natural resources ministry to gather and prepare the necessary data.<sup>54</sup>

The province provides funding for an Algonquin conservation officer, a support staff person and an office. The office is equipped with approximately \$70,000 worth of equipment for carrying out conservation enforcement activities, including a boat, motor and trailer, four-wheel drive vehicle and snowmobile.<sup>55</sup> The agreement also provides for continuing discussions between the two parties concerning the development of terms of reference and funding for an Algonquin nature department.<sup>56</sup>

The agreement provides for an Algonquin official who is Ontario's first Aboriginal cross-deputized conservation officer and who is "responsible for the observance of the Agreement through community consultations and surveys". Trained by the ministry of natural resources, the conservation officer works under the direction of the First Nation and enforces Algonquin law with respect to Algonquin community members within the parameters of the agreement. The conservation officer technically cannot enforce

provincial laws against non-Aboriginal persons, but notifies provincial officials about possible violations. Similarly, local provincial conservation officers, who are also responsible for the agreement, defer to the Algonquin officer if an incident involves a community member.<sup>57</sup> The Algonquin and local conservation officers have succeeded in developing a good working relationship so there has been little disagreement in practice over each party's jurisdiction.<sup>58</sup>

A unique element of the agreement is the community-based justice system set up to resolve charges against Algonquin offenders. Five judges, primarily elders, are appointed to the court, with each sitting of the court consisting of three judges. If an offender is found guilty by the panel, that person must perform community work or hunting and fishing rights may be suspended. If the offender refuses to comply with the decision of the panel, the Ontario government is informed that the person is no longer considered to be an Algonquin for the purposes of the agreement and is subject to provincial laws. To date, no one has rejected the system's decision.<sup>59</sup>

A research study prepared for RCAP concludes that one of the major achievements of the agreement has been a more positive relationship between the local ministry of natural resources office and the community. The co-ordinating committee's work has also succeeded in developing a more independent, and hence mutually acceptable, source of information on Algonquin use of the resource. This has been helpful in diminishing — although not entirely eliminating — accusations of overharvesting directed at the community. At the same time, the direct involvement of the Algonquin in managing the harvest has enabled the community to develop management and technical expertise while strengthening Algonquin laws and conservation practices.<sup>60</sup>

### ***Whitedog Area Resources Committee, Wabaseemoong Independent Nations and Province of Ontario***

The Whitedog Area Resources Committee (WARC) was established pursuant to a memorandum of understanding signed between Wabaseemoong Independent Nations (formerly known as Islington Band No. 29) and the government of Ontario in 1991. The committee represents another step in a protracted series of attempts at resolving the social, economic and environmental problems created by a number of resource-related development projects within the community's traditional territory. The construction of two major Ontario Hydro dams in the late 1950s flooded reserve and traditional land, buried homes and a community cemetery, and forced the relocation of band members from One Man Lake. The artificial raising of water levels severely damaged the land on which the community harvested resources for both traditional and commercial purposes.

In the 1970s, a major pulp and paper mill owned by Reed Inc. and located upstream from the community was found to have emitted an estimated 40,000 pounds of mercury into the environment (including the English River system adjacent to the community). As a result, community members suffered health problems, and the province was forced to ban commercial fishing. It was not until the late 1970s that the province agreed to enter into negotiations, which did not yield an agreement until 1983 (ratified in 1985). In addition

to compensation, remedial measures and social and economic development initiatives, the 1985 agreement provided for community consultation but not co-management. The agreement also stipulated that the parties conduct a review every five years “so that all sections of the Agreement are kept relevant to both parties”.<sup>61</sup> On the basis of the review conducted in 1990, the province and Wabaseemoong entered into new negotiations to resolve outstanding problems associated with the 1985 agreement. The Whitedog committee was created as a result of that process.

The committee’s mandate is to develop and design a co-management arrangement to govern all proposed activities by any parties in Wabaseemoong’s traditional land use area (TLUA). It was established in 1993 with a four-year mandate. “The purpose of the co-management agreement will be to address a program of planned, managed and sustainable development in the TLUA ensuring that the Wabaseemoong Nations share in the benefit of such development.”<sup>62</sup> The area encompasses 672,060 hectares (including part of a provincial park) surrounding three reserves, totalling 11,800 hectares. WARC’s mandate does not include the small area of patented lands within the TLUA or the reserves.

