

RENEWABLE RESOURCE MANAGEMENT  
IN THE NORTHWEST TERRITORIES  
A PROPOSAL FOR CHANGE

By

Hugh J. Monaghan

A Practicum Submitted  
In Partial Fulfillment of the  
Requirements for the Degree,  
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The University of Manitoba  
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## ABSTRACT

The study assesses the current approach to management of renewable resources in the Northwest Territories. Changes are recommended within the framework of the current constitutional review and the requirements for an integrated approach to management of these resources.

The renewable resources considered in the study are surface lands and forests, fisheries, inland waters, and wildlife. The management of each resource is qualitatively assessed by determining the degree to which the respective legislation and administration efficiently and effectively respond to legitimate interests. The legitimacy of local, regional/Territorial and national interests in each resource is determined by the characteristics of the resource, the parameters of the current constitutional review (which generally envisions a transfer of the control of renewable resources to the North), and, the general framework for the recent settlement of Native claims.

The study recommends immediate transfer of administration of surface lands and forests, inland waters and freshwater fisheries to the Territorial Department of Natural Resources with the underlying proprietary rights and legislative responsibilities remaining with Parliament. The administrative framework recommended is highly decentralized with the delegation of specific responsibilities to the communities and with limited powers being delegated to regional advisory structures. After the settlement of each regional claim of the Native people, underlying proprietary and legislative rights should be transferred to the Territorial Government for renewable resources with the exception of certain marine fisheries.

An organizational structure is recommended for the Territorial Government to accommodate these phased changes. A small task force of experienced natural resource managers presently with the Territorial and Federal Governments will be required to plan and implement the details of change with the benefit of political direction aided by the general review in this study.

## ACKNOWLEDGEMENTS

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## CHAPTER I

### INTRODUCTION

#### 1.1 Background

The development of representative and responsible government at the local and Territorial level in the Northwest Territories has been recent and is progressing at a rapid rate. Until 1968, all government administration in the Northwest Territories was carried out by federal civil servants. Administrative structures, policies and procedures were largely prescribed by the Department of Indian Affairs and Northern Development (DIAND) in Ottawa. In response to recommendations made by the Carrothers Commission<sup>1</sup> in 1966, a resident territorial civil service was created and made responsible to the Commissioner of the Northwest Territories, a Federal civil servant who was (and continues to be) responsible to the Minister of DIAND. This development was consistent with the basic thrust of the Commission's report that it was more appropriate to create the means to develop toward provincehood than to confer provincial status.

The Legislative Assembly (formerly referred to as the Council) of the Northwest Territories progressively assumed greater responsibility for the governing of the Territories. In 1972, the Government of the Northwest Territories (GNWT) conducted a study which concluded that the Northwest Territories Act provided the Legislative Assembly with most of the powers granted to the provinces under the British North American Act, although there were several serious limitations. The study concluded that as a result of these limitations, Territorial Ordinances were superceded by any Act of

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<sup>1</sup> A.W.R. Carrothers, Chairman, Report of the Advisory Commission on the Development of Government of the Northwest Territories, Northern Administration Branch, Department of Indian Affairs and Northern Development, 1966.

Parliament; only very limited surface lands were controlled by the Territorial Government; and, in many areas where the Territorial Government had been delegated authority, or in areas of shared responsibility, the Federal Government seriously restricted northern political development through the imposition of conditional financial grants.<sup>1</sup>

In addition to having the responsibility for the administration of certain designated surface lands, the GNWT has the responsibility for the management of game.

In August 1977, the Prime Minister commissioned a second review of government in the Northwest Territories. This action was largely in response to demands for greater authority by the Legislative Assembly and equally strong demands by the Native associations for recognition of their special status. A special Representative for Constitutional Development in the Northwest Territories (the Hon. C.M. Drury) was appointed with broad responsibility to consult with "recognized leaders" in the Territories and to report his findings to the Prime Minister and Cabinet. The objective of the review has been to reach a consensus concerning measures to modify and improve government in the N.W.T. to make it more "representative, responsive and effective."<sup>2</sup>

In support of this review process, the Special Representative has encouraged the various Federal and Territorial agencies to assess the responsiveness and effectiveness of their programs to local, regional and Territorial

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<sup>1</sup>A.R. Zariwny, "Paper on Provincial-Type Responsibilities Performed in the Northwest Territories", prepared for E.M.R. Cotterill, Secretary to the Executive Committee, Government of the Northwest Territories, January, 1972.

<sup>2</sup>"The Terms of Reference for the Special Government Representative for Constitutional Development in the Northwest Territories" and "Political Development in the Northwest Territories" are Federal Government documents issued by the Privy Council's Office in 1977 that outline the Hon. C.M. Drury's role and the general framework within which the Federal Government is willing to accommodate a process of evolution toward responsible government in the N.W.T. These are contained in the Senate Debates, August 4, 1977, pp. 1258-1263 and 1258-59 respectively.

interests. (The administrative regions of the Northwest Territories are shown in Figure 1).

The Federal Government has expressed a willingness to transfer ownership of renewable resources<sup>1</sup> and some lands to the N.W.T. Legislative Assembly, although it has reaffirmed its intention to maintain ownership (with revenue-sharing) of non-renewable resources. An important consideration in the constitutional review, therefore, will be the evaluation of the current approach to the management of renewable resources in the North and the provision of recommendations to effect change. The present responsibilities of the GNWT for the management of renewable resources are summarized and compared to Provincial responsibilities in this field in Table 1.

Despite the importance of renewable resources to the social and economic fabric of the North, little effort has been made by the various Federal and Territorial agencies to integrate the management of renewable resources. The current lack of policy and administrative coordination leads to inefficiencies at both the operational and program planning levels. As a result, there is limited achievement of basic economic and social goals for the North. Furthermore, the lack of consistency in the degree to which residents are encouraged or permitted to participate in legislative review, policy formulation, or directly in the operation of management programs does not support the political development objectives for the North.

In response to the current constitutional review, the GNWT must arrive

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<sup>1</sup>It should be noted that the "renewable resources" referred to in the Federal "Political Development..." paper are not defined. For the purpose of this study the term is defined in Section 1.6.

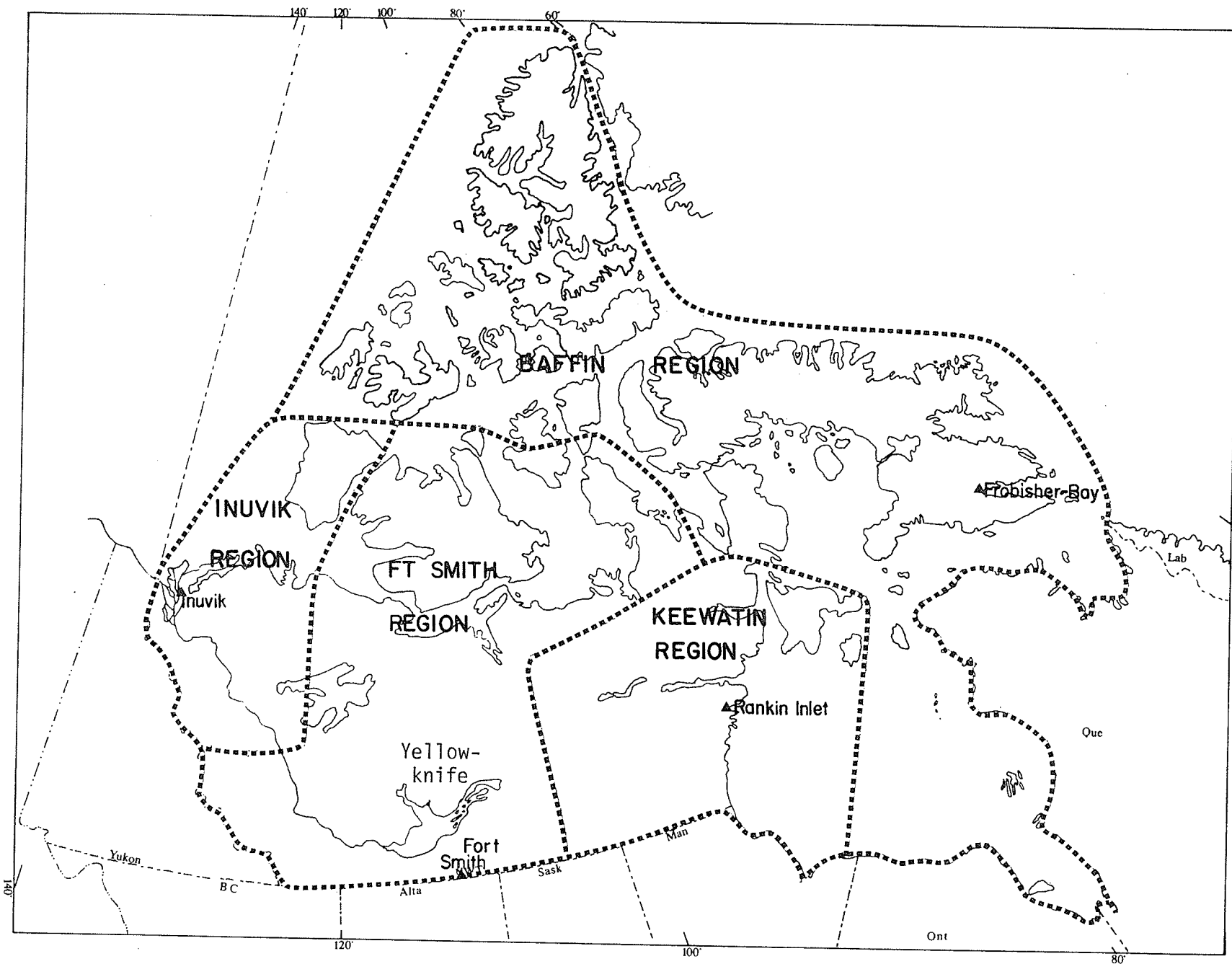


Figure 1. Map of Northwest Territories Showing Administrative Regions

TABLE 1

Summary of Government of the Northwest Territories Responsibilities for the Management of the Renewable Resource Management in Comparison to Provincial Responsibilities Under the B.N.A. Act

Resource <sup>2</sup>	Full Jurisdictional Authority		Co-ordinate Jurisdictional Authority		Administrative Responsibility		Advisory Function	
	N.W.T. <sup>1</sup>	Provincial	N.W.T.	Provincial	N.W.T.	Provincial	N.W.T.	Provincial
1. Terrestrial Mammals & Non-Migratory Birds	X	X	-	-	X	X	-	-
2. Migratory Birds	0	0	0	0	p	X	X	X
3. Non-anadromous Fish	0	0	0	0	p <sup>3</sup>	X	0 <sup>3</sup>	X
4. Anadromous Fish & Marine Mammals	0	0	0	0	0	p	p <sup>3</sup>	X
5. Surface Lands	p <sup>4</sup>	X <sup>5</sup>	-	-	p <sup>4</sup>	X <sup>5</sup>	-	-
6. Forests	0	X	-	-	0	X	0	-
7. Inland Waters	-	-	0	X	0	X	X	-

X - Yes

P - Partial

0 - No

- - Not applicable

- 1) Subject to the limitations of the N.W.T. Act discussed elsewhere in this study.
- 2) Resource is referred to within the context of the research, and the development and implementation of management programs for the resource in the natural state as opposed to use of the resource after it has been converted to private property.

- 3) The N.W.T. has become involved in the administration of the sport fishery (licencing) this year; the advisory role of the N.W.T. has been very limited in the past and in fact has declined in the past year in relation to collection of management data and the provision of management recommendations to the federal Fisheries and Marine Services.
- 4) This applies only to "Commissioner's Lands" and "Development Areas" which is a relatively small portion of the lands in the N.W.T., primarily in or near communities.
- 5) This applies to most lands in the provinces which are or were provincial crown lands.

NOTE - Resources 1, 5 and 6 are normally under the management (and legislature) control of the provincial government.

- Resources 2, 3 and 4 are a Federal Legislature responsibility under the B.N.A. Act, however, the provinces are involved in the management and administration of these resources to varying degrees.
- Inland waters are a joint federal and provincial legislature responsibility.

at a policy position that will outline a preferred approach to manage renewable resources in the Territories. The position should include statements on legislative jurisdiction and also an administrative framework that will ensure that the management of these resources will be responsive to, and effective in achieving local, regional, territorial and national interests.

The assumption should not be made that the objective is to obtain the normal legislative jurisdiction of a province and to plot an evolutionary course toward that end. Rather the Federal Government has indicated that it is willing to explore other options for the development of responsible government in the North. In particular, it refers to one alternative--a regional municipality type of government with substantial powers being granted to the communities rather than being left with the GNWT.<sup>1</sup>

Not only is the division of authority between the various levels of government under review, the possible division of the N.W.T. on the basis of functional factors (but not race) must also be considered. The structures and jurisdictional arrangements that are recommended must be compatible with the special rights and privileges of the Native people which are to be recognized with the settlement of their claims.

## 1.2 The Objectives

The purpose of this study is to recommend a phased acceptance of the responsibility for the management of renewable resources by the GNWT.

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<sup>1</sup> This form of devolution would permit communities to act cooperatively at the regional level for certain programs of common interest such as aspects of wildlife management. "Political Development in the Northwest Territories", op.cit., pp. 1261-1262.



