

## **Background Paper**

# **Conflict Arenas in the Management of Renewable Resources in the Canadian North: Perspectives Based on Conflicts and Responses in the James Bay Region, Québec**

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## **Addressing the Mandate**

The mandate of this working group is to identify national and regional interests and conflicts in the management of renewable resources and to explore the means available to reconcile or to deal effectively with such conflicts, highlighting those that are resistant to effective reconciliation. There are several perspectives from which the mandate could be addressed and around which discussion could be oriented.<sup>1</sup>

According to one perspective, there are no real conflicts at all. In this view, regional populations have no specific or special rights, and from a legal point of view, therefore, no interests that need significant special consideration in legal or administrative measures. Alternatively, it has been argued that whatever rights and interests northern peoples may have, they are ephemeral; the broad sweep of history dictates that, because of numbers or because of the “primitiveness” of their way of life, they will be wholly incorporated into those economic, political, social, and cultural structures that dominate the national arena in Canada.

This view dominated Canadian policy concerning Indian people for two centuries. The failure of this perspective to take into account the survival of diverse native populations, even in southern Canada, has done little to weaken the recurrence of such claims. They continue to be made in court cases and in various public statements, although no longer in national policy pronouncements, since court decisions in the 1970s gave credibility to recognition of distinctive aboriginal rights. This denial of a distinctive future for native peoples of the North is not solely associated

with one political perspective. Although this view is most commonly expressed by some persons of small "c" conservative persuasion, it also has been expressed by some of small "s" socialist persuasion, the difference being signalled by whether northern peoples will be incorporated into the democratic free-market system or united with the working class.

These perspectives fail to recognize the extent to which northern indigenous peoples have retained a real but constrained control over their own lives during 350 years of interaction with world economic systems, and 50 to 100 years of interaction with the Canadian state. This history demonstrates that the almost universally stated desire of northern native peoples for continued relative autonomy within the Canadian state, with appropriate economic, political, and social linkages to national and international institutions, is a potentially viable alternative.<sup>2</sup> I stress the word "potentially" because the question remains whether that autonomy can continue to be made workable in practice.

A second perspective would address the mandate by recognizing that there are conflicts, but claiming that they are not so fundamental that they cannot be resolved effectively in the short or medium term. Judging from the experience in northern Canada, and in Québec in particular, I conclude that this is a useful perspective to explore, although it may not account for the total picture. I do not find the regional and national interests locked in such all-encompassing conflict that no progress or resolution is foreseeable. Many of the arenas of conflict do not involve direct head-on confrontations but, rather, differing interests that have complementary elements and can be reconciled practically with political, legal, and administrative measures.

There are compromises involved in such resolutions, however. Therefore, the resolutions can be reached only through direct negotiations among the protagonists, because only compromises that are acceptable to them can be workable.<sup>3</sup> *Acceptable reconciliation* is a key concept here. It is not good negotiating to compromise basic, long-term goals for short-term conciliation, so the tradeoffs must be struck by each party in the light of its long-term goals. Nevertheless, given the possibility of finding reconciliations that do not make compromises on major points, it may be essential to resolve reconcilable conflicts in the short term so as to increase the chances of being in a position to continue the pursuit of long-term goals. Given the nature of renewable resources in the North, immediate solutions to those resolvable problems faced by both national and regional interests will enhance considerably the chances of survival of the renewable resource base until other, more intransigent, problems may be addressed. In short, I would argue for compromise and reconciliation, but not capitulation.

In this respect, experiences with implementing different types of legal, political, and administrative measures in various jurisdictions need to be examined and assessed as an aid to those seeking workable solutions. The main body of this paper addresses one set of such compromise resolutions—those being tried in the James Bay region of Québec. I do not argue that these are models for other regions, only that there are important lessons to be learned from each experiment for finding workable solutions. The solutions sought will vary by region. By examining experiences in the N.W.T., Yukon, Alaska, and Québec, we may be able to take some useful initial steps to assess the effectiveness of various means of reconciling resolvable conflicts. Resolution rests with the protagonists, but detailed evaluations, rather than rhetoric, may provide some information useful to the process.

A third perspective on our mandate suggests that there is a limited number of highly important arenas of conflict wherein effective reconciliation cannot be foreseen now in the short or medium term. I have been impressed by how wrong various pronouncements have been about what conflicts were irreconcilable. On the other hand, my reading of the northern Canadian experience is that we may be able to identify arenas where various potential means of reconciliation have failed repeatedly. In these arenas, administrative and other means of implementing a reconciliation may be available, but parties to the conflict may not have been able, in fact, to strike acceptable compromises. Alternatively, they may have appeared to do so, but later may have found that the actions of one party were inconsistent with understandings of another.

In these cases, we have to ask how and whether changes in those basic interests themselves are possible. This could lead to consideration of the structural and ideological foundations that inform those interests. Such an analysis would lead to a consideration of how various groups could contribute to changes in basic interests of parties. This perspective involves looking at historical patterns and underlying processes. In some respects, this analysis is not part of the typical fare of pragmatic workshops. Nevertheless, I would argue that it is a key part of our mandate and that we should view these as the pragmatics of the longer term.