The Whitedog committee consists of equal representation from the signatories, Ontario and the Wabaseemoong Nations, with an independent chair acceptable to both parties. All are appointed by the minister of natural resources, three on the advice of the Wabaseemoong, one on the advice of local third-party interests, and two directly from the ministry. The representation of third parties remains a matter of local controversy, especially in the town of Minaki, which claims an interest. The two signatories maintain that Ontario represents third parties by appointing a representative from the group as one of its members. Not all third parties are satisfied and they would like greater and more direct representation. Alternative proposals include involving more third parties directly (which would have the effect of eliminating the parity of representation now enjoyed by Wabaseemoong) or a direct partnership between Wabaseemoong and the local public in which Ontario plays only an advisory role. It is reported that there is some disagreement about the basis of appointment of Wabaseemoong representatives and some sympathy for the second model proposed by the third parties.

WARC has been given a budget to cover staff, access to expertise, and information sharing. As yet, it has no authority to plan, manage, or regulate land and resource use and has not been delegated any of the powers of Ontario in that respect. In practice, if the ministry declines to override Wabaseemoong’s objections at the committee, the latter has gained a greater role in decision making.

The bulk of the committee’s work has been devoted to directing the preparation of a comprehensive resource inventory of the traditional land use area in partial fulfilment of the committee’s mandate. This is a joint undertaking between the ministry of natural resources and Wabaseemoong staff that is funded by Ontario. From the resource inventory, the joint staff group will identify a host of potential sustainable economic development opportunities within the area and develop a socio-economic development plan for consideration by the community. In turn, the community will decide upon the

adoption of the overall socio-economic development approach, including specific initiatives as laid out in the plan. The work of the Whitedog Area Resource Committee is not yet complete and only lays the groundwork for a co-management agreement.<sup>63</sup>

### 3. Community-Based Resource Management

#### *Elk Lake Community Forest Project, Ontario*<sup>64</sup>

In May 1991, the Ontario minister of natural resources announced that the province would select four community forest pilot projects to test options for increasing local involvement in forestry. This was one part of a five-point sustainable forest program that included changes to legislation, protection for old-growth forests, and improvements to silviculture and private woodland management. In 1992, out of 22 applicants, the province accepted proposals from the Wikwemikong First Nation on Manitoulin Island and the northern Ontario communities of Geraldton, Kapuskasing and Elk Lake.

The community of Elk Lake is part of the township of James, an organized municipality that acted as the project proponent. Located some 250 kilometres north and west of North Bay (100 kilometres from Temagami), the township has a population of approximately 570 people and, typical of most small northern Ontario communities, an economy based entirely on natural resources. Elk Lake has a sawmill with 100 employees, three major logging contractors and several commercial tourist outfitters. A forest access road leading south from the community serves as the major entry point to the nearby Lady Evelyn-Smoothwater Wilderness Park.

Like the Wendaban Stewardship Authority, the Elk Lake Community Forest Project can be considered a response to conflict over land claims, resource use and the building of forest access roads in the Temagami region. Along with other members of his community, the reeve of James Township participated in a counter-blockade to those being mounted by the Teme-Augama Anishinabai and environmental activists in the late 1980s. The pilot project covers an area of some 470,000 hectares, encompassing the existing Elk Lake Crown management unit of the ministry of natural resources. About three-quarters of this area is included in the land claim of the Teme-Augama Anishinabai.

The principal objectives of the project, as developed by the proponent, are as follows:

- Secure local administrative and decision-making authority. This would involve the devolution of authority from the ministry of natural resources, subject to the acquisition of competence in resource management.
- Accelerate the development of sustainable forestry. This includes strategies to promote effective resource-use conflict resolution, improve knowledge of the area through proper data collection, and increase public awareness, knowledge and participation.