Specific objectives to be achieved by this study are as follows:

1. To recommend specific measures that will encourage optimal responsiveness of renewable resources management legislation, policies, and programs to local, regional, territorial, and national interests including:
  - a. decision making responsibilities that can be delegated to local and regional institutions;
  - b. advisory functions for special interest groups and the general public in areas of responsibility that cannot be delegated beyond the federal or territorial level of government; and,
  - c. institutional arrangements that will accommodate these delegated and advisory responsibilities.
2. To outline institutional and structural arrangements and processes for a more integrated approach to the management of renewable resources to increase the efficiency and effectiveness of programs to aid the attainment of overall governmental goals.
3. To recommend a specific degree of legislative authority and administrative responsibility for the GNWT in the management of each of the renewable resources considering the following roles:
  - a. policy development
  - b. resource management research and/or the setting of research priorities;
  - c. development of management programs; and,
  - d. administration and enforcement of management programs.
4. To outline a generalized organizational structure for the administration of the GNWT that will accommodate these changes.
5. To identify in general terms for the GNWT:
  - a. the budgetary implications of the recommended changes;
  - b. a process to effect the proposed changes; and
  - c. a schedule for the administrative and jurisdictional changes recommended and an outline of further study required to facilitate these changes.

### 1.3 Limits of the Study

1. This study is based largely on the review of public policy, administration, and focuses on the particular characteristics of resources in the North that should affect the appropriate management regime. Attention is paid to the needs of resource users but the study does not attempt to canvas the political development objectives of the various resource user groups.
2. The evaluation of the present jurisdictional arrangements, organizational structures, and programs of the various resource agencies is qualitative.
3. The budgetary implications of changing institutional and structural arrangements are provided only in general terms based on current expenditures.

### 1.4 Assumptions

The following assumptions have been made for this study.

1. The legislative jurisdiction for resource management that is available to the N.W.T. Legislative Assembly (or the regional institutions) is not necessarily limited to that which is vested in the provincial governments.
2. The Northwest Territories will remain a single political jurisdiction for at least a decade. Within this jurisdiction, authority will be granted to local and regional institutions to the greatest degree possible. Where local or regional control is not feasible, administrative structures and mechanisms will be established to encourage public involvement in the development of government programs and policies.
3. In the long term, a resource management system is more likely to be responsive to "legitimate" public interests if the system is representative and allows extensive and consistent involvement of all interests in the decision making processes and structures (including the bureaucracy).
4. The broad framework outlined in "Political Development in the Northwest Territories" and the terms of reference for the Special Representative accurately reflect the scope of the jurisdictional alternatives available for political evolution in the Northwest Territories at this time. In particular:-

- a. Constitutional change in the Northwest Territories will evolve over a period of time, therefore, jurisdictional arrangements for the management of the various resources can take into account administrative arrangements that permit a gradual assumption of authority by the Territorial Government, or regional authorities as the case may be; and,
  - b. although the Federal Government is not willing to transfer ownership of non-renewable resources at this time, it is willing to transfer the ownership, and, in certain cases legislative jurisdiction, for renewable resources if it can be demonstrated that that the result will be of lasting benefit to Northerners while protecting the interests of other Canadians.
5. An integrated approach to the management of renewable resources in the North is the most efficient and effective approach to attaining overall societal goals.
  6. In general, the management of renewable resources implies their continued existence and undiminished availability (in terms of both quantity and quality) for future generations.

Because I have been involved in the management of renewable resources in the Northwest Territories for several years, I have firm opinions which favour the development of representative and responsible government. The benefits of the devolution of authority within the politically defined legitimate interests of Northerners in these resources are obvious to me. At the same time, I recognize the need to ensure the protection of the residual national interests.

#### 1.5 Methods

This study provides a general overview, the purpose of which is to outline a more effective approach to renewable resource management. The overview, (a) identifies areas where improvements can be made through jurisdictional and/or administrative transfers; (b) provides recommendations

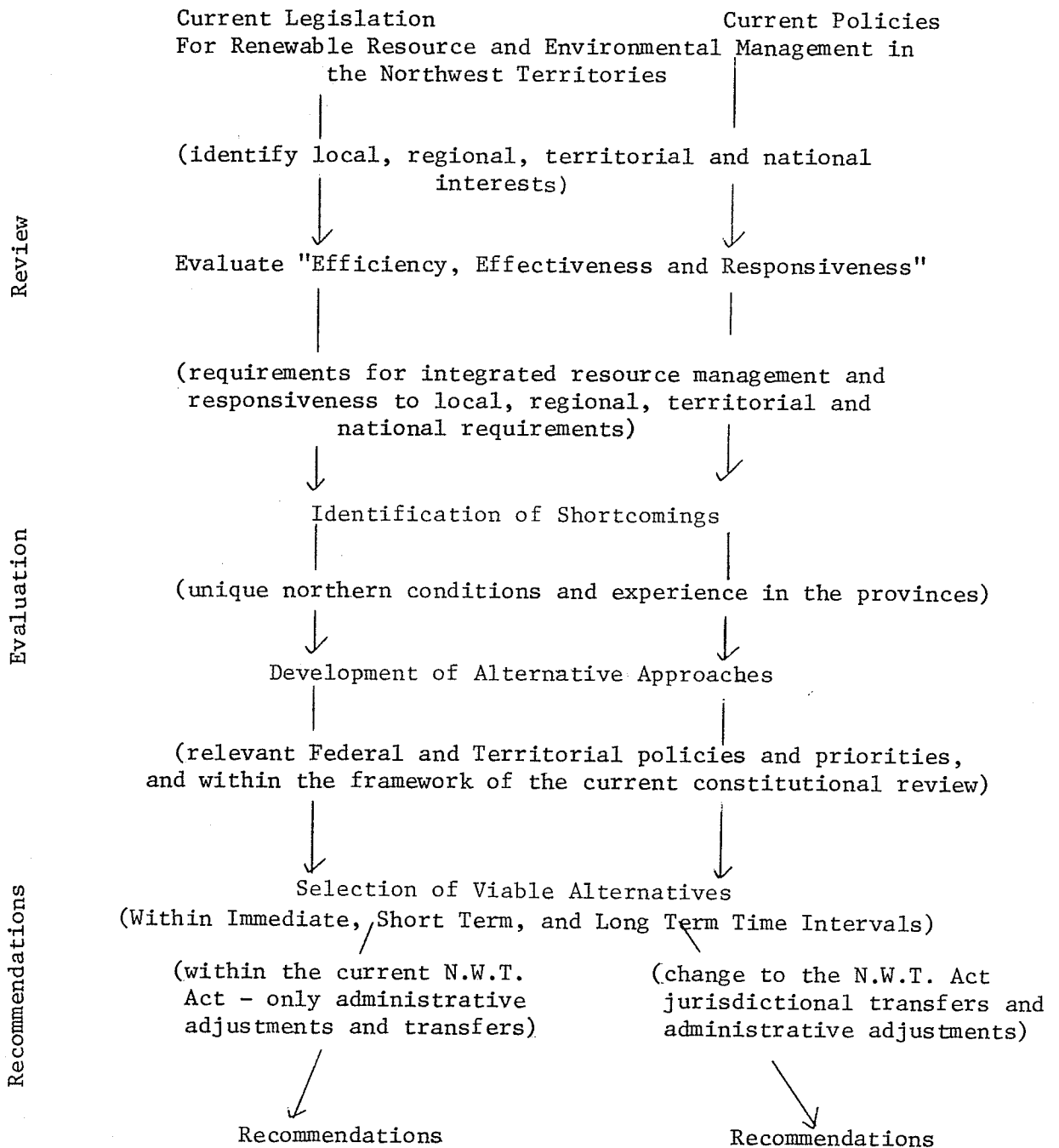
for an approach to effecting change; and, (c) identifies specific areas (primarily implementation) for further study.

A further study, involving the various agencies affected, will be required to implement the changes that are recommended should they be approved by the political process. The implementation of change will be more effective if there is policy agreement and an outline of a general approach which defines overall goals and objectives.

This study was conducted as outlined in Figure 2. The first step was to review the current approach to the management of each renewable resource in the N.W.T. Based on an assessment of the strengths and weaknesses of the present approach, alternatives for the management of each resource were developed and analyzed with consideration given to the various "interests" (geographical and special interest groups) subject to constraints. The constraints were: the framework for political evolution in the North; the special interests of the Native people; the characteristics peculiar to each resource that limit institutional options for the management of the resource; and, other conditions peculiar to administration in the vast and diverse Northwest Territories.

Recommendations for a new approach to the integrated management of these resources were developed under two different conditions. The first condition was that change would occur within the framework of the current N.W.T. Act (i.e., only transfers of administrative responsibilities are possible). The second condition was that changes beyond those allowed by the current N.W.T. Act (i.e., the transfers of jurisdictional authority) were possible. These conditions of change are related to three time frames--immediate, medium term and long term.

Figure 2. Schematic Outline of Study



A more detailed review of the methods used in each component of the study follows.

1.5.1 *Legislative Review and Analysis*

A review was conducted of all Territorial and Federal legislation that has a direct bearing on the management of each renewable resource. Areas of jurisdictional overlap between and within the two levels of government were identified. The administrative arrangements that have been made by the various agencies to accommodate these jurisdictional overlaps were outlined. The legislation was then assessed in terms of the degree to which it:

- a. permits the management agency to conserve the resource both in relation to controlling direct consumption as well as to control or influence other events (such as the development of non-renewable resources) which can influence the continued viability or availability of renewable resources;
- b. explicitly allows for the direct involvement of local, regional and territorial institutions and special interest groups in the development of resource legislation, policy and management goals, objectives and strategies in either an advisory or decision-making capacity;
- c. is sufficiently flexible to respond to the changing requirements necessary to manage the resource in response to local and regional human needs; and,
- d. accommodates an integrated approach to the management of resources.

This review and analysis of the present legislation was aided by discussions with a number of resource managers.

The legislative review was also used to evaluate the ability of existing legislation and jurisdictional arrangements to accommodate future options that result from the policy analysis.

Relevant provincial legislation was reviewed to help select a preferred legislative arrangement that would give effect to public involvement in the management of resources, the objectives of integration, and appropriate inter-jurisdictional arrangements.

#### 1.5.2 *Public Policy Review and Analysis*

The criteria for improvements in efficiency, effectiveness and responsiveness of resource management programs as a basis for constitutional change are admirable but often difficult to deal with in specific terms. A statement of the key elements of these terms in relation to resource management in the North and the method of using these criteria in the policy review and analysis follows.

A position had to be determined on each of the following points before any recommendation could be made for an approach to renewable resource management in the North:

- a. What are acceptable local, regional, territorial, and national interests in the management of, and access to the benefits accruing from, each renewable resource? This leads to the question of legislative jurisdiction.
- b. What is the most efficient, effective and responsive administrative (structural) arrangement to meet the management requirements for each resource considering,
  - i. efficiency--in program delivery as measured qualitatively by the budget and manpower that are used to manage resources as a tool to achieve program objectives;
  - ii. effectiveness--as demonstrated by the integration of resource management programs to more effectively meet societal goals; and,
  - iii. representative and responsive--to the appropriate degree to the geographical (local, regional, territorial and national) interests, as well as sectoral interests to be reflected in policies and management programs.

### Representativeness and Responsiveness

Since the legitimacy of the various interests in a resource (and hence the question of ownership and legislative jurisdiction) is affected by the geographical integrity of the resource, this was used as one criterion in defining interests. The policy of encouraging a maximum degree of decentralization or devolution also affects the definition of interests. Where these two criteria were in conflict, the method for recommending an appropriate jurisdictional arrangement was to select an alternative that would permit the maintenance of the resource based on the characteristics of the resource.<sup>1</sup> This does not weigh all considerations in determining "interests". Many are "political" and intangible and are therefore beyond the terms of reference of this study. Nevertheless, this approach will aid the political decision makers by clarifying the issues, including the benefits and costs to the various interest groups, of the decisions they must ultimately make.

The representativeness and responsiveness of resource management programs to interest groups are assessed by the degree to which access is created to decision making processes. Where appropriate, qualitative judgments are made on changes to structures and processes to assure a greater degree and consistency of representativeness and responsiveness to the various interests.<sup>2</sup>

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<sup>1</sup>For example, a caribou population which migrates through several regions cannot be effectively managed solely by a single regional authority. Either cooperative arrangements would be required between the two regions or a more senior Territorial (or Federal) level of authority is required to effectively manage the resources. In certain cases combinations of authority can be arrived at for certain functions such as the sub-allocation of harvest quotas.

<sup>2</sup>It is recognized that a system can be responsive while not being representative, or open; however, it is assumed on the long term that the system is more likely to be responsive if the contrary is true. This is the basis of the fourth assumption in Section 1.4.



The special interest of the Native people is outlined in relation to each resource. All Native groups in the N.W.T. have outstanding claims. The agreement in principle recently reached with the Inuvialuit, governmental policy papers and, in certain cases, constitutional law were used to define the special interest of the Native people.

#### Efficiency and Effectiveness Goals--Integrated Resource Management

Since effectiveness of program delivery is a function of operational efficiency directed toward achieving goals that are responsive to societal needs, by definition the integration of renewable resources is desirable. Therefore, within the policy analysis where shortcomings (or lack) of integration between resource management regimes are identified, recommendations are provided for improvements.

Within the limitations of this study, the use of quantitative measures of effectiveness was impractical. Both operational efficiency and program effectiveness were assessed by structural and, where appropriate, policy analysis.<sup>1</sup> Recommendations for improvement were based on the appropriateness of agency goals to the overall governmental goals for the North and the ability of the structure of agencies to respond to "legitimate" geographical and special interests. This information was used to recommend jurisdictional and administrative improvements to increase the efficiency and effectiveness of resource management programs.