In summary, I would argue for the need to adopt at least two perspectives in our discussions. The first is addressed to the short and medium terms and involves evaluating experiences with various means available to parties desiring to reconcile resolvable conflicts. The second perspective involves identifying irreconcilable conflict arenas and seeking to understand how the interests in question are rooted, how they have changed in the past, and how they might be changeable in the longer term future.

The main body of this paper comments on the short- and medium-term experience and, more specifically, on the means being tried for reconciling conflicts in the James Bay region of Québec. My agenda for this part of the discussion comprises five arenas of conflict: the recognition and definition of the basic rights of native hunters; the management of the resources; the allocation of the resources among conflicting users; the provision of adequate cash incomes for indigenous hunters; and the protection of the renewable resources from the effects of non-renewable resource development. At the end of the paper I shall raise agenda items for discussion of irreconcilable conflicts.

## Recognition and Definition of the Basic Rights of Native Hunters

Throughout much of Canada, no basic and inalienable right to harvest and use wildlife resources is recognized. Native peoples are accorded various rights to use renewable resources by the Crown; the rights so accorded are subject to change by the will of the Crown alone. In the past, the exercise of the Crown's authority has been constrained only partially, mainly by political considerations and certain treaty obligations. Indigenous peoples, on the other hand, have asserted their aboriginal rights consistently, which include a right to harvest and to use renewable resources not subject to government authority. Recently, the negotiation of aboriginal claims agreements, the restructuring of northern political arrangements, and the drafting of the Constitution have provided contexts in which a recognition of native hunting rights can be enshrined in a form that is more enduring and less subject to unilateral alteration.

The view that native peoples' rights should not be subject to unilateral alteration seems to be basic. All of us feel that we should have certain rights inalienably entrenched, as the inclusion of a Charter of Rights in the Constitution has again indicated. We may disagree about what those rights should be, but the need for such rights is acknowledged widely today. For native peoples, these inalienable rights would differ in content but would be equally necessary, and I assume that northern native peoples would include among their inalienable rights those relating to hunting.

The issue of whether such rights need to be enduring requires a brief comment. It may not be appreciated how often basic hunting rights have been changed in the past. A cursory review of the history of legislation relating to the use and management of wildlife resources in Québec reveals that the basic regulations have been overhauled once in every one or two decades in this century and that each major revision has altered significantly the bases and the principles on which use and management were recognized in practice. I suspect that a similar pattern has occurred in other jurisdictions with similarly long histories of legislative action. Although everyone recognizes the need for revision and change, the frequency of basic rewrites emphasizes the need to enshrine basic and enduring rights outside conventional legislative forms. This need arises, in the first instance, from the explicit and universal desire of native peoples to retain and to continue to develop the hunting cultures and economies that have been their heritage, and that they envisage in terms of generations rather than decades.

The contents of the rights that indigenous peoples seek will vary, but the need for new definitions is clear. The standard Canadian formula of hunting rights on unoccupied Crown lands is clearly inadequate for maintenance of renewable resource-based economies, as the history of non-native occupation of southern Canada has indicated. One possible direction for revision is indicated by the harvesting right enshrined in the James Bay and Northern Québec Agreement (JBNQA). This agreement specifies the content of the right, the limitations that apply to it, and the persons to whom the right applies. The JBNQA also states the need to recognize the Crees' own culturally defined system of rights and privileges.

The JBNQA provides for a native right to hunt, fish, and trap—called a right to harvest—all species of fauna, at all times, over all categories of land in the entire territory, wherever this activity is possible physically. The only general restrictions to this right are that it is subject to the principle of conservation, it cannot be exercised inside towns, and it is restricted when there is actual interference with the physical activities of others or with public safety. The latter restraints are specifically and narrowly defined. The right to harvest also explicitly includes the right to subsidiary activities and technology necessary to exercise harvesting rights, many of which have been and often are restricted by current provincial, territorial, and federal legislation. The right to harvest includes the right to conduct all of the hunting, fishing, trapping, and related activities that the Cree people now are pursuing and traditionally have pursued. This establishes a general right to hunt, intended to codify aboriginal hunting rights in modern terms and to give them legal force binding on governments at all levels.

The one new constraint on the right to harvest is that it is subject to the principle of conservation, which is specifically defined in paragraph 24.1.5 of the JBNQA:

“Conservation” means the pursuit of the optimum natural productivity of all living resources and the protection of the ecological systems of the Territory so as to protect endangered species and to ensure primarily the continuance of the traditional pursuits of the Native people, and secondarily the satisfaction of the needs of non-Native people for sport hunting and fishing.<sup>4</sup>

In essence, the principle of conservation provides that the right to harvest may be limited only under specific conditions in order to protect endangered species and ecological systems. These limitations are essential to the reconciliation of the interests of the provincial and federal governments and those of the regional population. The principle signifies the acceptance by all parties of the priority interest in protecting wildlife and environments.

To whom the rights apply and who can benefit from the products of the exercise of the rights have been the central questions argued in each legislative jurisdiction in the North. In the JBNQA, there is no basic subsistence means test. The right can be exercised by all Cree and Inuit beneficiaries, whether status or non-status. Harvesting in order to sell meat to non-natives is, however, effectively prohibited.

The right to harvest, as set out in the JBNQA, was intended to give legal recognition to Cree hunting and to provide the basis for hunters to pursue their way of life according to their own culturally ordered knowledge, decisions, and activities. The agreement does not try to codify or to define the cultural system, but recognizes its existence and its key structures: the system of hunting territories and of “owners” of territories, which are called, respectively, “traplines” and “tallymen” in the agreement.