- Ensure the economic viability of local communities. This includes strategies to retain existing industry, maintain or enhance recreational opportunities, and promote economic diversification.
- Secure the permanence of the community forest. In addition to delegated management authority, this would include partnerships with outside interest groups and organizations and attempts to become financially self-sustaining.

The Elk Lake project is governed by a partnership committee that represents a range of forest user interests. As first constituted, the nine voting members included First Nations (Teme-Augama Anishinabai), the local community (Township of James), business (Elk Lake Planing Mill), labour (Elk Lake Planing Mill Employees' Association), education (Timiskaming Board of Education), and representatives of the mining and forest industries, tourist outfitters, anglers and hunters, and local environmentalists. Representatives of the Ontario ministry of natural resources and the Central Timiskaming Economic Development Corporation sit on the committee as non-voting resource people.

In late 1992 the Teme-Augama Anishinabai withdrew from voting membership because of a potential conflict over treaty negotiations with the Ontario government. An Aboriginal representative remains on the committee in an advisory capacity. The committee make-up has been criticized by environmental activists for being overly weighted toward those with a stake in the forest industry. It is difficult to avoid such an imbalance in a lumbering community like Elk Lake. The project has tried to maintain a forum where the various interest groups can reach consensus on controversial land use issues.

The partnership committee is responsible for establishing the direction to take to meet the goals of the project. Decisions are based on the principle of majority rule. The chairperson, who is chosen by the committee from among its members, has a second vote for the purpose of tie-breaking.

During the first three years of operation, the Elk Lake project received the bulk of its financing from the ministry of natural resources (\$100,000 in the first year and \$475,000 in the next two years). The proponent has invested a total of \$110,000 to date. Provincial funding has been extended for an additional year (1995-96). The pilot project has been aggressive in seeking alternative sources of funding and in generating community development. Contract field work for the ministry of natural resources, as well as other public and private employers, provided 397 days of employment in 1994 and 1,806 days in 1995. Activities undertaken included highway right-of-way brushing, tree planting, line running and conducting worker safety training courses. The provision of contract services has been criticized by some local and regional contracting businesses as unfair competition.

During the first year of operation, the partnership committee hired a professional forestry consulting firm to assist in preparing a pilot project plan, to develop and supervise data collection projects, and to provide professional forestry support. At present, much of the

professional and technical support for the project is provided by the ministry of natural resources, Kirkland Lake district.

The partnership is in the process of being revamped to become a non-profit corporation. This will assist in its organizational and financial goals. The long-term political goals are less certain. The pilot project remains an advisory body only; its basic planning ability is circumscribed by its obligation to abide by all provincial forest management legislation and policies. Thus far, the ministry of natural resources has not agreed to devolve management authority to the project.

Nevertheless, the Elk Lake community forest initiative has proven extremely popular with residents of James Township, who see it as a form of local empowerment. The project committee believes it can demonstrate that sustainable forestry is both possible and viable in a local and regional context. While environmentalists remain wary, constructive discussion has replaced confrontation.

### ***Controlled Exploitation Zones, Quebec***

During the 1970s the government of Quebec established a number of territorial zones in which development, harvesting and conservation of wildlife and/or a species of wildlife are managed by local non-profit organizations. These controlled exploitation zones (ZECs) were created as a means of dismantling private hunting and fishing reserves on which the public and Aboriginal people were previously not permitted to hunt, fish or trap. Quebec has approximately 80 ZECs, which are divided into three major categories: wildlife, waterfowl, and salmon. The zones are located in the southern part of the province; the northern region is administered by the hunting and trapping co-ordinating committee established as part of the James Bay and Northern Quebec Agreement and by exclusive harvesting zones, such as beaver reserves, in which only Aboriginal people may harvest.