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<sup>1</sup>Structural analysis, if used in isolation, has serious limitations. In an attempt to compensate for this, discussions were held with the resource managers involved to obtain their impressions of the degree to which the integration of resource management programs of the various agencies actually work to achieve stated goals.

### Determination of Specific Responsibilities for the Territorial Government

The recommendations for the specific degree of involvement of the GNWT in the management of each resource is based on the following considerations:

- a. the determination of interests;
- b. the relative potential importance of the particular resource to the attainment of northern goals;
- c. the relative monetary cost to the GNWT of assuming the responsibility in relation to the benefits likely to be received (as in b. above), including the option for devolution of responsibility to a local or regional authority; and,
- d. the marginal cost to the federal, territorial or regional institutions of managing the resource in relation to the administrative structures either already in place or planned.

### Generalized Organization Structure for the Territorial Government

The generalized organizational structure was determined by a consideration of:

- a. the responsibilities (legislative, administrative, enforcement, advisory, etc.) that are recommended for the GNWT;
- b. other related jurisdictional responsibilities of the GNWT;
- c. the relative responsibilities of the Federal Government and the authority devolved to the local and/or region institutions; and,
- d. conditions peculiar to the North, and experience elsewhere (as expressed in the literature and based on discussions with knowledgeable resource managers in Canada).

### Identification of Budgetary Implications

Critical factors in considering even rough estimates of the costs of program transfers between governments or to regional institutions are the

assumptions that must be made concerning other program responsibilities that are retained by the organization and, assumptions about the target level of service for each program. Given these and other uncertainties, and given the qualitative nature of this study, only order of magnitude estimates are provided. These are based on a similar or increased level of service using the current expenditures of the agency involved as a base.

#### Outline a Process to Effect Change

The recommended approach to reorganizing the management of renewable resources was based on the objectives of change, similar experience in the N.W.T. with the implementation of the Carrothers Commission report, and the comments of resource managers with relevant experience in the North and elsewhere in Canada.

### 1.6 Definitions and Abbreviations

#### Definitions

- i. Anadromous fish -- species that occupy the marine environment but migrate (usually to spawn) into fresh water systems periodically.
- ii. Fish -- includes all fish, marine mammals and crustaceans as defined in the Canada Fisheries Act (R.S.C. 1970, c. F-14).
- iii. Game -- includes all terrestrial fauna and avi-fauna, except migratory birds.
- iv. Inland (freshwater) fish -- species that continuously occupy the freshwater environment.
- v. Integrated Resource Management (IRM) -- the application of coordinated management strategies to achieve maximum benefit from the optimal use of natural resources of a specific area for the benefit of a referent group and its successors.<sup>1</sup>

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<sup>1</sup>After the Sub-committee on Multiple Use of the National Committee on Forest Land. See Appendix, section 1.3.

- vi. Management -- includes all phases of the inventory of a resource; planning and design of measures to use and/or protect a resource; the enforcement of legislation to conserve the resource; and, communication with the public concerning the management of the resource.
- vii. Management Studies -- research designed to address specific resource management needs.
- viii. Migratory birds -- as defined by section 3 of the Migratory Birds Act (RSC, 1970 c. M-12). This generally includes all waterfowl and certain species of insectivorous birds.
- ix. Renewable resources -- unless qualified, refers to surface lands and forests, inland waters, fish and wildlife.
- x. Wildlife -- includes game and migratory birds.

Abbreviations:

- i. ALUR -- Artic Land Use Research Program of the Department of Indian and Northern Affairs.
- ii. BLT's -- Black Land Transfers of parcels of land to the administration of the Government of the Northwest Territories under the Commissioner's Land Ordinance.
- iii. CWS -- Canadian Wildlife Service of the Federal Department of the Environment.
- iv. DFO -- Federal Department of Fisheries and Oceans.
- v. DIAND or DINA -- Federal Department of Indian Affairs and Northern Development later to become the Department of Indian and Northern Affairs.
- vi. DOE or DFE -- Department of the Environment, previously the Department of Fisheries and Environment.
- vii. EARP -- The Federal Environment Assessment and Review Process.
- viii. EIS -- an environment impact statement
- ix. EPS -- Federal Environment Protection Service of the Department of the Environment.

- x. EMR -- Federal Department of Energy, Mines and Resources.
- xi. ERC -- Interdepartmental Environmental Review Committee chaired by the Department of Indian and Northern Affairs (Ottawa) that provides policy review of major developmental proposals.
- xii. FEARO -- The Federal Environmental Assessment Review Office.
- xiii. FTLAC -- Federal-Territorial Lands Advisory Committee
- xiv. GAC -- Game Advisory Council of the Northwest Territories that advises the Commissioner on all matters related to wildlife management.
- xv. GNWT -- Government of the Northwest Territories.
- xvi. HTA's -- Hunters' and Trappers' Associations in the N.W.T.
- xvii. ITC -- Inuit Tapirisat of Canada.
- xviii. IWD -- Inland Waters Directorate of the Federal Department of the Environment.
- xix. NIWA -- Northern Inland Waters Act.
- xx. NWLFS -- The Northwest Lands and Forest Service of the Department of Indian and Northern Affairs.
- xxi. NWTWS -- Wildlife Service of the Government of the Northwest Territories.

CHAPTER II  
LANDS AND FORESTS

2.1 Legislative Review

All unalienated lands<sup>1</sup> in the N.W.T. are held by the Crown in right of Canada and most of this land is administered by the Federal Government. The GNWT has been granted the responsibility to administer and legislate for certain lands. In general, the Federal Government has retained control of lands in the hinterland while delegating to the GNWT legislature and administration responsibility for surface lands in and near most communities, and along parts of the highway system. The management and sale of timber is within the jurisdiction of the Territorial Legislative Assembly but is administered by DINA.

This arrangement is in contrast to the constitutional division of responsibility in southern Canada where generally public lands and forests are held by the Crown in right of the province<sup>2</sup> by Section 109 of the B.N.A. Act. In practical terms this is treated as a proprietary right. The provinces also have exclusive legislative rights for lands and forests (excepting those held in the national interest) by section 92(5) of the B.N.A. Act.

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<sup>1</sup>"Lands" in common law include that which is on the land (including waters and forests) and the air space above it, as well as all sub-surface resources. For the purposes of this study, reference to lands is meant only to include surface lands and timber thereon.

<sup>2</sup>In common law, ownership of public lands by the Provinces is more correctly the right to administer public lands in right of the Crown for the beneficial use of the Province (i. e. the Crown in right of the Province). However, to avoid confusion in this study "administer" is used in the narrow sense of carrying out policy rather than creating it.

The prairie provinces did not receive ownership and control of their resources until the promulgation of the Natural Resources Transfer Agreements between the Federal Government and each province. The Federal Government administered the land and forest resources for the prairie provinces during the period between attainment of provincial status and the Resource Transfer Agreements. In some cases this transition period lasted for 25 years.

#### 2.1.1 *Federal Legislation*

##### Territorial Lands Act

The Territorial Lands Act<sup>1</sup> enables the management and disposition of surface and sub-surface land resources in the Yukon and N.W.T.<sup>2</sup> The Act allows for the setting aside of land for public purposes and for the fulfillment of obligations under Indian Treaties. It allows for public enquiries to meet objectives relating to the management of territorial lands.

The Act explicitly allows for the involvement of Northern elected officials in land management. The Governor-in-Council where "practicable" is to consult with the Territorial Council (Legislative Assembly) or each

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<sup>1</sup>R. S. 1970 c. -6

<sup>2</sup>In this study the regulations relating to the management of non-renewable resources are mentioned only to the extent that they directly affect the management of surface lands. These regulations include the Territorial Quarrying Regulations SOR/54-114, the Canada Mining Regulations SOR/61-86 and amendments, the Canada Oil and Gas Land Regulations SOR/61-253 and amendments, the Territorial Coal Regulations 1955 and amendments, and the Territorial Dredging Regulations, 1955, and amendments.

of its member prior to creating land management zones, or prior to creating regulations under the Act.<sup>1</sup>

Reservations from granted lands usually include a one hundred foot strip adjoining navigable waters, the sea coast, and provincial-territorial boundaries (s.9); beds of waters (s.10); minerals and the right to work a claim; the rights to the fishery as well as the use of nearby lands as a base for the fishery (s. 11); and, the reservation of any exclusive right or privilege to the water bodies (i. e. riparian rights, s. 12). Reference is made to the regulations pursuant to the Territorial Lands Act that pertain to the use and alienation of public lands below.

#### Territorial Land Use Regulations

The Territorial Land Use Regulations<sup>2</sup> designate all of the N.W.T. as land management zones for the "protection of the ecological balance" of these lands. Most of the permits issued regulate the hydrocarbon and mineral exploration industry.<sup>3</sup>

Permit conditions may govern the location and operating period; type and size of equipment; methods and techniques of operation and facilities; the use, handling, and storage of toxic materials; and, the protection of

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<sup>1</sup>N.W.T. Lands Act, Sections 3.

<sup>2</sup>S.O.R./77-210.

<sup>3</sup>These permits involve the use of campsites for 100 to 400 man-days; storage of 50 to 150 kg. of explosives; the use of vehicles weighing between 5 and 10 tonnes or involving equipment having a ground bearing pressure greater than 34K pa; or, fuel storage facilities of 4,000 to 8,000 l(or a single container of 2,000 to 4,000 l). Ibid., section 9. The Timber regulations refer to a person living a nomadic way of life, trappers and prospectors, and scientists while conducting those activities. Territorial Timber Regulations, P.C. 1962-1042 pursuant to the Territorial Lands Act.



wildlife and fisheries habitat, recreation, scenic and ecological values associated with the control of land use operations.<sup>1</sup>

Land use activities that are specifically exempted from the regulations include any activities of a resident of the N.W.T. associated with hunting, fishing and trapping; prospecting or staking that does not involve heavy equipment or large amounts of explosives or fuel; and, the harvesting of timber by a person during his trapping or prospecting or similar activities.

Recent amendments to the regulations acknowledge the necessity of regulating small scale forms of land use which may have considerable impact on the environment. The regulations accomplish this through a thorough review of class A (larger) and B (smaller) permits while allowing the rapid processing of those applications that are routine. The onus is on the administration to respond within specific time frames.

The Regulations do, to a large extent, accommodate related resource legislation and they are reasonably flexible. For example, section 13(2) of the Territorial Land Use Regulations which is used to manage construction at stream crossings, acknowledges the supremacy of the Fisheries Act and the Northern Inland Waters Act; section 16 requires the protection of archaeological sites; section 17 which relates to the regulation of campsites, requires the compliance of permittees to the N.W.T. Public Health Ordinance and, section 21 requires the non-renewable resource exploration industry to have appropriate permits to explore for sub-surface resources. Those holding permits to explore under the Canada Oil and Gas Land Regulation or the Canada Mining Regulations must do so subject to the Territorial Land Use Regulations (s. 27).

A serious limitation of the Regulations in the past has been that

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<sup>1</sup> Territorial Land Use Regulations, section 31.

the Regulations were not consistently used to control the direct disturbance to wildlife of land-use operations. The Regulations were often interpreted narrowly to control disturbance to only wildlife and fisheries habitat. As a consequence, clauses relating directly to disturbance of wildlife usually were attached as an annex to the land use permits, in effect requesting the compliance of the operator rather than requiring that compliance.<sup>1</sup>

A broader interpretation of the Territorial Land Use Regulations would seem appropriate given the stated purpose of the regulations - " ... protection of the ecological balance" - and the broad discretionary powers granted to engineers in section 31(m) of the Regulations - "such other measures ... necessary for the protection of the biological or physical characteristics of the land management zone." This broader view of the use of the Regulations seems now to be accepted as evidenced by the recent controls imposed in the Keewatin to protect caribou from disturbance.

The main limiting factor of the Land Use Regulations is that the Regulations are intended to deal with the administration of individual land-use applications but do not permit a holistic approach to land-use management in the N.W.T. For example, the regulations and administrative process do not facilitate the consideration of the cumulative environmental impact of industrial land use or, more importantly, specifically provide

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<sup>1</sup>Regulative action by the Territorial Wildlife Ordinance is apparently thwarted because any activity authorized by an act of Parliament cannot be overruled by a constitutionally subservient Territorial Ordinance. For the present GNWT legislation in this area expresses intent and will be used with the concurrence of DINA which will use its administrative and legislative powers in a complimentary manner.

a framework for land use planning.<sup>1</sup>

While the Regulations allow for coordination with other legislation, they do not acknowledge the existence of the inter-agency Land Use Advisory Committee, perhaps because the Committee is only advisory in nature. Consultation with the communities is allowed for within the application review time, and is usually practiced. However, the necessity of such consultation, mechanisms for it, or the right of citizens to receive notice and be heard, are not acknowledged in legislation. Although the Lands Act allows for hearings, hearings are not required and an effected group cannot insist on hearings to air a resource management issue.

#### Territorial Lands Regulations

The Territorial Lands Regulations<sup>2</sup> allow for the alienation of lands in the N.W.T. that are administered by the Federal Government. The Minister of DINA may make reservations on land sale or lease agreements. By regulation, all surface leases are to reserve the timber and mineral resources. Also reserved is the right of entry to the property to prospect for, and develop mines, and the right of way for water conveyance required for mining.<sup>3</sup>

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<sup>1</sup>This is discussed at length by William F. Rees in "Development and Planning North of 60°: Past and Future." Second National Workshop on People, Resources and the Environment North of 60°; (Ottawa: Canadian Arctic Resources) February, 1978.