A trapline is defined as an area in which harvesting is conducted under the supervision of a Cree tallyman. A tallyman is defined as a person responsible for a trapline and recognized by a Cree community. These definitions incorporate the essential cultural concepts and practices of the Cree in their use and management of renewable resources without forcing the specific features of the system into western legal concepts; these features, therefore, are left flexible for definition and adaptation by the Cree.<sup>5</sup> Usher has emphasized that such recognition is essential to the establishment and recognition of native rights.<sup>6</sup>

Finally, Usher has raised, in his paper for this workshop, an important question with respect to the legal nature of the right to wildlife resources *vis-à-vis* the rights to development and compensation [reproduced in this volume]. One attempt to redefine hunting rights has been explored in Québec through the use of the term “harvesting” in the JBNQA to define the native right to use wildlife. This term avoided the extensive judicial and legislative interpretations that attach to the terms “hunting,” “fishing,” and “trapping.” If I understand Usher, however, he not only wants to distinguish a new right from previous rights, but also wishes specifically to identify its priority or inferiority to other land-use rights and to give it a higher priority than currently exists. This could provide new avenues for an attempt to resolve several of the types of conflicts discussed below.

## Management of the Wildlife Resources

Management of wildlife resources inevitably raises the issue of conservation of the resources. Just as the scientific definition of conservation has been changed historically and has been debated frequently by scientists, so it varies among cultures. The cultural relativity of both values and concepts is a given for modern social science, and the fact that there is considerable variability in the definition and use of concepts is more than abundantly demonstrated. The implications in the northern Canadian context are that values, goals, and methods of conservation and wildlife management differ among the culturally distinct populations of the area, and that these differences need to be recognized. This variability further implies that the different systems need to be articulated.

First, however, I must argue that the recurrent claim, recently expressed by Theberge, that there are no behavioural self-regulatory mechanisms or traditions among hunting peoples to limit human natality with respect to food supply, or to conserve resources, is simply wrong on both counts.<sup>7</sup> There is an important literature on the limitations to the growth of hunter-gatherer populations.<sup>8</sup> More important for the present discussions, the existence of hunting territories among the Algonkian people of eastern sub-arctic Canada and the use of these territories to conserve key wildlife were described early in this century by Frank G. Speck.<sup>9</sup> These systems, which clearly predate government introduction and which may or may not predate the fur trade (I would claim the former), have been the subject of an extensive research extending over six decades.<sup>10</sup> Lest I appear to be choosing a single case, there have been periodic reviews of indigenous conservation systems by anthropologists over at least the last 25 years. More

recently, Canada has been one of the main areas for quantitative work on indigenous management systems relating to beaver and moose populations,<sup>11</sup> fisheries,<sup>12</sup> and to waterfowl,<sup>13</sup> as well as to management of forest successions.<sup>14</sup> The significance of self-regulation has been emphasized in these recent articles and need not be repeated here.

My own research among the Waswanipi Cree of Québec emphasized several additional issues. First, indigenous systems not only serve to constrain the use of wildlife resources but also, at least under certain conditions, serve to manage the resource. Thus, the indigenous systems can control certain vital biological parameters of the resource and can do so to optimize the quantities or qualities of wildlife populations that are highly valued in a given indigenous cultural system. I have argued that Waswanipi Cree try to hunt moose and beaver so as to meet four objectives. Based on the statements of the Waswanipi Cree and the logic of their belief and spiritually sanctioned symbolic systems, I have phrased their goals in western technical terminologies as follows: to harvest these resources within sustainable yields so as to avoid depletion; to choose, from the variety of harvesting strategies that are compatible with sustained yields, the intensity and frequency of harvesting that relatively stabilize the biological populations and that also may make them relatively resilient to perturbation; to optimize the labour cost of hunting by using more efficiently harvestable resources in preference to less efficiently harvestable resources, whenever this is compatible with the foregoing objectives; and to produce as much food as is consistent with the foregoing goals and with cultural values of work intensity, social sharing obligations, and spiritual propriety.

In general, the research on Cree activities supports the conclusion that the Waswanipi actually seek these objectives in practice, and biological indicators support the conclusion that they usually achieve these objectives. An important factor in this success is the extensive knowledge that senior hunters have of the land and of the wildlife they hunt. This knowledge comes from observing trends in game population indicators and harvests over many years. Harvests are adjusted in response to these trends. The observed indicators of moose and beaver populations include trends in numbers of animal signs and sightings, numbers of moose yards and beaver colonies, sizes of aggregations or colonies, age and sex structures, frequency of births, the frequency of twinning in moose, and the size of cohorts among beaver (judged from observations of placental scars during butchering), and the general health of animals. These are precisely the kinds of data that non-native game managers try to get in order to manage moose and beaver populations. Senior Cree hunters who have returned frequently to the same hunting territories, and who know these distinct

tracts (which average about 1200 km<sup>2</sup>) in great detail, have more knowledge of the game populations they hunt and manage than non-native game managers can have for the vast tracts under their management and intermittent observation.