The establishment and management of ZECs are based on four main principles: conservation, resource accessibility, user participation and the self-financing of operations.<sup>65</sup> To implement these principles ZECs are managed by non-profit organizations made up of community volunteers and representatives of wildlife organizations. Once established, the organization enters into a memorandum of agreement with the government to administer resource management in the area on behalf of the Quebec department of recreation, fish and game. These management organizations are empowered to establish by-laws with respect to

- registration of persons;
- entry or activity fees; and
- types of vehicles, boats and engines, or aircrafts that may be used for recreational purposes.<sup>66</sup>

The organization responsible for the management of an area exercises its authority within the context of provincially defined regulations and procedures concerning hunting, fishing and trapping activities in the zones. Any by-law passed by the organization must be approved by the minister, who may “amend or replace the by-law if it does not comply with the conditions prescribed by regulation of the Government or if the rules provided for its adoption have not been complied with.”<sup>67</sup> The minister, therefore, retains ultimate authority for overall resource management and decision making.

Resources required for ZEC operations are provided in part by funding agreements and by moneys collected from the permits and licences issued by the ZEC agencies for hunting, fishing and other activities within the zone. The management agencies are also supported by the activities of a broader organization — the Quebec federation of ZEC managers. Founded in 1983, the federation represents the ZEC administrators in dealings with government and other agencies, promotes management adapted to the geographical and demographic characteristics of the territory, promotes access to wildlife resources, promotes wildlife development and rational harvesting policies, and defends the interests of its members.<sup>68</sup>

Aboriginal people may participate as individuals in the local association responsible for managing the zone. However, the ZEC enabling legislation does not provide for guaranteed Aboriginal involvement in zone management, nor does the act recognize Aboriginal rights to resource use within the zones.<sup>69</sup> Aboriginal representation on a local ZEC board therefore may range from a minority to a majority position, depending on how the board is set up. Experience varies with the state of relations between the local Aboriginal and non-Aboriginal communities.

In some zones, community members have structured representation to ensure equal Aboriginal and non-Aboriginal representation. For example, the Atlantic salmon agency is involved in a number of co-operative management schemes with several First Nations. They pointed out a number of positive examples in their presentation to the Commission.

[T]here is a river in Quebec which is co-managed, because there is a sizeable non-Aboriginal population on the Escoumins and there is a ZEC which is under delegated management, and which is managed by a bipartite committee made up of equal numbers of Aboriginal and non-Aboriginal people in a management structure that provides access for everyone, but the two communities both derive equal benefits from this management.

... I believe that we have to count on everyone’s mutual goodwill to establish a genuine dialogue and recognize, I would say, everyone’s efforts. [translation]<sup>70</sup>

The ZEC management agencies are not co-management bodies in the sense that the government and a community undertake to jointly manage an area or species, but rather are a form of delegated community-based resource management. In a few cases, the agencies have been relatively successful in building bridges between local Aboriginal and non-Aboriginal residents who share a mutual interest in the resource and in ensuring that resource management is oriented to the needs of the broader community. Some



Aboriginal groups, notably the Quebec wing of the Assembly of First Nations, are not supportive of ZECs since the management operations are not based on the recognition of Aboriginal rights in their traditional territories.

***Bras d'Or Watershed Stewardship Proposal, Nova Scotia***<sup>71</sup>

The Bras d'Or Lake watershed covers 3,600 square kilometres of Cape Breton Island (2,500 square kilometres of land and 1,100 square kilometres of fresh and salt water) and is home to about 18,000 people, including members of the Cape Breton Mi'kmaq First Nations. Although the watershed is an area of considerable development potential, there are unique environmental and cultural features that require protection. The region has consistently suffered from a lack of co-ordinated planning: there are 22 separate government agencies at the federal, provincial and municipal level that currently share responsibility for activities in the watershed.

In 1975 the Bras d'Or Institute at the University College of Cape Breton (UCCB) submitted a proposal to the Nova Scotia government to undertake development of a management plan for the Bras d'Or Lake coastal zone. Although this proposal was rejected, it marked the beginning of two decades of effort to protect and guide development in the watershed.

In February 1994 the federal government provided funding to UCCB to design a new watershed management system. The college in turn spearheaded the creation of the Bras d'Or Lake working group, representing various communities and interest groups in the watershed. With the assistance of a professional forester, the group co-ordinated public consultation and preparation of the final report to government. It also examined other models of co-management and community-based resource development in various regions of Canada (including the Wendaban Stewardship Authority and the Elk Lake Community Forest Project).