<sup>2</sup>S.D.R. 61-1.

<sup>3</sup>Ibid., Section 12.

### Timber Regulations

The Territorial Timber Regulations<sup>1</sup> "apply to the cutting and removal of timber on territorial lands which are under the control, management and administration of the Minister of Indian Affairs and Northern Development ..."<sup>2</sup> which is all the land in the N.W.T. excepting those parcels for which the administration has been delegated to the Commissioner (i. e. Commissioner's Lands).

The Territorial Lands Act enables the setting aside of lands for various public purposes. These include the designation of such areas as Migratory Bird Sanctuaries, National Parks, National Wildlife areas and Historic Sites. The legislative basis (and other particulars) for conservation areas managed under federal legislation are summarized in Table 2 while other areas that are managed under legislative authority delegated to the N.W.T. Legislative Assembly are summarized in Table 3.

#### *2.1.2 Territorial Government Legislation*

##### Commissioner's Land Ordinance

The Commissioner's Land Ordinance allows for the administration of lands transferred to the Commissioner by the Governor-in-Council pursuant to section 46 of the Territorial Lands Act. The mineral rights to these

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<sup>1</sup>SOR/54-371 and amendments to P.C. 1962-1042.

<sup>2</sup>John K. Naysmith, "Land Use and Public Policy in Northern Canada", Northern Policy and Planning Program, Planning Branch, Northern Affairs Program, Department of Indian and Northern Affairs, September, 1975, p. 72.

TABLE 2. List of Federal Conservation Areas in Place or Proposed for the Northwest Territories and Relevant Particulars

Designation	Federal Legislation	Purpose	Subsurface Withdrawn		Consul-tation		Sites		Proposed Sites		Managed By	Elsewhere in Canada Managed By	Administrative Relationship to Territorial Land Use Regs.
			Yes	No	Yes	No	No.	Area /mi <sup>2</sup>	No.	Area /mi <sup>2</sup>			
1 Migratory Bird Sanctuaries	Migratory Bird Sanctuary Regs. (SOR/54-371 + amendments)	Protect critical Habitat of migratory birds		X		X	16	44,750	?	?	Canadian Wildl. Service Department of Environment	Generally provincial	Migratory Bird Sanctuary Entry Permit treated as pre-eminent (ie: land use permit issued only subsequently).
2 National Parks	National Parks Act (1974, c.W-13)	National heritage (proposed as scenic areas, natural values, historic sites, land marks and canals)	X		X <sup>2</sup>		3	40,885	11 <sup>3</sup>	?	Parks Division Department of Environment	Federal-same	Supercedes N.W.T. Land Use Regulations.
3 National Wildlife Areas	Canada Wildlife Act (1973 c.-21), Wildlife Area Regulations (1977)	Protection of critical wildlife habitat, education, maintenance of endangered species, and/or research purposes	X			X <sup>4</sup>	Nil	Nil	-	-	Canadian Wildlife Service Department of Environment	Same Creation by co-operation of provincial governments	Would presumably supercede the Land Use Regulations.
4 Archaeological and Historical Sites	N.W.T. Archaeological Sites Regs., Historic Sites and Monuments Act, (Historic Resources Ordinance - Territorial	Protection and management of historic resources	X		X		?		?	?	Government of the N.W.T	Mainly provincial, but federal legislation is used where there is a national interest	Regulations presently ineffective therefore rely on Land Use Regulations <sup>5</sup>

Table 2  
(Continued)

Designation	Federal Legislation	Purpose	Subsurface Withdrawn		Consultation		Sites		Proposed Sites		Managed By	Elsewhere in Canada Managed By	Administrative Relationship to Territorial Land Use Regs.
			Yes	No	Yes	No	No.	Area <sub>1</sub> /mi <sup>2</sup>	No.	Area <sub>2</sub> /mi <sup>2</sup>			
5 Ecological Sites	Not determined, DINA presently favours use of the Land Use Regulations	Conservation, education, research	variable		X		Nil	Nil	100+	Variable 6	Presently proposed DINA	Provincial	DINA presently envisions using the Land Use Regulations to implement this program.

- 1 Consultation with the Legislative Assembly of the N.W.T. is a legal requirement prior to the creation of these conservation areas.
- 2 Consultation is required but can be created simply by a Federal Order in Council.
- 3 Five areas are under active consideration and there is a long-term interest in 6 other sites. Tom Espie, "Canada Parks Activity in N.W.T. and Territorial Parks Policy" an unpublished paper for the Government of the Northwest Territories. March 1, 1979, p. 10.
- 4 Legally concurrence by GNWT not required but in practice the N.W.T. Wildlife Service is treated the same as a provincial wildlife agency.
- 5 See "Mackenzie Delta Contingency Plan", a report of the Federal Territorial Regional Planning Committee, Information Series, Government of the Northwest Territories, 1977, p. 6-4.
- 6 The sizes of proposed sites vary from a few acres to several thousand square miles depending on the purpose and location.

TABLE 3. List of Territorial Conservation Areas in Place or Proposed for the Northwest Territories and Relevant Particulars

Designation	Territorial Legislation	Purpose	Subsurface Withdrawn		Proposed Sites		Managed By	Elsewhere in Canada Managed By	Administrative Relationship to Territorial Land Use Regulations	
			Yes	No	No.	Area/ mi <sup>2</sup>				No.
1. Territorial Park	Territorial Parks Ordinance (c.-5)	Recreation and preservation - 4 types -					N.W.T. Parks Division	Provincial	The Land Use Regulations do not apply in these areas. The areas are managed under the authority of the N.W.T. Parks Ordinance.	
		-Natural Environment Recreation Parks	X		Nil	-				?
		-Outdoor Recreation Parks		X	Nil	-				?
		-Community Parks		X	13	-				?
		-Wayside Parks (roadside campgrounds)		X	19	-	?			
2. Game Sanctuary <sup>2</sup>	Wildlife Ordinance	Preserve wild-life and wild-life habitat					NWT Wildlife Service	Provincial	In Thelon where there is a withdrawal of surface resources, entry is controlled by the Wildlife Service; (there is no land use in the normal sense); the Land Use Regulations apply in the other Sanctuaries.	
		-Thelon Game Sanctuary	X		11,200					
		-Mackenzie Bison Sanc. -Bowen Bay & Twin Islands		X	2,400					

Table 3.  
(Continued)

Designation	Territorial Legislation	Purpose	Subsurface Withdrawn		Sites	Proposed Sites		Managed By	Elsewhere in Canada Managed By	Administrative Relationship to Territorial Land Use Regulations	
			Yes	No.	No.	Area/ mi <sup>2</sup>	No.				Area/ mi <sup>2</sup>
3. Critical Wildlife Areas <sup>3</sup>	Wildlife Ordinance	Conserve critical habitat and manage disturbance to wildlife		X	Nil	-	?	?	NWT Wildlife Service	Provincial	Unclear, anticipated that regulative regime not administered to by NWT Wildlife Service but rather by a land agency.

<sup>1</sup>All land withdrawn by N.W.T. Lands Federal Act.

<sup>2</sup>Several game preserves are in existence but they do not have any effect on land management practices, rather they are areas preserved for hunting and trapping.

<sup>3</sup>These areas are enabled by the new Wildlife Ordinance, none have been created yet.



lands are reserved by the Crown in right of Canada.

The Commissioner's Land Ordinance allows for the disposition of these lands and for appropriate regulations. These lands are mainly in and adjacent to communities. The Commissioner's Land Regulations delegate the administration of the Regulations to the Director of the Department of Local Government, including the regulation of the harvesting of timber and hay, and the issuance of permits for quarries on these lands.<sup>1</sup> Section 48 of the Ordinance allows for an appeal procedure (of any act, or lack of an act, by the Director) to the Commissioner.

Each of these areas for which the administrative responsibility is transferred to the Commissioner, are referred to as Block Land Transfers (BLT's). These BLT's now consist of 1,134 square miles. To avoid prejudicing the settlement of the land claims of the Native people in 1978 the BLT program was replaced by the Interim Revised Transfer Policy which allows for transfers under urgent circumstances created by rapid urban expansion.<sup>2</sup> A peculiar situation has arisen. Lands in communities where BLT's have not been arranged (due to the "freeze" policy pending the settlement of Native land claims) are now being administered by the Territorial Department of Local Government, on the advice of the community councils, with the GNWT using Federal Government forms to satisfy the current legal arrangement.

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<sup>1</sup>Tom Espie, "Canada Parks Activity in the Northwest Territories and Territorial Parks Policy," an unpublished paper for the Government of the Northwest Territories, March 1, 1979, p. 62.

<sup>2</sup>Ibid.

### Area Development Ordinance

The Area Development Ordinance,<sup>1</sup> enables the GNWT to control development in designated areas beyond Commissioner's lands. A set of separate Area Development Regulations have been created for each Area. The Areas have mainly been in, or immediately adjacent to, communities. This was probably the original reason for the Ordinance.<sup>2</sup>

The use of this ordinance has broadened considerably with the establishment of the Mackenzie Development Area in 1973. The use of this Ordinance to control larger tracts of land began in 1970 when the creation of the Hay River Enterprise Development Area granted control of development within four files of the highway from the N.W.T. - Alberta border to Hay River. The Mackenzie Development Regulations<sup>3</sup> include an area along the Mackenzie Valley Highway route of approximately 8,000 square miles with 13 zones paralleling 4 miles on either side of the route from near Enterprise to Tuktoyaktuk, including the lateral route to Ft. Liard and the N.W.T. - British Columbia border. Naysmith<sup>4</sup> states that if the Ordinance were used in this manner it could function as regional planning legislation.

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<sup>1</sup>The reservations noted in the Territorial Lands Act are reiterated in this ordinance.

<sup>2</sup>Naysmith, op cit., p. 78.

<sup>3</sup>Mackenzie Development Area Regulations 2-73.

<sup>4</sup>Naysmith, op cit., p. 79.

The N.W.T. Legislative Assembly has created legislation to reserve and manage lands for the conservation of renewable resources including parks, game sanctuaries and areas critical wildlife areas for the maintenance of wildlife populations (noted previously in Table 2).

Other relevant Territorial legislation are the Public Health Ordinance<sup>1</sup> (which includes reference to maintenance of camps, water purity, etc.), Sanitation Regulations, and Camp Sanitation Regulations, the Pesticide Ordinance and the Petroleum Products Storage Ordinance.

#### Forest Protection Ordinance

The reference to timber in the Commissioner's Land Ordinance is separate from the Forest Protection Ordinance.<sup>2</sup> In the Commissioner's Land Ordinance the sections related to forestry, "deal with such matters as the burning of slash and debris during right-of-way clearing closed seasons, burning permits and fire-fighting assistance."<sup>3</sup> The Forest Protection Ordinance deals with all aspects of forest management and applies throughout the N.W.T. and is administered by the Northwest Lands and Forest Service of DINA.

A Territorial Environmental Protection Ordinance allows for the control, storage, and discharge of contaminants and for clean up of such materials and unsightly premises. This ordinance facilitates coordinated governmental action on matters affecting public health in the N.W.T. The

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<sup>1</sup>1957, c. -7 and amendments 1961 c. -14, 1962 c - 14.

<sup>2</sup>c.F-8.

<sup>3</sup>Naysmith, op. cit., p. 72.

all inclusive definition of contaminants<sup>1</sup> allows future broadening of the scope of this legislation. However, thus far this ordinance has had little use and has not been tested in court. No regulations have been developed to give effect to the Ordinance except for regulations relating to emission standards from paving plants.

### 2.1.3 *The Native Interest in Lands*

At present, the Native people have the usufructory right to unoccupied Crown lands. While only the Hay River Indian Reserve exists in the N.W.T., virtually all lands in the N.W.T. are subject to aboriginal claim.

The agreement in principle between the Inuvialuit and the Federal Government is likely to be a precedent for settlement of other claims in the N.W.T. This agreement allows for large tracts of land to be granted to Native corporations in fee simple absolute title with the mineral rights reserved to the Crown; and, for limited lands with fee simple absolute title including mineral rights to be granted to the Native corporations. A regional Land Use Planning Commission will advise the Federal Government on management of all lands in the region.<sup>2</sup>

The lands held by the Native Corporations are to be subject to the laws of general application; hence, minimum environmental management standards are to be determined by the government. The Native corporations

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<sup>1</sup>1957, c.-7 and amendments 1961 c.-14, 1962 c.-14.

<sup>2</sup>The Commission is to include persons recommended by the Native people (2 representatives), the Federal Government (one), the Territorial Government (one), and one person appointed directly by the Minister of DINA. Canada, "Inuvialuit Land Rights Settlement: Agreement in Principle", 31 October, 1978. Section 15(2). Government of the Northwest Territories files.

will be able to impose more restrictive controls.

In summary, a very complex and evolving web of Federal and Territorial legislation is in existence to manage the disposition and use of Crown lands in the N.W.T. Those directly involved in the land management programs are challenged to develop and maintain an understanding of the inter-relationships of the legislation and the mandates of the various agencies. The combination of the old and the new requires intricate administrative manoeuvring to make the system work. Currently objectives are often far from clear and very often in conflict.

The complexity of the administrative arrangements becomes especially apparent when, as is often the case, conflicting objectives for the management of several resources are involved. Coordinated management of the administrative processes is required.