The goals of management may vary among different native peoples, but the often extensive knowledge of these peoples needs to be recognized and their capabilities as managers acknowledged. Although there is important variability among indigenous cultures and societies in the Canadian North, I would suggest that a testable working hypothesis is that many northern hunters may share the goals of Waswanipi Cree on the whole, and that it is plausible that other northern hunters also can be successful at meeting these objectives. There is a significant difference between these native objectives and the goals of conserving resources and maximizing cash returns from them, cited by Usher as characteristic of non-native management systems. The two kinds of objectives clearly are based on different cultural values.

A second issue is that indigenous management systems are themselves highly resilient and adaptable. This, however, does not mean that they are not easily put under pressure or that they do not undergo changes. Berkes has identified several conditions under which indigenous management systems require alteration: loss of control over resources, rapid technological change, commercialization of subsistence uses, and rapid population growth.<sup>15</sup>

In northern Québec, the indigenous management system, based on hunting territories or traplines, has existed at least since the beginning of this century, and there is good evidence of its existence at the beginning of the last century as well as plausible grounds for assuming it to have existed under certain pre-contact conditions. During this period there have been successive intrusions by outsiders who have threatened, and occasionally have implemented, controls over resources. There has been extensive technological change, increased pressure for commercialization, and rapid population growth. As well, there has been the introduction of new consumer demands, non-native controlled education, more sedentary lifestyles, extensive land-based development, and increased bureaucracy. The wildlife management system has been maintained, however.

The Waswanipi Cree have fought both government and internal changes to maintain the system. Although it has not always been possible to maintain the system with respect to all species, they have abandoned it only in those times, under those circumstances, and for those species for which it temporarily was not possible to continue management practices. For example, when there were competing fur trappers in the 1920s and 1930s, the Waswanipi feared loss of control of the resource and trapped out

beaver and marten. They did not over-hunt moose or other fur-bearers less easily depleted by non-native trappers, however. Simultaneously, they petitioned the government to restore their control over the resource so that they could re-establish the game populations and good management practices.

Various changes resulted from these events, some of which made it appear to outsiders that fundamental control of wildlife had shifted to the government. In practice, only the Cree had a sufficiently detailed knowledge of trends in local game populations to be able to manage them, and any local and detailed management by government agents was not enforceable in practice if it was not supported by the Cree tallymen. In the widely decentralized system of hunting territories—there are close to 300 in the James Bay region of Québec—only the most general and ineffective regulations can be enforced by a centralized authority. This situation provides an incentive for reconciliation amongst interests.

If the fact that it can be regulated only by decentralized “owners” of hunting territories is a strength of the Cree system as it has been tested and reshaped during recent history, this is not to say that it is, or can be, isolated from outside interventions. The same history shows that the actions of non-natives can disrupt and require alteration of the system. The historical weakness of the system lies in its ability to regulate only the activities of members of the indigenous community. This is why recognition of the system in the JBNQA was insufficient; means still were needed to regulate non-Cree use and effects of this use on wildlife. This situation provided additional incentive for reconciliation.

Although indigenous systems probably are widespread and resilient, there is still a need to articulate them with management systems designed for regulated non-native activities. There is, thus, a mutual benefit in recognizing both systems. Thus, the JBNQA, besides protecting hunters’ autonomy by recognizing rights and the culturally defined Cree system, also recognizes that there will have to be new structures and principles for articulating that system with government powers.

Most of the specific provisions of the JBNQA are designed around this latter need. Given the effectiveness of indigenous management, the agreement recognizes that there should be as little interference as possible. Because harvesting is limited by the principle of conservation, so long as Cree conservation is working the Cree are complying with this condition. Interference with Cree practices can occur only if and when one party—native or government—claims (and can show plausibly) that a conservation problem exists, whether it is caused by native or non-native peoples. Depending on the nature of the problem, its solution may or may not involve alterations in Cree practices for the short or long term. When it

does involve alterations, conservation decisions affecting native peoples will be implemented first through guidelines or advisory programmes or both, which amount to native self-regulation. If these mechanisms are not effective or if they are inappropriate, regulations may be used. Regulations will be used, however, to create a minimum of interference with native peoples and harvesting activities. If regulations do not conform to this pattern, they are unlikely to be fully or even extensively enforceable. The underlying assumptions are that the new structures will come into play only when problems arise and that, when they are needed, the Cree people and the appropriate governments will wish to see the problem resolved to protect the resource.

An obvious area of contention is the nature of the new structures that are to join indigenous management systems to those of wider application—in particular, the relative authority of native and non-native institutions in those processes. The JBNQA provided for equal representation on primarily consultative bodies, with the provincial and federal governments retaining a final authority for most, but not all, issues. This authority is constrained by a series of principles specifying native needs and by the procedural elaborations that are required to alter the initial advice. It is fair to say that although the key tests have not been made decisively, this system appears to be workable, but not necessarily desirable. The system is complex and bureaucratic; when it is not used in an atmosphere of goodwill, those using it can lose sight of issues in the plethora of procedures and rights. Other means of establishing joint exercise of management clearly need to be explored in other regions of the Canadian North. The nature of evolving government forms in the northern territories will provide an opportunity for establishing different structures and procedures.