In April 1995 the working group submitted a report to the federal and provincial governments, recommending the creation of a Bras d'Or stewardship commission, whose primary mandate would be planning and management of land and water resources in the entire watershed area. To avoid duplication, the proposed commission would operate as a streamlined, single-window agency that would expedite intergovernmental activities and provide an accessible, efficient and responsive public system. Responsibilities of the commission would consist of

- drawing up action plans for high priority issues (such as contamination of the lakes);
- drafting a charter to serve as the basis for policy making and planning, development and protection decisions;
- planning the development and use of land and water resources in the context of ecological, cultural and heritage values;

- promoting the area and educating the public;
- managing the sustainable development of the watershed, including sewage systems, docks, logging, recreational boating, fisheries and aquaculture;
- ensuring enforcement, including compliance monitoring, reporting and laying charges;
- reporting to the public through the provincial legislature; and
- conducting periodic reviews and making adjustments to the watershed plan.

The report recommends that the central principle guiding the proposed commission should be co-management, in which the responsibility for stewardship of the watershed is shared between the Mi'kmaq First Nations and the non-Aboriginal community. The 18 voting and non-voting members would represent the following areas:

- Geographical: seven voting members, one member for each of the seven geographical areas within the watershed; these representatives would be locally elected.
- First Nations: five voting members, one from each of the five Mi'kmaq First Nations. The report recognizes that resolution of Mi'kmaq land claims on Cape Breton may require changes in future representation.
- Government: six non-voting members, one from each of the four municipalities in the watershed, one from the province and one from the federal government, all to be appointed by their respective governments.

The report recommends that the commission use consensus-building as the primary means of reaching decisions: only in cases where consensus has not been possible should voting be used.

The working group's report also recommends that the commission be supported by an advisory panel of experts representing natural resource and cultural interests in the watershed. To develop new skills among Aboriginal and non-Aboriginal residents, it is proposed that UCCB and the five Mi'kmaq First Nation communities enter into an agreement to develop appropriate technical education programs.

The report recommends that the government of Nova Scotia take the necessary legislative steps to establish the Bras d'Or stewardship commission under the terms of the new *Nova Scotia Environment Act* and that the government of Canada co-ordinate discussions between the Mi'kmaq and federal, provincial and municipal governments to transfer the required authority and responsibility for planning, management and enforcement to the commission.

## **Notes:**

- 1** Lorraine F. Brooke, “Experiences of the Inuit of Nunavik (Northern Québec) with Wildlife Management and the James Bay and Northern Québec Agreement (1975-1993)”, research study prepared for RCAP (1994).
- 2** Lindsay Staples, “The Inuvialuit Final Agreement: Implementing its Land, Resource and Environmental Regimes”, research study prepared for RCAP (1995).
- 3** The summary is excerpted from Staples, “The Inuvialuit Final Agreement”.
- 4** Community conservation plans have been prepared by Inuvialuit communities in association with the Wildlife Management Advisory Council of the Northwest Territories and the Fisheries Joint Management Committee to supplement a regional wildlife conservation and management plan for the Inuvialuit settlement region required under the Inuvialuit Final Agreement. See Community of Paulatuk 1990, Community of Sachs Harbour 1992, Community of Tuktoyaktuk 1993, Community of Aklavik 1993, Community of Inuvik 1993.
- 5** For the initial ten-year period identified to implement IFA, Treasury Board allocated approximately \$18.25 million or 28 per cent of the total funds for wildlife management research. Staples, “The Inuvialuit Final Agreement” (cited in note 2).
- 6** Staples, “The Inuvialuit Final Agreement”.
- 7** Staples, “The Inuvialuit Final Agreement”.
- 8** Denendeh Conservation Board Authority and Procedures Manual, June 1988, Appendix III, p. 1.
- 9** Authority and Procedures Manual, Appendix III.
- 10** Authority and Procedures Manual, section 1.5, p. 2.
- 11** Authority and Procedures Manual, section 1.3, p. 1.
- 12** Authority and Procedures Manual, Appendix III.
- 13** Laurie Montour, “Natural Resource Management Agreements in First Nations’ Territories”, research study prepared for RCAP (1994).
- 14** Montour, “Natural Resource Management”.
- 15** Warren St. Germaine, 1991, quoted in Montour, “Natural Resource Management”.
- 16** Montour, “Natural Resource Management”.