## 2.2 Program Assessment

A re-assessment of the various interests in lands, a key resource, is essential to simplify, and more effectively frame, the legislation and administrative processes required to meet specified goals and objectives for the integrated management of natural resources.

### 2.2.1 *Management of Land Use*

The Federal government's national objectives for the North, as enunciated by the Hon. J. Chretien in 1972,<sup>1</sup> provided overall guidance for land use policy in the N.W.T. The objectives included references to quality of life, economic development, maintenance of sovereignty, maintenance of the northern environment, further development of self-government

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<sup>1</sup>The Hon. J. Chretien, "Northern Canada in the 70's", a report by the Minister of Indian Affairs and Northern Development to the Standing Committee on Indian Affairs and Northern Development on the Government's objectives, priorities and strategy for the 70's. April 1972.

and other social goals. Despite these broad objectives for northern development, the document made it abundantly clear that the Minister felt that the economic future of the north, and its contribution to Canada, lay in the development of non-renewable resources.<sup>1</sup> The Minister also made it clear that DINA was to have authority analogous to a provincial government and that the Department would coordinate all programs of the Federal and Territorial Governments in the North.<sup>2</sup> Within this framework, land-use policies were directed toward facilitating resource exploration in the national interest while providing several mechanisms for environmental review of proposals for land use.

#### Operations

The Land Use Regulations were promulgated in 1971 primarily to protect northern lands from the activities associated with oil and gas exploration.<sup>3</sup>

The amendments to the regulations in 1977 have largely been effective in applying the Regulations to the mineral exploration industry by reducing the criteria (such as the number of camp-man-days and the weight of equipment) through the creation of a Class A and B permit system previously referred to. The amendments also included the Central Arctic and the Keewatin as land management zones.

The agency which was selected to implement the land use management

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<sup>1</sup>Ibid., p. 4.

<sup>2</sup>Ibid., p. 3.

<sup>3</sup>Exploration programs increased dramatically during the mid 1960's. The activity progressively moved down the Mackenzie Valley and reached a peak of activity in the Mackenzie Delta and the Arctic islands in 1974.

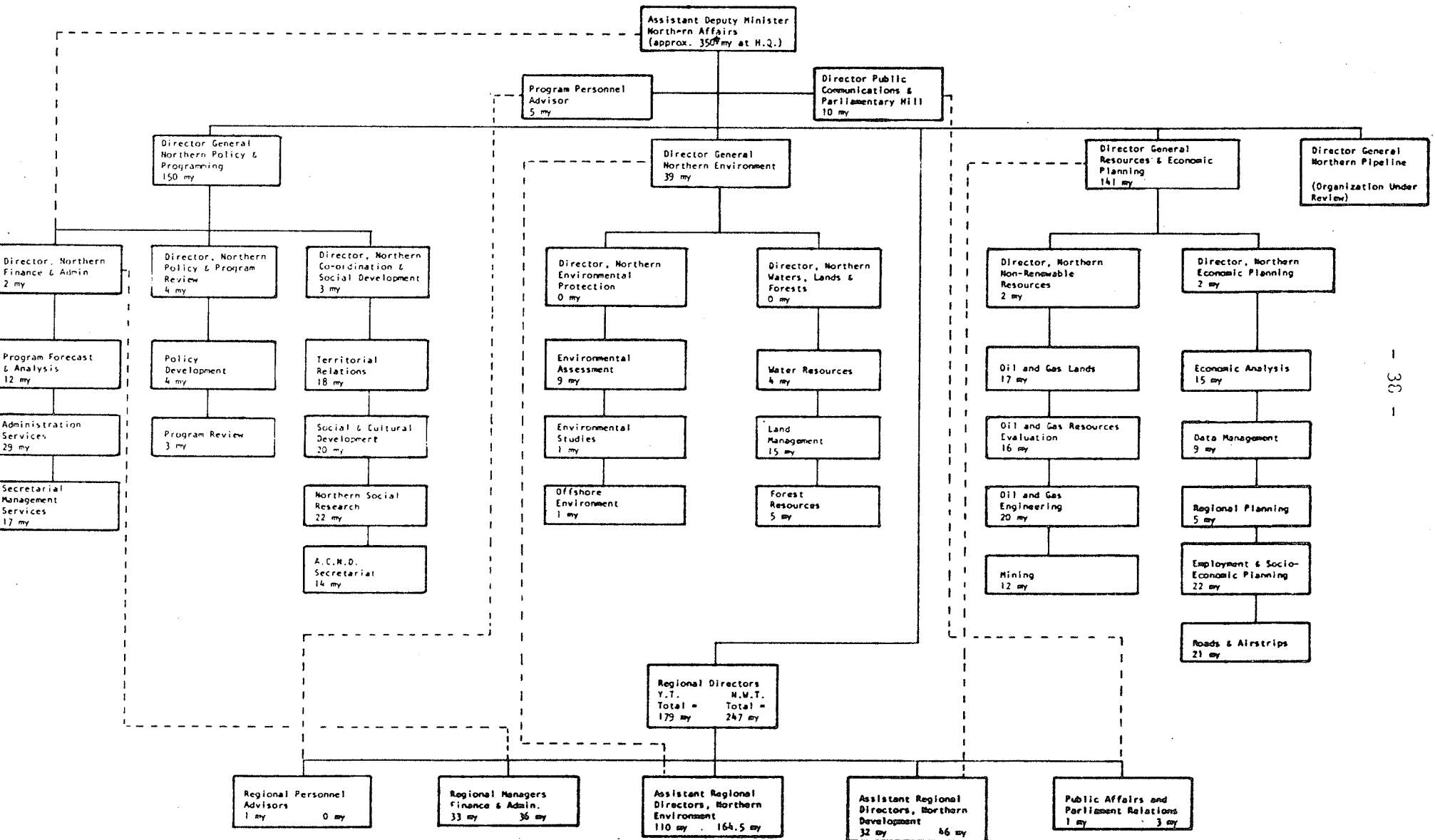
program in the field in 1970 was the Mackenzie Forest Service later to become the Northwest Lands and Forests Service (NWLFS), which had remained in DINA after the creation of the Territorial civil service in 1968. The NWLFS added the land use inspection role to the other Service responsibilities of forest protection (forest fire fighting), and forest management (controlling commercial cuts). Certain NWLFS officers became land agents.

To ensure an adequate response to the land use program, the N.W.T. Regional operation of DINA expanded dramatically in the early and mid 1970's. The Mackenzie Forest Service had grown from a staff of 10 permanent and casual employees in 1955 to a staff of 36 in 1965. The Regional budget by the fiscal year 1977/78 for forest fire protection, forest management and land use inspection had grown to \$8 million and a permanent staff of 89 excluding the Regional (N.W.T.) headquarters executive and administrative staff and budget. Almost all of these positions are in Mackenzie Valley. Only recently have district offices been created in Rankin Inlet and Frobisher Bay. District Offices also exist in Yellowknife, Inuvik, Fort Smith and Fort Simpson with either Resource Management Officers and/or (forest) Protection Officers based in most communities in the Mackenzie Valley. The Ottawa headquarters and regional DINA Northern Affairs<sup>1</sup> organizations are noted in Figure 3 and 4 respectively.

The fiscal and manpower resources allocated by DINA for inspection of land use activities, and the stream-lined procedures that have been

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<sup>1</sup>The Northern Affairs program of DINA is responsible for the management of renewable resources excepting fish and wildlife.



\*my - man years staff

Figure 3: Headquarters Organizational Structure of the Northern Affairs Program of the Federal Department of Indian and Northern Affairs-1979



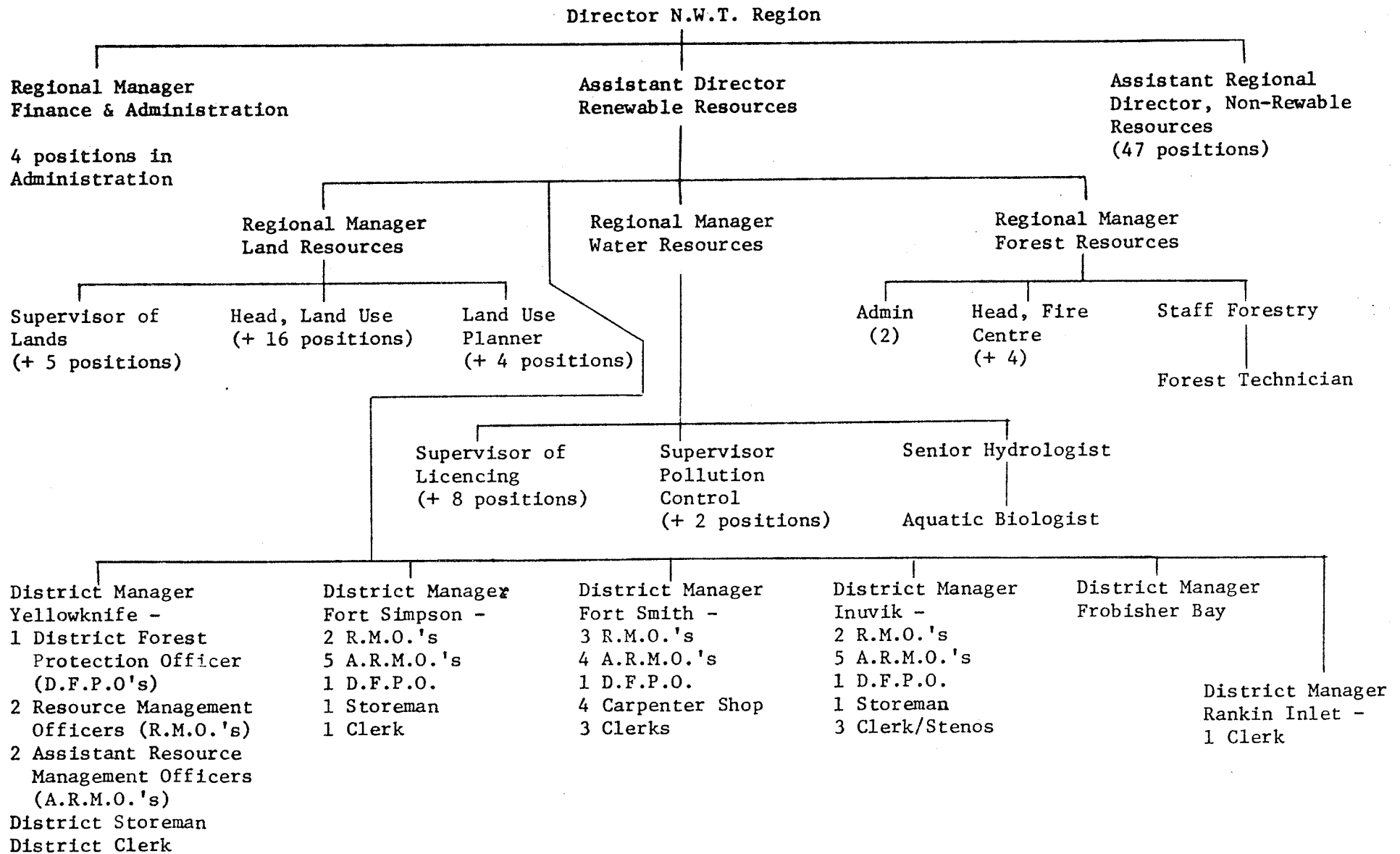


Figure 4: The N.W.T. Regional Organizational Structure of the Northern Affairs Program of the Federal Department of Indian and Northern Affairs -- July, 1979.

developed for the administration of land use management, at the regional level in Yellowknife have been impressive. Unfortunately, in the early 1970's, the administration of the Land Use Regulations became, and has remained, a sensitive subject in many communities. The administration of the Regulations has been viewed as a vehicle to facilitate exploration by the hydrocarbon industry without responding adequately to the concerns raised by DOE, GNWT or in the communities about the effects of the exploration programs on renewable resources and the use of those resources by Northerners.<sup>1</sup>

All land use applications are available for review and comment by the communities in the area to be affected by the proposed activity. The consultation process is informal.<sup>2</sup> The comments from the communities are relayed back to the Land Use Administrator responsible for that district for possible inclusion in the permit. The limitations of this form of consultation have been recognized by the regional office of DINA for several years. The Department is moving to decentralize the administration of land use applications qualifying as class B permits and is encouraging the formation of regional public consultative committees throughout the N.W.T. to review applications for both type A and B permits. This will permit a general regulative framework for routine applications and a mechanism for consultation

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<sup>1</sup>This perspective of the administration of land use controls, and the apparent pro-development bias of DINA during that period, is discussed by P. Usher in "Land Use Regulations: A Conflict of Interest", Northern Perspectives, Canadian Arctic Resources Committee, Vol. 1, No. 3, March 1973. For the same reason, and because of the limited training of most Land Use Inspectors in enforcement procedures, neither the Fisheries and Marine Service or the Canadian Wildlife Service delegated the administration or enforcement of the habitat protection sections of their respective legislation to DINA. The enforcement capability of the Land Use inspectors has probably been upgraded to a degree by involvement in enforcement training programs since 1976.

<sup>2</sup>The applications are provided to any local entity that wishes to be involved - usually the Settlement Council, Hunters and Trappers Association, and/or the Band Council.

on applications of particular concern.