## Regulation of Conflicts between Native and Non-native Users

Conflicts between native and non-native users of wildlife are common in many, but not all, areas of the North, and raise the basic question of how the resource will be allocated. The first key to successful resolution of this conflict is agreement on the relative merits and strengths of the claims made by various user groups. This relative ranking is largely a political process, shaped at various times by legal and ideological features of both societies. In the last decade, the principle of a priority for native use has gained ground. It is still clouded, however, by questions of whether it

applies equally to status and non-status peoples, whether there should be an economic means or subsistence test, whether the priority should include non-native peoples with similar lifestyles if not similar social communities, and whether the priority applies only to subsistence uses or includes various exchange, monetized, or commercialized uses. These issues will be resolved increasingly through aboriginal claims agreements, constitutional rights definitions, and the development of new government structures, and they will have to vary between regions. Recognition of native priority is likely to be a key to conciliation.

As priorities among resource users and uses are established, various mechanisms will have to be established to regulate conflicts and to allocate resources according to these priorities. One such set of mechanisms was developed in the JBNQA to establish the priority accorded to native harvesting. The JBNQA contained several provisions intended to regulate present and future conflicts between use of the wildlife resource by natives and use by sport hunters and fishermen, outfitters, and commercial fishermen. One provision was intended to limit the extent of potential conflict, the second was to establish a mechanism to put into operation the priority of native harvesting over sport hunting and fishing, and the third was to design an outfitting regime that would provide an important degree of practical native control over aspects of non-native hunting and fishing activities.

In general, the agreement limits potential conflicts between native and non-native sport hunters and fishermen to the species for which non-native use had been established already and to geographical areas less essential for native use. It also eliminates existing conflicts in areas of primary interest around native settlements. The goal of these provisions was to set aside several general species and geographical areas for exclusive native use.

Several mechanisms for putting a native harvesting priority into practice were discussed during the negotiations. One mechanism guaranteed a harvest per native hunter. Another guaranteed the native peoples a percentage of the total kill of a species. A third guaranteed the native peoples a fixed level of harvest, if permitted by animal population levels. The first option was dropped early in discussions because it was unacceptable to governments. Preference for the third mechanism was based on two convictions: first, that most resources subject to competing use were nearly fully harvested at that time and secondly, that the most sensitive period for the maintenance of subsistence production occurs when game populations decline, either for natural reasons or because of development or over-hunting.

It was considered preferable to guarantee a fixed harvest that would effectively cut off sport hunting or fishing when animal populations declined and would reserve the entire available catch for the native peoples, rather than simply guarantee a fixed percentage of a declining kill while non-native hunting continued. In the periods when populations were low, this would assure native hunters of a higher harvest of a species than would the alternative formula, thereby protecting subsistence production during the period of greatest vulnerability. This option also would place the initial burden of development-induced declines in jointly used resources on non-native users. The fixed-level guarantee, however, was acceptable to the native peoples only when it was linked to the additional provisions that larger kills were possible when warranted by game populations and that allocations above the guaranteed level would be based on need.

Because it is impossible in practice to guarantee actual harvests over time, the mechanism finally adopted provides for the governments and native peoples to establish fixed, guaranteed levels of allocations to natives. These levels are to be based primarily on the results of a joint research project concerning native harvests of wildlife during a seven-year period (James Bay and Northern Québec Native Harvesting Research Committee (JBNQNHRC), 1982).<sup>16</sup> Once the guaranteed level is established, it will determine partly how the permissible kill in any one year will be allocated between native and non-native users. When the estimated permissible kill from a wildlife population in a given year is equal to, or less than, the guaranteed level, the entire kill will be allocated to the native peoples. When the permissible kill of a wildlife population in a year is higher than the guaranteed level, the native peoples will be allocated at least the guaranteed level; the balance of the permissible kill then will be divided between the native peoples and non-natives according to their needs, provided that some of the balance is allocated to the non-natives.

This mechanism for giving priority to native harvesting will provide a major means of controlling the actual kill by sport hunters and fishermen and of limiting the conflicts with native hunters. The mechanism will be used only when conflicting uses create a conservation problem. Furthermore, although quotas are given priority as the means of implementing allocations, other management techniques can be used in ways consistent with these principles.

Other areas of native concern, with respect to non-native hunting and fishing, were to have some effective influence over the times, places, and ways in which non-natives hunted, and assurance of a higher share for native peoples of the economic benefits produced from outfitting for sport hunters and fishermen. The outfitting provisions established in the hunting, fishing, and trapping regime, therefore, require the following: that



the numbers of non-native hunters, and the times and places where they may hunt or fish, shall be regulated, and that outfitting shall be a principal means of that control; that as the number of outfitting facilities grows, non-native hunters and fishermen increasingly shall be required to use such facilities; that native peoples shall have a right of first refusal, which they may exercise in seven of ten cases, of new or transferred outfitting establishments, and that this right shall continue for 30 years, at the end of which its continuation shall be reviewed; that non-natives shall be required to use native guides to the extent that this is possible.

It was thought that this combination of measures could regulate and restrict conflicts between native and non-native users. In practice, the verdict is not in yet, but two items have become problematic—the lack of personnel and funds for policing non-natives around large development sites, and the tardiness of the governments in enforcing the provisions.