- 17** *Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* (Ottawa: Supply and Services, 1993), p. 153.
- 18** *Umbrella Final Agreement*, section 16.1.0, p. 153.
- 19** *Umbrella Final Agreement*, sections 16.6.1, 16.6.6, and 16.6.9, pp. 163-164.
- 20** *Umbrella Final Agreement*, section 16.6.9, p. 164.
- 21** *Umbrella Final Agreement*, section 16.8.0, pp. 173-174.
- 22** *Umbrella Final Agreement*, section 16.6.7, p. 166.
- 23** *Umbrella Final Agreement*, section 16.7.11, p. 168.
- 24** This is the preferred Inuktitut spelling of the herd name. The old spelling, Kaminuriak, survived in the original name of the board which was changed to the new spelling when the agreement was renewed in 1992.
- 25** Peter J. Usher, “The Beverly-Kaminuriak Caribou Management Board: An Experience in Co-Management”, in Julian T. Inglis, ed., *Traditional Ecological Knowledge: Concepts and Cases* (Ottawa: International Development Research Centre, 1993), p. 113.
- 26** *Beverly Qamanirjuaq Barren Ground Caribou Management Agreement* (Caribou Management Agreement), 4 June 1992, p. 1.
- 27** For a more detailed evaluation, see Usher, “Beverly-Kaminuriak” (cited in note 25).
- 28** Bruce Rigby and Alex Zellermeier, “Auyuittuq National Park Reserve”, unpublished paper presented at a conference entitled *The Benefits of National Parks and Protected Areas in the North*, 19 April 1994, p. 4.
- 29** Rigby and Zellermeier, “Auyuittuq National Park Reserve”.
- 30** *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada* (Ottawa: Minister of Indian Affairs and Northern Development and the Tungavik, 1993). See the agreement for a complete listing of matters that may be addressed in the development of Inuit impact and benefits agreements in relation to parks.
- 31** Claudia Notzke, *Aboriginal Peoples and Natural Resources in Canada* (North York: Captus Press Inc., 1994).
- 32** Although Parks Canada, through the *National Parks Act*, is willing to enter into co-management arrangements with Aboriginal communities, its regulations and policies

assume that the federal government retains ultimate authority for the management of lands and resources within parks.

**33** *Gwaii Haanas Agreement between the Government of Canada and the Council of the Haida Nation*, 30 January 1993, p. 4.

**34** Notzke, *Aboriginal Peoples and Natural Resources in Canada* (cited in note 31).

**35** *Gwaii Haanas Agreement* (cited in note 33), p. 6.

**36** Wendaban Stewardship Authority, presentation to the Standing Committee on Aboriginal Affairs and Northern Development, 6 December 1994.

**37** Claudia Notzke, "The Barriere Lake Trilateral Agreement", research study prepared for RCAP (1993).

**38** Notzke, "The Barriere Lake Trilateral Agreement".

**39** M. Clifford Lincoln, Algonquins of Barriere Lake, RCAP transcripts, Maniwaki, Quebec, 2 December 1992.

**40** *Trilateral Agreement between the Algonquins of Barriere Lake, the Gouvernement du Québec and the Government of Canada*, 22 August 1991, p. 2.

**41** *Trilateral Agreement*, p. 3.

**42** Notzke, "The Barriere Lake Trilateral Agreement" (cited in note 37).

**43** Lincoln, RCAP transcripts (cited in note 39).

**44** Notzke, "The Barriere Lake Trilateral Agreement" (cited in note 37).

**45** Notzke, "The Barriere Lake Trilateral Agreement".

**46** Montour, "Natural Resource Management" (cited in note 13).

**47** British Columbia, *The Report of the British Columbia Claims Task Force* (Vancouver: Ministry of Aboriginal Affairs, 1991). The report recommended that interim measures be negotiated with First Nations as a means of protecting Aboriginal interests in lands and resources pending completion of the B.C. treaty process.