Considerable inefficiency results from the artificial structural separation of the NWLFS, the Fisheries and Marine Service, the N.W.T. Wildlife Service (NWTWS), and to a lesser extent, the Canadian Wildlife Service (CWS), which are all involved in the management of renewable resources. As a result, in a small community such as Fort Simpson, each agency (excepting the CWS) has its own personnel, facilities and equipment. The fact that the Officers are in separate office buildings and have different reporting relationships discourages communication that would otherwise aid operational and program coordination if not integration.<sup>1</sup>

Present organizational structures encourage the field staff of each agency to focus on the narrow objectives of each service since those are the measures of their evaluation. There is no single set of local resource management objectives; rather there are three or four sets in some communities. These objectives are usually not explicit, which compounds the problem. The result is fragmented program delivery for a public which is often far from sure who is responsible for what. In short, there are too many green uniforms for too few tasks.

The separation of the agencies also produces inefficiencies and lack of program effectiveness where DINA does not have field staff. Until 1976 DINA had no permanent staff in the Arctic, with the exception of Inuvik. Although district offices have recently been created in Rankin Inlet and Frobisher Bay, there is no DINA presence for land administration

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<sup>1</sup>For example, in one small community in 1976 a considerable amount of helicopter time on a forest fire contract was to expire. At the same time a Wildlife Officer in the same community could not carry out inspections of big game outfitter camps because of a lack of funds necessary to charter aircraft. The problem was simply a lack of communication; they were in separate offices across the street.

in any of the other Arctic communities. The Land Use Inspectors therefore have the difficult chore of flying into a community for a few hours or overnight to "consult with the community" about particular land use applications. Regardless of the sincerity of the Inspectors, it is impossible for them to develop a rapport with the community during these "Cook's tours". This approach for obtaining the reactions of communities to land use applications often reinforced the "proponent" image of the Inspector.

In such communities there usually are resident Wildlife Officers, or other GNWT administrative personnel. These officials deal on a regular basis with the Hunters and Trappers Associations which are usually the main point of contact on matters involving land use beyond the community boundaries. To expend travel funds<sup>1</sup> on such quick consulting trips is not efficient when a more thorough process of local involvement can be had by ongoing liaison with GNWT field staff or local government personnel resident in most communities. Such liaison would require no additional expenditure of funds. To a large extent this practice is now being attempted by the new DINA district offices in Rankin Inlet and Frobisher Bay. Unfortunately these offices are not fully integrated into the GNWT regional structure.

In many communities a field officer cannot be justified by any one renewable resource agency; but one officer could efficiently and effectively meet most of the public needs in the whole renewable resource field.

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<sup>1</sup>For example, the 1980-81 Budget Forecast for DINA operations in the N.W.T. shows \$100,000 (including two man years) for "consultation with communities".



Any amalgamation of agencies would likely permit a re-allocation of positions to provide permanent resource management staff to serve communities that now only receive this service on an occasional basis from the various agencies.

In 1975, Naysmith<sup>1</sup> concluded, for the sake of efficiency, lands should be managed by the GNWT regardless of the jurisdictional arrangement. The arguments are even more compelling today.

#### Coordination in the Bureaucracy

A Northwest Territories Land Use Advisory Committee (LUAC) exists in Yellowknife as a forum for other agencies to advise DINA on terms and conditions that should be incorporated in land use permits. The approach provides "one window" for industry to deal with government. The Committee also provides "... a regional mechanism for continuing coordination and exchange of information on member agency projects and regulatory activities."<sup>2</sup> The LUAC has been chaired by the Regional Engineer (Assistant Regional Director, Renewable Resources), or more recently the Head of the Land Use section. The agencies represented on the Committee have been the GNWT Department of Local Government (to represent community interests and to coordinate the management of Commissioner's Lands), NWTWS, DOE (including the CWS and Environmental Protection Service - EPS), and the Fishery and Marine Service (FMS) of the Department of Fisheries and Oceans.

The LUAC functioned in a state of turmoil for the first few years until the administrative procedures and working relationships were worked

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<sup>1</sup>Naysmith, op cit., pp. 171,2.

<sup>2</sup>"Terms of Reference: Northwest Territories Land Use Advisory Committee", Wildlife Service files, Government of the Northwest Territories, Yellowknife.

out. The differing positions have usually been resolved largely by compromise. Since the DOE had an adequate mandate to protect fish habitat and Migratory Bird Sanctuaries, suitable operating conditions were negotiated and ultimately became largely a matter of routine. This was often not the case with the protection of game species from disturbance. The NWTWS, despite its mandate for game management, does not have a mandate to unilaterally protect critical game habitat or protect game from disturbance during critical periods in their life cycle. As a result, negotiation to obtain consideration for game resources is constant, and from a uniformly weak position unless political attention is focused on the issue. Only recently has an explicit policy been made to reconcile the often conflicting national objectives for non-renewable resource development and the primarily regional interest in maintenance of renewable resources. The decision was made in favour of the maintenance of renewable resources (specifically caribou) but only after considerable public controversy.<sup>1</sup>

Experience with the LUAC indicates that if the resolution of resource conflicts is to be a bureaucratic process, the agencies representing renewable resources should have the mandate to protect habitat critical to the maintenance of the resource. However, this may be antagonistic to political development objectives. This arrangement could also lead to a loss of effectiveness of resource management programs because the will

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<sup>1</sup>The Minister of DINA referred to a balanced approach to development, which in the case of industrial activity on caribou calving areas (during the calving period), means "preferential land use" being granted to protect wildlife. Notes for a Speech by the Hon. J. Hugh Faulkner, Minister of Indian and Northern Affairs, (Govt. of N.W.T. files). Ottawa, April 27, 1978.

of an agency primarily concerned with a single resource could prevail, working against the integration of resource management and the attainment of broader societal goals.<sup>1</sup> If the policy process is made more open to the various public interests, the policy debate will provide the administration with direction for which there is a broad base of public support. In addition, land use planning with public participation would provide specific guidance to the administration and a reasonable degree of predictability with explicit resource management policies.

DINA has made no effort at comprehensive land use planning. The need for this type of planning has been pointed out by many persons directly and indirectly involved in northern resource management issues through the years.<sup>2</sup> The project that most closely resembled land use planning was the regional contingency plan carried out by both levels of government for the Mackenzie Delta in response to proposed hydrocarbon developments.<sup>3</sup> Unfortunately, the land use component of the plan was never attempted due mainly to the lack of credibility in the region for the planning process. General public involvement and acceptance of regional

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<sup>1</sup>For example the administration of the strong environmental quality controls of the Fisheries Act by a Federal agency is beyond the control presently available to the "Territorial" interests who may wish to determine where the compromises are to be reached between the maintenance of renewable resources and development of non-renewable resources.

<sup>2</sup>For example, see William E. Rees, "Development and Planning North of 60°: Past and Future,". Second National Workshop on People, Resources and the Environment North of 60°, Canadian Arctic Resources Committee, 1978. Also, a detailed approach to land use planning and management was outlined for DINA by Naysmith, op cit., in 1975.

<sup>3</sup>Government of the Northwest Territories. "Mackenzie Delta Contingency Plan", Information Services, Yellowknife, 1977.

planning are unlikely until the various land claims reach the agreement in principle stage thereby providing mutually agreed upon guidelines for the participation of the various interests in resource development planning and management.

The Federal Government has decided belatedly that regional land use planning is desirable, but unfortunately, it cannot now be assured of the participation of the Native people. The Native people also find themselves in a dilemma. If they participate in the process to make the outcome more acceptable to them, they may prejudice the negotiation of their land claims. An example of the product of this dilemma was the interim court injunction ordered by the Federal Court of Canada which provided the framework for land use regulation in the Baker Lake area.<sup>1</sup>

Regional Land Use Planning as a tool to integrate renewable resources management is an important part of the agreement in principle between the Inuvialuit and the Federal Government. The Agreement suggests an approach to land use planning that is generally along the lines suggested by Naysmith in 1975.<sup>2</sup>

Unfortunately, the limited localized planning that does occur is usually based out of Ottawa and occurs largely after the project is in place or under construction.<sup>3</sup> The project planning role is presumably kept in Ottawa to ensure responsiveness of resource planning exercises

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<sup>1</sup>An interim injunction was ordered by Mr. Justice Patrick Mahoney on April 24, 1978 in the Federal Court of Canada, Ottawa to protect caribou from undue disturbance from mineral exploration programs.

<sup>2</sup>See Inuvialuit Land Rights Settlement: Agreement in Principle, October, 1978. Government of the Northwest Territories files. Yellowknife, N.W.T. Section 11(2) (a).

<sup>3</sup>Examples are the planning associated with the Liard Highway while construction is in progress, and the Dempster Highway after it was constructed.



to Departmental policies which are controlled centrally. Planning could proceed much more efficiently, and tie in much more closely with the regulative process, if the Ottawa based planners were moved to Yellowknife where they would be more directly exposed to local, regional and territorial concerns.<sup>1</sup> Further, public involvement in the planning process should begin in each region as agreements-in-principle have been reached with each Native association Land selection for the settlement of each claim should result from the planning process rather than precede planning.

#### Departmental Conflicts of Interests

The representation of various interests in the bureaucracy of one omnipotent department (DINA) has advantages in efficiency but these advantages are outweighed by the lack of vigor in responsiveness and therefore, effectiveness to the long term public interests. This is particularly true in the case of a more distant bureaucracy (in Ottawa) that cannot be held accountable to local, regional or territorial interests.

The present paternalistic system of land use administration in the North is made worse by the almost complete control of natural resource management by DINA, which by the nature of the conflicting responsibilities,<sup>2</sup>

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<sup>1</sup>The GNWT has created an interdepartmental Resource Development Committee to be led by the Executive Committee (of Ministers) to develop comprehensive GNWT policy on major developmental proposals. The support analysis and planning will be carried out by a core group of departmental planners. Unfortunately, the same will not occur with the Federal Government which will retain its N.W.T. planning unit in the Northern Economic Planning Branch in Ottawa. This leads to the awkward arrangements for information exchange and coordination between the two governments that occurred during the contingency planning exercise for the Mackenzie Delta.

<sup>2</sup>These conflicting responsibilities are northern development (and in particular, development of energy resources), environmental protection, and the special interest of the Native people.

causes almost all major policy debates to be internal.<sup>1</sup> This is antagonistic to the political development goal in the national objectives for the North enunciated in 1972.

#### Responsiveness of Regulative Framework

The response time required to change Federal legislation causes further inflexibility in the resource management system. This is merely symptomatic of the problem of having a Federal Government which is effective in encouraging non-renewable resource development in the national interest but not effective in protecting the primarily regional interest in renewable resources.

An example of this lack of responsiveness is that in 1969, the community of Baker Lake first expressed its concern about the lack of regulation of the mineral industry and alleged that mineral exploration

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<sup>1</sup>For example, the Department of Energy, Mines and Resources which bears the responsibility for Canada's national energy policy, has no regular forum for consultation with DINA and was not consulted prior to the temporary suspension of uranium exploration programs in the Baker Lake area. K. A. Graham, R. E. McEachern and C. G. Miller, "The Administration of Mineral Exploration in the Yukon and Northwest Territories", a report by the Centre for Resource Studies for the Department of Indian and Northern Affairs, October, 1978. Some of the other Federal agencies involved in resource management in the N.W.T. represent other interests to the Department in an advisory capacity such as the Department of Fisheries and Oceans and the Department of Environment. However, these are generally fairly weak sisters in influencing northern development policy. The N.W.T. Wildlife Service is of course in an even weaker position because its authority is delegated to it by DINA rather than it being coordinate. In practical terms the ultimate test of the legitimacy of the interest of an agency in the bureaucracy boils down to the legislative mandate for the agency and therefore its ability to impose its will.

activity had adverse effects on the caribou in the area. This concern grew and was voiced repeatedly, and a peak of concern was reached in 1973.<sup>1</sup> The concern about the lack of regulative controls in the Keewatin had also been raised by the NWTWS through the LUAC and by DINA regional staff. However, the Department did not include the area in a Land Management Zone until late in 1975. The Regulations were not altered to permit more effective control of the activities of the mineral exploration industry until 1977. The response time was eight years from the date that concern was first registered and four years from the date when intense concern was expressed. Because of this time lapse, the issue moved from the technical/administrative level to the political/legal arena.

#### Research Requirements

The need for a scientific basis for land management in the North, and particularly in the Arctic permafrost areas, was recognized early by DINA. The Arctic Land Use Research program (ALUR) was created in the Environmental Studies Section based in Ottawa "to provide information and research support for implementation of the (land and water management) Acts and Regulations."<sup>2</sup> An ALUR Advisory Committee was formed:

to enable the ALUR program to benefit from the expertise available in Canadian universities and in industry and to provide a means for exchange of information on northern research between government, industry and the academic community.<sup>3</sup>

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<sup>1</sup>Interdisciplinary Systems Ltd., "Effects of Exploration and Development in the Baker Lake Area," Vol. 1a, study report for Department of Indian and Northern Affairs. February 1978.

<sup>2</sup>"Advisory Committee on Arctic Land Use Research - Terms of Reference", internal unpublished document, Department of Indian and Northern Affairs.

<sup>3</sup>Ibid.

The Committee has advised DINA on immediate and long term research requirements, availability of personnel and support facilities, relative scientific and practical merits of research proposals, other current research projects, and the content of the ALUR program.

The ALUR program has provided information that has been of considerable value in land use management. The program has brought to bear considerable scientific and practical expertise from academia and industry.

Until 1976, the agencies and individuals that were directly involved in the practical problems of managing land use through the LUAC (including the DINA regional office), unfortunately did not have effective access to the review process that determined the research priorities for the ALUR program. Recently, the total ALUR funding has decreased and an increasing amount of remnant funding is being used for specific studies such as the studies associated with the "land freezes" at Baker Lake and the Tuktoyaktuk Peninsula. The ALUR program is currently under review<sup>1</sup> and the future status of this program is not certain at this time.