The compromise provisions of the JBNQA are based, in part, on the assumption that governments and the native peoples take the conservation of renewable resources as an important objective. To the extent that provisions of the agreement have not been implemented quickly or fully by responsible governments, and particularly by the provincial government, this reflects the fact that the government sometimes has ignored its responsibility for the conservation of the renewable resources of the territory, or has made it subsidiary to departmental political interests. This has occurred not only in interdepartmental conflicts, but also within the departments whose primary responsibilities are for renewable resources. To the extent that this can happen elsewhere, it would require a re-evaluation of the kinds of compromises that may be workable. In the James Bay case, it already has required legal action to enforce certain provisions of the agreement, and more may be required in the future. Legal and political action will test the defensibility of the agreement provisions.

## Provision of Adequate Cash Incomes

Native peoples in the Canadian North who continue to depend extensively on renewable resources also have come to depend on complex, extensive, and direct interactions with the Canadian market economy. This aspect of renewable resource use is sometimes overlooked as a major arena of conflict between native and non-native societies.

Native peoples now depend on imports of some, although clearly not all, important and sometimes specialized components of their hunting technology, and materials to operate and maintain these components. They depend on the use of various commercial services, particularly in

transportation and communications. They depend on use of imported foodstuffs to make up any difference between harvestable resources and the subsistence requirements of a growing population. All these imports require substantial annual cash incomes.

Cash incomes have come from several sources. Income from the sale of harvested products—of which furs are the most important—is highly unstable because prices respond to unpredictable variations in international economic cycles, as well as to style shifts. Government transfer payments, since the 1940s, have cushioned the effect of the unregulated market cycle on incomes, but have not always kept pace with rises in import outlays. As well, governments have attempted repeatedly to use dependence on transfer payments as a lever to force northern native peoples to comply with government development policies. Because these policies typically have either sought or assumed the demise of the harvesting economy, the effects, in most cases, have been detrimental to the support and maintenance of income from harvesting. Some important counter-examples can be cited, such as federal assistance for Inuit hunting camps and Québec assistance for the organization of Montagnais caribou hunts. Such programmes are increasing, but some insulation from the economic effects of changes in government administration and policy is required.

Several proposals have been made in this regard. Few have been put forward as single comprehensive solutions, but each of the following proposals has been offered as a possible component of a larger solution: new government bush camp programmes; rents on the use of, and participation in the development of, non-renewable resources; compensation for damages to wildlife; and guaranteed income security programmes.<sup>17</sup> Each of these proposals has its advantages and its potential weaknesses and probably a “mix” will be desirable in most cases.

The economic problems of hunting were addressed in the JBNQA sections dealing with the Income Security Program (ISP), a Cree Trappers' Association (CTA), and the compensation provision for a corporation to undertake compensatory and remedial works relevant to the effects of the first stage of the hydro-electric development, the La Grande Complex Remedial Works Corporation (SOTRAC) [la Société des travaux de correction du complexe La Grande]. ISP is the key provision here, intended to provide sufficiently generous cash payments to Cree hunters to reduce their dependence on fur prices in the world economy, and on government-controlled transfer payment programmes. Section 30.1.8 of the JBNQA states the objective of the ISP as follows:

The program shall ensure that hunting, fishing and trapping shall constitute a viable way of life for the Cree people, and that



individual Crees who elect to pursue such a way of life shall be guaranteed a measure of economic security consistent with conditions prevailing from time to time.

The ISP could be used to accomplish this objective, however, only because it was integrated into the JBNQA, which contained the other provisions briefly cited above. The effectiveness of a cash payment to hunters depended on their possession of a right to hunt that could not be removed at the initiative of governments; it depended on a continued priority access to wildlife resources and on limiting the effects of sport hunters and fishermen; it depended on continuing Cree wildlife management; and it depended on regulation of the effects of future development.

The general effectiveness of ISP payments depends also on the availability of the goods, services, and infrastructure necessary for hunters to make effective use of the funds available to them. This is the role of SOTRAC and the CTA, within the framework of the agreement. These organizations, individually and jointly, can provide infrastructure in the forms of access routes, improved bush camps, and bush communication systems; also they can provide needed goods and services such as fur sales co-operatives, bulk-purchasing and distribution facilities, bush pick-up and delivery facilities, airplane dispatching services, and wildlife and harvest monitoring services. SOTRAC is funded by the James Bay Energy Corporation. The CTA has been funded by joint contributions from the governments of Québec and Canada and from the Cree themselves.

Without these provisions of the JBNQA, the ISP could not contribute effectively to reducing the dependency of Cree hunters on world economic conditions and government welfare policies. Even with these other provisions, it can only reduce, not eliminate, such dependencies.

The incorporation of ISP into the framework of the Cree claims settlement made it possible for the programme to be structured in such a way that it would limit some of the dependencies inherent in other transfer payment programmes. The costs of ISP—both programme benefit costs and administrative costs—were to be paid by Québec under the terms of the agreement. In this sense, the ISP is another transfer payment programme and it ran the risk of creating dependency of the kind experienced by the Cree under the previous welfare programmes—dependency on funds controlled by changing government policies and politics.

When the Cree negotiated the ISP as part of the JBNQA, they attempted to use the negotiations and the agreement itself to limit this kind of dependency. First, the ISP exists not only in the agreement but also in Québec law, which gives legislative force to the terms of that agreement.