**48** *Interim Measures Agreement between Her Majesty the Queen in Right of the Province of British Columbia and the Hawiuh of the Tla-o-qui-aht First Nations, the Ahousaht First Nation, the Hesquiaht First Nation, the Toquaht First Nation and the Ucluelet First Nation*, 19 March 1994.

**49** Christine Lattey, Director, Special Projects, B.C. Ministry of Aboriginal Affairs, personal communication, 17 May 1994.

**50** The concept of a 'tribal park' has been developed and used primarily by First Nations in B.C. as a means of protecting their traditional territory from resource extraction. In declaring Meares Island a tribal park in 1984, the Nuu-chah-nulth Tribal Council stated that they intended to protect and preserve the area as a park in which management and operations are based on their Aboriginal title and jurisdiction to the land. Park management would centre on Aboriginal cultural survival (for example, Aboriginal harvesting and the protection of sacred sites in the park). The province has not developed a working definition of the concept; Parks Canada is beginning to explore the notion.

**51** Montour, "Natural Resource Management" (cited in note 13).

**52** *Interim Agreement on Hunting between Algonquins of Golden Lake and Government of Ontario* (September 1993).

**53** Montour, "Natural Resource Management" (cited in note 13).

**54** *Interim Hunting Agreement* (cited in note 52), p. 4.

**55** Montour, "Natural Resource Management" (cited in note 13).

**56** *Interim Hunting Agreement* (cited in note 52), paragraph 5(d), p. 4.

**57** *Interim Hunting Agreement*, p. 2. In 1995, the United Chiefs and Councils of Manitoulin Island reached a similar agreement with Ontario providing for a cross-deputized conservation officer.

**58** Montour, "Natural Resource Management" (cited in note 13).

**59** Montour, "Natural Resource Management".

**60** Montour, "Natural Resource Management".

**61** *Mercury Mediation Agreement Between the Province of Ontario and Islington Band No. 29*, as quoted in Wabaseemoong Independent Nations, "Review of Mercury Mediation Agreement" (unpublished, January 1991), clause 10.3.

**62** O.I.C. 1673/93, O. Gaz 1993.

**63** Anthony Usher Planning Consultant et al., *Partnerships for Community Involvement: A Comparative Analysis of Community Involvement in Natural Resource Management* (Toronto: Ontario Ministry of Natural Resources, 1994).

**64** This section is based on Elk Lake Community Forest, “Forest Partners: Caring and Sharing”, presentation to the House of Commons Standing Committee on Natural Resources and the Environment (October 1995) as well as on background documents supplied by the Elk Lake Community Forest Pilot Project. See also Brit Griffin, “What’s the Buzz: The Elk Lake Community Forest Project”, *Highgrader Magazine* 1/3 (May/June 1995), pp. 10-14.

**65** Fédération québécoise des gestionnaires de ZEC [FQGZ], “Mémoire pour la Commission royale sur les peuples autochtones”, brief submitted to RCAP (3 December 1993).

**66** *An Act respecting the conservation and development of wildlife*, L.Q. c. C-61.1, s. 110 (6).

**67** *An Act respecting the conservation and development of wildlife*, c. C-61.1, s. 110 (2).

**68** FQGZ, brief submitted to RCAP (cited in note 65).

**69** *An Act respecting the conservation and development of wildlife* (cited in note 66), c. C-61.1.

**70** Bernard Beaudin, president, Fédération québécoise pour le saumon de l’Atlantique, RCAP transcripts, Montreal, Quebec, 30 November 1993.

**71** This section is based on University College of Cape Breton, “Taking Care of the Bras d’Or: A New Approach to Stewardship of the Bras d’Or Watershed” (Sydney, Nova Scotia: April 1995), as well as on information supplied by Dr. J. Rod Carrow, R.P.F., who chaired the Study Group for Stewardship of the Bras d’Or Watershed.