A consultant's report in summary concluded that:

ALUR is in need of redefinition of and formal rededication to regulatory objectives; that it has significant problems in communication and use of research results; that it maintains excellent and cost-effective scientific management and contract administration; that it has suffered real dollar cutbacks and requires additional resources. We consider the program to have excellent potential for achieving clear, limited and

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<sup>1</sup>Department of Supply Services (Canada), "Arctic Land Use Research, File No. DISC c. 7111-8-0194. Appendix A - "Statement of Work: Terms of Reference", DINA files Ottawa.

and unique Departmental objectives.<sup>1</sup>

This report positively stresses the need for ALUR to be redirected to make it responsive to the regulatory needs of land use administration but unfortunately the membership for the ALUR Advisory Committee recommended by the consultant deviates from this principle by placing DINA regional staff on the review committee only in an observer capacity. Further, the report suggests that the GNWT participation be conducted by the N.W.T. Science Advisory Council which has no line management responsibility in the resource field. Participation by the NWTWS which is a member of LUAC and which has key related responsibilities,<sup>2</sup> would be more reasonable. The final decision on priorities should be made by the Lands program managers in consultation with other program managers directly involved in and responsible for northern land use management.

The consultant recommends that "as a long term objective, the program should be managed from the Yukon and/or Northwest Territories."<sup>3</sup> The report also recommends the merger of ALUR with all non-marine resource studies and further, that there be an integration of all environmental research with similar socio-economic research directed toward regulatory objectives. The implementation of these recommendations would enhance the value of a revamped ALUR program.

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<sup>1</sup>Interdisciplinary Systems Ltd., "Evaluation of the Arctic Land Use Research Program (ALUR)", for Northern Policy and Program Review Branch, DINA. January, 1979. Letter of Transmittal from IDS to the Chief, Program Review, DINA January 29, 1979.

<sup>2</sup>This includes being on a senior committee with DINA (N.W.T. Region) and the Regional Director of CWS who review all government sponsored biological research projects in the N.W.T.

<sup>3</sup>Interdisciplinary Systems Ltd. Ibid, January 1979. p. 61.

On the matter of who should direct the ALUR program, the consultant states that:

the principle guideline would appear to be that whichever department has the responsibility for regulating that department should also be responsible for performing the necessary applied research.<sup>1</sup>

Therefore, if the administration of the land use management program is transferred to the GNWT, the latter should also manage the ALUR program or its successor.

### *2.2.2 Management of Land Disposition*

#### Crown Lands Administered by the Federal Government

Only a limited amount of land in the N.W.T. has been alienated. In the past it was difficult and time consuming to surmount the administrative hurdles to obtain leases (usually limited to cottage lots and a few small grazing leases), and in practical terms nearly impossible to obtain fee simple title to lands beyond community boundaries. By policy Crown lands are presently not being alienated to avoid prejudicing the settlement of the land claims of the Native people.

Exceptions to this rigid policy are the leases for cottage lots in sub-divisions designated for that purpose and leases for market gardens near communities. The DINA regional office and the Territorial Departments of Local Government, and Economic Development and Tourism have coordinated the operational aspects of the market garden and cottage lease policies. Unfortunately, the control of the Cottage Lot Policy by the Federal Government in Ottawa has been so rigid that it encourages "squatting"

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<sup>1</sup>Interdisciplinary Systems Ltd., Ibid, 1979. p. 82.

and the filing of mineral claims as a ruse to obtain an interest in land so that cottages may be built on lands administered by the Federal Government - the very situation the policy was intended to avoid.

A Federal/Territorial Lands Advisory Committee (FTLAC) chaired by DINA facilitates the involvement of all interested agencies in the review of applications for land tenure and policy matters. Policy control remains in the firm grip of DINA officials in Ottawa who ensure that only the operational aspects of lands administration are delegated to the regional DINA office and it ensure absolute consistency in land policy in both the Yukon and N.W.T. regardless of the dissimilar consitions.

#### Lands Administered by the Territorial Government

The Department of Local Government financially and administratively supports urban planning (acting as a Planning commission in unincorporated settlements) and supports local development projects in communities as well as in the surrounding Commissioner's Land. These developments include commercial and industrial sub-divisions, market gardening, and cottage sub-divisions in which land is alienated. The Department administers Commissioner's and Federal Crown lands within communities in formal consultation with the communities. The Department may manage resources on these lands through permits to use hay, timber, land, and quarries. The Department also consults with other agencies having an interest in applications for resource use. In effect, this consultation with other agencies occurs much like the LUAC and FTLAC that review applications for lands administered by DINA.

### 2.2.3 *Assessment of Major Development Projects*

A review of major developmental proposals may take a number of forms. The review may involve public inquiries, public hearings, or a less formal environmental and/or socio-economic review process that may or may not involve extensive public participation.

#### Inquiries

The MacKenzie Valley Pipeline Inquiry was the first formal public inquiry in Canada used as a vehicle to assess a major resource development project.<sup>1</sup> Having considered the social, environmental, and economic impacts of the project, Mr. Justice Berger recommended to the Federal government the terms and conditions that should be incorporated in any permits authorizing the construction of the pipeline. In fact the hearing became much wider in scope and was in certain respects a forum for the consideration of basic issues relating to the social and economic policies of northern development.

The appropriateness of this mechanism, and the scope of the Berger Inquiry in particular, depends on the particular interest of those viewing the procedure. What is certain is the effectiveness of that Inquiry in hearing and considering the views of many northerners, particularly Native Northerners. The combination of formal and informal (community) hearings thoroughly aired the issues. Clearly, there was no consensus on goals for northern development at the time and likely there will be no consensus until Native people feel they have effective participation in shaping

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<sup>1</sup>K. Lysyk, "Public Inquiries and the Protection of the Public Interest in Resource Development Projects", draft notes for a speech, University of Manitoba, 1977. p. 8.



resource development policy and a stake in resource development. Public inquiries provide a forum for effective participation of the Native people in the decision making process pertaining to, and benefits from development to advise government(s) on major development proposals at least until the agreement in principle stage of claims negotiations.

Lysyk, who chaired the inquiry into the environmental effects of a natural gas pipeline along the Alaska Highway in the Yukon, concluded that inquiry: educated both the "laymen" and "experts" to the issues; benefited from the representative Board of Inquiry with northern participation; and, did not increase tensions because it helped clear misconceptions. He also concluded that the intervenors that were given financial assistance to contribute to the hearing did contribute important information and that to deny such assistance would seriously limit the effectiveness of the process. Lysyk noted that hearings held in the communities that were directly affected were very helpful in reconciling the interests of majority and minority groups in the region as well as in reconciling the regional and national interests.

In summary, although the experience with formal inquiries as a tool to review major developmental proposals is fairly recent<sup>1</sup>, inquiries certainly seem to be an option to ensure that all relevant information is brought to bear on the issue in an attempt to reconcile the various interests. In particular, an inquiry with broad terms of reference in reassuring to minority interests. The experience in other jurisdictions

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<sup>1</sup> Although there have been relatively few inquiries into resource issues, those that have been formed are relevant since in most cases they involve northern areas and areas with relatively large numbers of Native people.

that are using inquiries should be monitored to learn from their experience. The pronounced physical and social regional differences, and divergent interests in the North, and the residual national interest in non-renewable (and in particular energy) resources, suggest that inquiries (although perhaps less formal) may be an increasing fact of life in managing northern development.

#### Environmental Assessment and Review Process

The purpose of the Federal Environment Assessment and Review Process (EARP) is to ensure that environmental matters are considered during project planning prior to the making of irrevocable decisions, and to incorporate the results of the review into the design and implementation of projects. The EARP is intended to be used to assess the environmental consequences of "projects initiated by Federal departments and agencies, those for which (Federal) funds are solicited and those involving Federal property."<sup>1</sup> Because of Federal ownership of almost all lands in the N.W.T., almost any project could be subjected to EARP.<sup>2</sup> DINA is the proponent department for all projects in the N.W.T. which are submitted to EARP.<sup>3</sup>

A Screening Committee refers the project to the Federal Environmental Assessment Review Office (FEARO) which creates an Environmental Assessment

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<sup>1</sup>Canadian Council of Resource and Environment Ministers, "Environmental Impact Assessment in Canada: A Review of Current Legislation and Practice", British Columbia Ministry of Environment, February, 1977, p. 13.

<sup>2</sup>For a detailed description of the process see "Detailed Outline of Contents of the Cabinet Memoranda Establishing the Federal Environmental Assessment and Review Process", by the Federal Environmental Assessment Review Office, April 1, 1978.

<sup>3</sup>For the purposes of EARP, DINA (because of its present roles in the N.W.T.) is not only the land owner, it is also in effect a province, a regulatory agency, and a Federal department for the purpose of the review process.

Panel to review the project. The Panel creates guidelines for the project proponent to prepare the environmental impact statement (EIS) which is submitted to the Board which hold hearings to obtain "public response" where "technical organizations, interest groups, and individual citizens are encouraged to present their views".<sup>1</sup> The Panel report may recommend that the project not proceed, or proceed with, or without, conditions. Implementation of the recommendations is by ministerial decision. By policy all reports have been made public. The Panel, which is chaired by the Executive Director of FEARO or his appointee reports to the Minister of the Environment. Panel membership is not limited to the civil service.

An Environmental Review Board which would be "external to the government service"<sup>2</sup> is allowed for in special circumstances, but this approach has not been used.

In the provinces, EARP is used only to the extent that the Federal Government has a special interest. In short EARP by itself does not justify Federal intrusion in a resource issue. In the two Territories, EARP assumes the function of the environmental review process in which all provinces have in one form or another.

Although EARP appears to be a positive step, it is too early to fully evaluate its value as an instrument to determine the environmental implications of major proposals for development. Recent experience raises some doubt as to whether EARP is actually accomplishing the purposes for which it was created. The fact that the process has no basis in law

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<sup>1</sup>Paul Wolf, "The Federal Environmental Assessment Review Office and the Federal Environmental Assessment and Review Proces". An unpublished paper presented to a Seminar on Northern Development and the Environment, Banff School of the Environment, January 8, 1979. Mr. Wolf is a Senior Analyst, Federal Environmental Assessment Review Office.

<sup>2</sup>Federal Environmental Assessment Review Office, ibid.

means that it cannot be enforced,<sup>1</sup> and the public does not have the option of recourse in the courts<sup>2</sup> in respect to the procedures or recommendations of the panel.

These considerations impose limits to the scope of the Process. The EARP has only been used in the N.W.T. to review an application for off-shore drilling in Lancaster Sound. Certain limitations have been identified;<sup>3</sup> the major ones are:

- (i) only civil servants have been involved in the panels;
- (ii) the opportunity to review and comment on the guidelines has not been open to interests groups;<sup>4</sup>
- (iii) the EARP is arbitrary and discretionary;
- (iv) the scope and thoroughness of the review is limited by the fact that the panels are seconded to a review only on a part time basis and have no support staff; and,
- (v) procedural limitations have had an effect on the process.<sup>5</sup>

Conceptually the process appears to be well developed but it is far from clear that DOE can use it as an effective tool to permit public access to, and full consideration of environmental matters in planning and regulating northern development. However, the process does not have the potential to involve the northern public as well as members of the

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<sup>1</sup>Canadian Council of Resources and Environment Ministers, op.cit., p. 14.

<sup>2</sup>Wolf, op. cit., p. 24.

<sup>3</sup>Pers. comm., D. Gamble, Canadian Arctic Resources, Ottawa. January, 1979.

<sup>4</sup>Indeed by the time the Panel developed the guidelines for the review of the application for drilling in the offshore environment east of Baffin Island, the field studies by industry were well advanced and several were nearing completion.

<sup>5</sup>Specifically, briefs to be submitted to the hearing were not available in advance (as called for in the procedures). Therefore the other intervenors could not gain full benefit in questioning the witnesses. Secondly, because of the non-legal nature of the process, evidence cannot be required unless those involved willingly present it.

Territorial administration on the Panels. The most obvious use of the Process in the review of major proposed developments is in combination with a public inquiry.<sup>1</sup> This was the approach used to assess the impact of the proposed Alaska Highway Pipeline.

The advantage of a formal inquiry over an administrative process such as EARP, is that the terms of reference for an inquiry can be broad enough so that social and environmental issues are not artificially separated. An inquiry can also avoid the limitations of EARP by providing a more holistic review of a scenario for development rather than the review of a single project.

The appropriateness of the reporting relationship to the federal Cabinet in the case of the Berger Inquiry, and the federal Minister of the Environment in the case of EARP, depends on the definition of interests in northern resources, and in particular northern lands. This is discussed subsequently.

#### *2.2.4 Forest Protection and Management*

Forest management in the N.W.T. is provided by the NWLFS of DINA. The personnel and facilities are to a large extent inseparable from the land management program.<sup>2</sup> The program is provided through two sub-activities, forest protection and forest management. The Canadian Forest Service of the DOE provides limited research support.

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<sup>1</sup>EARP is limited to the environmental aspects of a single proposed development. It considers the social consequences of a development only to the extent that they are directly affected by changes to the environment.

<sup>2</sup>For example, although aircraft charter funds for forest fire suppression are distinct in the Departmental budget, the maintenance of the communications system, office and warehouse facilities, and most other aspects of the operation of the area and district offices, are inseparable.