The legislation is subject to parliamentary politics and discretion. However, because this legislation does not replace the agreement, because the agreement states that the legislation must reflect the provisions of the JBNQA, and because the agreement is a legally binding contract between the Cree and the governments of Québec and Canada, any change in the programme must involve changes in the agreement. Changes can be made only with Cree consent. Recourse in the event of a breach of this contract would be to the courts.

Secondly, unlike most welfare recipients, the beneficiaries of the ISP have the right to benefits from the ISP as long as they meet the fixed criteria for eligibility for the programme. The benefits to be paid are based on fixed criteria for calculating the amounts due. Beneficiaries can appeal to the ISP board or can take legal action if those rights are violated.

Thirdly, the ISP is not administered by the government that funds it, but by a separate corporate entity, the Cree Income Security Board, made up equally of Québec and Cree appointees, with a rotating chairmanship. The board hires and employs its own staff, although those hired may be civil servants if the board so decides. The obligation of the Québec government is to transfer the funds needed each year to the accounts of the ISP board. In practice, the board members and the staff are closely associated either with the Cree Regional Authority or with the Québec government, and the balance is and has been maintained. The board is therefore not bound by the full range of government administrative norms. It is given considerable authority to implement and, where necessary, to interpret and to review the ISP and its operations, in accordance with the legislation and the agreement.

Fourthly, the board operates out of a regional office, but it must maintain staff and offices in each Cree community to assure the beneficiaries of access to the administrators of the programme.

To summarize, the incorporation of the negotiations over the ISP within the framework of the comprehensive aboriginal and land-claims negotiations permitted integration of the ISP into the package of regimes, programmes, organizational structures, and benefits thought to be necessary to ensure the economic viability of hunting. It also made it possible to establish a programme that, although funded by government, is significantly independent of government policy and politics, is jointly controlled and administered by the government and representatives of the beneficiary population, and legally encodes the specific rights of the individual beneficiaries.<sup>18</sup>

## Protection of Renewable Resources from the Effects of Non-renewable Resource Development

There is clearly no long-term future for renewable resource based economies in the Canadian North if there is not, in fact as well as in policy, a real priority given to renewable resources in the decisions about how non-renewable resources and land are used in the North. Unless rights to have and to use renewable resources can be given more political weight, the recent history of northern development is not very promising for the future. There has been an extensive series of government policy statements and regulatory regimes designed to afford protection to at least some components of northern ecosystems. We also have seen the development and, in many cases, the adoption of a range of tools to assist with the making of decisions and choices among various development objectives such as multiple-use planning, land-use planning, environmental and social impact assessment, and a plethora of others. Yet the history of northern development has shown that the key considerations in decisions concerning whether, where, and how projects and explorations have been undertaken have not been environmental considerations.

A series of investigations over the last decade has made it increasingly clear that policy statements and tools of decision making and administration have not been effective means to do more than moderate and, where possible, to remedy the effects of non-renewable resource developments.<sup>19</sup> We have not yet seen the political will, nor a sufficiently large lever, to alter the balance. On economic, ecological, and social grounds, I see reasons to believe that controlled development could be quite extensive and yet still be compatible with needed environmental protection, as well as be of potential benefit to native peoples in the North. An effective way to ensure the establishment of this balance has been elusive, however. This is an instance in which a short- or medium-term reconciliation may not be possible.

In this respect, the one positive note is that there may be time for basic circumstances to be changed, albeit at the cost of the particular regions and resources that already have been, or may soon be, damaged.

A two-fold approach is essential, one part of which aims at changing basic circumstances and interests, in the long term, and another part of which seeks to increase the moderating and remedial provisions attached to ongoing developments in the shorter term.

Under these conditions it is clear that significant damages caused by development will occur in the future in the North. The key issue facing

native peoples is whether conditions for maintenance of a viable native hunting society might be maintained in the medium term despite these developments. I remain hopeful that these societies can be maintained for a considerable time, while the effort to establish a basic balance of interests between conservation and development continues.

Several types of provisions were negotiated in the JBNQA in an attempt to help Cree hunters to continue their activities and economy despite the effects of development. As I have already indicated, harvesting rights were recognized as exercisable wherever physically possible, subject to certain limited restrictions. This recognition ensured that the legal taking of land for development purposes would not, in itself, preclude use of the land. The key problem was the actual physical transformation of the land and its wildlife resources by development activity, and the effects of such transformations on harvesting activities. Future development was subjected to social and environmental impact assessment and to ongoing environmental quality review, but final decisions on developments rested with the responsible governments. This regime has not been strong enough yet to establish an effective balance between wildlife conservation and large-scale development interests.

To survive the effects of the reduction of wildlife populations that would accompany even regulated development, native peoples clearly needed access to other currently under-used wildlife resources.

In the James Bay area of Québec, despite the maintenance of an intensive modern hunting society, despite the fact that all land was being used on some regular and recurring basis, and despite the fact that populations of some species were harvested very intensively, there remained significant opportunities to intensify the use of some renewable resources. There were important limitations on these possibilities as well, including limited biological productivity, low harvesting efficiencies, high cash costs, and cultural acceptability. There was no clear basis for claiming that the under-used resources were fully equivalent in quality to those damaged, nor was there any assurance of their being equal in quantity to those that could be made unproductive by continued development in the long term. The need to provide immediate access to those wildlife resources that were available and were desired by the Cree was clear, however.

Access to alternative wildlife resources could be provided in several ways. In the case of those species for which there was a substantial kill by non-natives as well as a native kill, any reduction of population levels as a result of development activity in the territory would result in a consequent reduction in sustainable yields. Given the principles of priority and guaranteed level of allocation to native harvesting, the reduced allocation would influence first the total kill by non-natives. Thus, for certain key

species, effects on the total native kill could be moderated by the operation of the guaranteed allocation of harvests and the principle of priority to native harvesting, at least in the initial phases. This procedure has not yet come into operation.

This buffer will work only at a group level, however. It will not reduce the effects on individual native hunters whose traplines are disrupted by development. For these hunters, alternative means of hunting must be provided even though such alternatives cannot replace the loss suffered by destruction of land on which a lifetime of knowledge and care has been vested. Further, not all species that would be affected adversely sustain high kills by non-natives.

One response to these effects on individual Crees was to establish the guaranteed annual income programme, which provided a payment indexed to rises in the cost of living for all Cree hunters for whom wildlife harvesting is a way of life. This programme was established, in part, to provide these hunters with the means to maintain, to modify, or to expand harvesting activities in changing circumstances. The additional funds made available to hunters could be used to finance travel to more distant or isolated wildlife resources, to improve the efficiency of harvesting by improving equipment, and to provide an increased level of security in the bush during a time of disruption caused by development. Complementary infrastructures and services could be provided by SOTRAC and the CTA.

To date, these provisions appear to have worked; between 1974-75 and 1978-79 no downward trends in total available weights of food from harvesting occurred in the affected Cree communities, although the effects of future hydro-electric and other resource developments create uncertainty for the future.<sup>20</sup> It also needs to be emphasized that the major renewable resources the Cree use are species that either are relatively localized (e.g., moose, beaver, non-anadromous fish), in which case the effects of development so far also have been localized, or they are migratory species, such as geese and smaller populations of caribou, whose patterns have been affected only marginally by the developments to date. Future developments may alter this relative insularity for the Cree, just as current developments elsewhere in the North clearly and directly threaten other important renewable resources and the native peoples who depend on them. Thus, specific immediate opportunities for resource maintenance in the face of ongoing development need to be explored and used, while longer term efforts to find effective resolutions in this area of fundamental conflict continue.

## Conclusion

This discussion began with the premise that the maintenance and enhancement of relatively autonomous indigenous cultures is a comprehensible and justifiable objective for the native peoples of the Canadian North. I have ended on the question of its practical plausibility, and the linked question of the plausibility of retaining extensive renewable resources in viable ecological systems in the North. Clearly there are areas and peoples whose isolation and autonomy will survive for a long time. The vital question is whether this will be a result of the happenstances of non-renewable resource distributions, economic conditions, and indigenous tenacity and adaptability. Or, whether basic political processes eventually will lead to effective regulation of development, with the result that continued maintenance of indigenous communities and economies and of ecological systems can be widespread and can respond both to the intentions of the native peoples and to what some of us think should be a more balanced national interest. The survival of native societies and cultures does not mean that they will not change, nor that non-renewable resource development will not occur. It does presuppose a new political will based on the plausibility of creating balanced developments, on ideological justifications for such an outcome, and on effective legal and administrative levers to produce such an outcome. Such changes necessarily will involve greater control of development at the local and regional levels.

It is hard to envisage precisely how fundamental changes in the national, provincial, and territorial interests could be brought about, but this does not alter the problem. Historical analyses show that these long-term processes are always going on and must be occurring today, despite the fact that they are hard to perceive and to participate in effectively. A variety of open-ended initiatives and explorations is therefore needed. The changes that we know are desirable and possible may not come to fruition, but efforts to bring about these possibilities require that groups with diverse interests pursue them by a variety of means.

In summary, there are aspects of the conflicts over renewable resources in the Canadian North that are resolvable in the short and medium terms, primarily through recognition and enhancement of local control. Meanwhile, there are aspects of the conflicts that really send us back to look at the long-term processes and the means of political, economic, and cultural change in the national interests.

## Endnotes

1. The research project results reported in this paper were funded by a Social Sciences and Humanities Research Council research grant, a Killam Post-doctoral Research Fellowship, and a Canada Council Doctoral Fellowship. Portions of the paper are drawn from previous publications. Attendance at the Third National Workshop was made possible by funding from the Department of Anthropology and the Faculty of Social Sciences, McMaster University, and by the Canadian Arctic Resources Committee.
2. See H. Feit, "The Future of Hunters within Nation States: Anthropology and the James Bay Cree," in *Politics and History in Band Societies*, B. Leacock and B. Lee, eds (Cambridge: Cambridge University Press, 1982), pp. 373-411, and M.I. Asch, "Dene Self-Determination and the Study of Hunter-Gatherers in the Modern World," in *Politics and History in Band Societies*, pp. 347-371.
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20. James Bay and Northern Québec Native Harvesting Research Committee, *The Health of the Land: Wildlife Harvests by the James Bay Cree, 1972-73 to 1978-79*, see above, note 16; and F. Berkes, "The Role of Self-regulation in Living Resources Management in the North," see above, note 5.

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# **NATIONAL and REGIONAL INTERESTS in the NORTH**

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**Third National Workshop  
on People, Resources, and the  
Environment North of 60°**

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**Yellowknife, Northwest Territories  
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