### Forest Protection

The purpose of the forest protection program is to "protect life, property, timber resources and important game habitat areas from fire."<sup>1</sup> The forest fire protection zones are based on the protection priorities noted above.

Fire fighting in the north has had considerable social and economic benefits (in effect transfer payments), through the wages paid to local fire fighters and financial support to aircraft charter operators. The benefits of the fire protection program to game habitat are less clear.<sup>2</sup> The relatively limited stands of merchantable timber to be protected are located mainly in the Slave River Lowlands and the Liard Valley. Due to the huge area burned during the summer of 1979, an inquiry was conducted into fire fighting practices, priorities and policies.<sup>3</sup> Clearly fire fighting policies and wildlife management policies, goals and objectives must be closely integrated. This is not presently the case; however, the NWLFS and the NWTWS started working together in 1978 to have the fire protection program reflect the requirements of wildlife management and those of hunters and trappers. Because of the review of the Inquiry report is currently in progress, detailed recommendations are not provided here.

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<sup>1</sup> Advisory Committee on Northern Development (ACND), "1975-76 Government Activities in the North", Supply Services Canada, 1976. p. 101.

<sup>2</sup> See Lorraine Allison, "The Relationship of Fire and Wildlife to Fire Management in the Northwest Territories", N.W.T. Wildlife Service, June, 1979.

<sup>3</sup> The enquiry was struck in response to public pressure from the Hunters' and Trappers' Association in Fort Smith, however, the whole program throughout the N.W.T. is under review.

The limited amount of on-going forest management research is contracted with the Forest Service of DOE because DINA has no forestry research personnel. The research has focussed mainly on the effects of fire in the boreal forest and on the prediction techniques for fire protection.

#### Forest Management

Forest Management as practiced in the provinces does not occur in the N.W.T. In a 1975 annual report DINA noted its responsibility "to manage the forests of the North using sound, recognized, forest management practices" and it recognized the necessity of forest regeneration which "is critical to the sustained manufacture of forest products and to a stable industry".<sup>1</sup> However, the Department had not carried out any applicable forest management studies at that time (1975). Plans by DINA for 1976/77 included:

formal adoption of an interim forest policy, progress in planning an up-to-date forest inventory and improving the timber data base for the area of the Lower Liard River.<sup>2</sup>

Long term plans "include commencement of a modern continuing resource inventory as a basis for comprehensive forest policy, improved legislation and up-to-date regulations."<sup>3</sup>

Although funding for forest management on the order of \$380,000 was included in the 1977/78 budget, these funds were not spent directly on

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<sup>1</sup>ACND, op. cit., p. 102.

<sup>2</sup>ACND, ibid., p. 102.

<sup>3</sup>Ibid.

managing the forests. The bulk of the expenditures were for salaries of District supervisory staff (including supervision of the protection activity), the Departmental communications system and staff, and clerical and warehousing support.<sup>1</sup>

The private sector forest industry, because it involves only small local operations, does not employ its own foresters to manage their leases.

Forest management, at this time, is largely limited to timber cruising by field officers to inventory local areas for managed cuts. While this level of management may be adequate for the present level of forest utilization, it will not be adequate if the utilization of this resource is increased. The Territorial Department of Economic Development and Tourism has conducted feasibility studies for the development of this resource which will aid the development of this industry. However, adequate programs of research and management studies must be designed and implemented as a basis for recommending forest management policies and strategies that will meet defined long term northern goals.<sup>2</sup>

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<sup>1</sup>This is shown by activity area in the Regional Departmental budget summary. DINA files, Yellowknife.

<sup>2</sup>This is particularly important in the North because there is reason to wonder if timber in many parts of the N.W.T. can be treated as a renewable resource in standard economic terms. Benefits discounted over an eighty year regenerative period may be very limited or questionable. Further, although regeneration may be fairly rapid in the Slave River Lowlands and the Liard River Valley, the effects of forest cutting to the ecosystem in the lower Mackenzie Valley and the Delta are far from certain.



### 2.3 Interests in Land and Forest Resources

There are many interests in land management as suggested by the range of matters covered in the legislative review in section 2.1. Naysmith, in his study of "Land Use and Public Policy in the Canadian North" for DINA in 1975, documented the evolution of northern land management practices and outlined an approach to land management for the two Territories. Most of his recommendations are equally valid today.

Naysmith recommended the adoption of an integrated approach to land management with policies that reflect the natural values of the area and physical properties of the land base.<sup>1</sup> Therefore, the first criterion for land use is land capability. This ecologically based land policy is supported by the fact that at present, very little land is alienated and a holistic approach to land management is possible because of the vastness of the area and the relative lack of political boundaries.

The next question to be considered is, within the capability of the land, whose interest should prevail in determining the use of northern lands? Although the question of ownership was beyond Naysmith's terms of reference, he considered the interests<sup>2</sup> of the various groups and the Federal and Territorial Governments that were to be integrated. For example, both Native and non-Native northerners see control over land management as a means to control their local and regional affairs. This

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<sup>1</sup>This was based on his view that: "It seems unlikely that northern Canada will ever be heavily populated even by Canadian standards" and that "commercial forestland, cropland, pasture and grazing land comprise less than five percent of the land area north of 60°. However, these areas, as with fish and wildlife resources which are broadly distributed throughout the North, are important to northern residents. Considering the long term, possibly the greatest potential of northern land will be the capacity to meet the recreational needs of the nation's growing population, in terms of open space, natural landscapes, aesthetic and perceptive values." Naysmith, op. cit., p. 106.

<sup>2</sup>He referred to them as values which imply "the capacity to satisfy individual wants" Naysmith, op. cit., p. 92.

must be balanced with the requirement that there be compatibility of the land management goals and objectives between local areas and regions which imposes limitations to devolution of authority.<sup>1</sup> Naysmith also noted that the Federal Government had an interest in national policies for energy resources and economic development.

More recently, the terms of reference for the Special Representative and the supporting document (the "Political Development ... " paper) note the overall intent of constitutional change at this time is to allow self-determination in the Territories while maintaining the national interest in specific areas such as the development of non-renewable (and in particular energy) resources. The Federal Government also claims an on-going interest in the protection of the northern environment. To give effect to the interests of northern residents, the Federal Government intends to transfer control of renewable resources and some lands to the Territorial Government and some lands to the Native people through the settlement of their claims, subject to the laws of general application which enable government to regulate minimum standards to conserve the natural feature of surface lands, and other resources.

The following are specific statements of the various interests in Northern lands as a basis for discussing appropriate institutional and structural arrangements to manage lands. These statements are made in an attempt to reconcile the general statement of interests made above. These

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<sup>1</sup>This is because of the characteristics of certain resources. For example, barren-ground caribou are dependent on vast ranges, the elimination from any part of which could have serious effects on the population and therefore other regions sharing the use of and potential jurisdiction for that population.

statements are the assumptions used to develop a land management regime for surface lands in the N.W.T.

In the national interest, Parliament shall retain sufficient control of land management so as to be able to:

- i. meet its obligations to the Native people through the settlement of land claims;
- ii. maintain access to lands sufficient to assess and develop non-renewable (and in particular, energy) resources while maintaining the ecological characteristics of the area;
- iii. manage certain established conservation areas, (specifically, National Parks, National Wildlife Areas, and Migratory Bird Sanctuaries) and designate new national conservation areas subject to negotiation with northern interests, and continue to hold other reserved lands referred to in the B.N.A. Act (fortifications, etc.)

In the interests of the people of the N.W.T., the Legislative Assembly (and/or regional institutions as the case may be) shall have the legislative tools sufficient to:

- i. assist community planning and development;
- ii. manage territorial economic development in specific areas through area development controls, and throughout the N.W.T. through general resource management (land use) policies and regional resource planning;
- iii. manage renewable resources (subject to the residual national interests) through control of land use and alienation (including the management of conservation areas such as Critical Wildlife Areas and Territorial Parks); and,
- iv. permit private ownership of surface lands, and corporate lease and purchase of surface lands for domestic, commercial and recreational purposes.

In the local interest communities shall be able to:

- i. manage the lands within the municipal boundaries to control local development;
- ii. influence development in the surrounding area (i.e. in what are presently Commissioner's lands) and contribute to the broader debate on resource management policies and management practices within the region and the N.W.T.

The special interest of Native people<sup>1</sup> will be acknowledged by government so the Native corporate entities will hold large tracts of surface lands in fee simple title (and more limited lands with sub-surface resources) sufficient to:

- i. control resource development on the lands they own subject to an environmental regime for which the minimum standards will be determined by the laws of general application;
- ii. control the allocation of the benefits from certain renewable resources on their lands;
- iii. negotiate participatory agreements with land users to ensure that benefits from the exploration for and development of non-renewable resources from their lands accrue to the Native people.

This statement of interest permits an assessment of options for the ownership of and legislative jurisdiction for lands (which Naysmith was unable to address) in categories of land and the appropriate management regime.

## 2.4 "Ownership"<sup>2</sup> and Legislative Jurisdiction for Lands

### 2.4.1 *The National Interest*

#### The Native Claims

An argument that has been used in favour of Parliament retaining

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<sup>1</sup>This is essentially as outlined in the agreement in principle with the Inuvialuit which very closely adheres to the approach recommended by Naysmith. It is recognized that there are broader principles involved, including cultural values and such factors as compensation for the aboriginal claim. This section is limited to the effect of these considerations on a land management regime.

<sup>2</sup>Further to the reference to land ownership in section 2.1, in common law, "ownership" (i.e. proprietary right) of land, is not transferred from the Federal Crown to the Crown in right of the Province, but rather what is transferred is the right to administer the lands (i.e. control the lands for the beneficial use of the residents of the province). Reference to "administration" in this legal sense is avoided here to ensure there is no confusion since the term "administration" is used elsewhere in this paper to refer to the bureaucratic process. Instead, the term proprietary right is used, meaning the right to hold and dispose or control the use of surface lands, which in practice is the legal position of the provinces (pursuant to sections 109, and 92(5) of the B.N.A. Act, or the Resource Transfer Agreements).

"ownership" of lands in the N.W.T. is to ensure that it can meet its obligations to settle outstanding land claims of the Native people. This argument may have a basis in public policy but it is not a requirement in law. Parliament could transfer control of surface lands (i.e. the administration and legislative jurisdiction) to the Territorial Legislative Assembly, subject to a requirement that the GNWT grant lands in fee simple title to the Native people as required to satisfy any outstanding claims of the Native people.<sup>1</sup>

This procedure may not be acceptable for political reasons, particularly since the GNWT could alienate lands and thereby prejudice Native claims.

In the interim, the GNWT could administer Crown lands in the hinterland through the use of Federal legislation, or delegated authority as it already does in settled areas. The administrative policies of the GNWT for land management could be subject to overriding Federal policy direction sufficient to protect the interest of the Native people prior to the settlement of their claims. This arrangement would meet the objectives of administrative efficiency while increasing the responsiveness of the administration to territorial interests within the requirement of protecting the special interest of the Native people.

After the settlement of claims in each region, this concern could be eliminated as the (territorial or regional) laws of general application would be in force within a framework that could acknowledge the special

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<sup>1</sup>This was done in the Manitoba Natural Resources Agreement which gave the Provincial Government control of lands in the province subject to a requirement to set further lands aside for the Metis.

interests of the Native people. If, however, some of the claimants request "reservation" status for their lands, the underlying title to the land would remain with the Crown in right of Canada for the beneficial use of the Native people in which case the lands would be administered by the Federal Government.<sup>1</sup> The GNWT could administer these reserved lands for the Federal Government on a contractual basis, which could increase the efficiency of integration of land planning and administration with the surrounding lands.

#### Development of Non-Renewable Resources

If the Federal Government is guaranteed access, it does not require ownership or control of surface lands in order to explore. On the other hand the local, regional and territorial interests do require control of surface lands to effectively manage renewable resources.

Conflicts between the maintenance of renewable resources and the development of non-renewable resources are inevitable. Despite this, the Federal Government could transfer control of lands to the Territorial Government and still ensure the protection of the over-riding national interest in access to these lands by several means. Firstly, the transfer of surface lands could be subject to guaranteed access for the development of non-renewable resources within an acceptable environmental management regime.<sup>2</sup> Secondly, the Federal Government should feel reassured of the

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<sup>1</sup>This was the practice used in the prairie provinces. In the case of the original provinces and in British Columbia the underlying title remains with the provinces but the lands are administered by the Federal Government.

<sup>2</sup>In essence this is what the arrangement will be on Inuvialuit Lands according to that agreement in principle.

"reasonableness" of the Territorial (or regional) institutions since they will also be recipients of certain benefits of resource development through agreements with the Federal Government.<sup>1</sup>

#### Conservation Areas

The underlying title to lands that are set aside for Conservation purposes in the national interest should be vested with the Crown in right of Canada.<sup>2</sup> A regional interest should not be used to displace the long term national interest in these areas. However, these areas should not be created without meaningful consultation with the northern public and the agreement of the Legislative Assembly as to both the decision as to whether the areas should be designated as well as the appropriate operating regime.

National Parks (or new forms of parks such as National Wilderness Areas) fall into this category. In the main, these areas are set aside because of the value of their natural features. National Parks are not created specifically to protect wildlife resources.<sup>3</sup> Most aspects of the conservation of game species are generally a sub-national interest, as noted in Chapter V, requiring the use of the Canada

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<sup>1</sup>As a last resort, the Federal "declaratory" power is available which would ensure access in the national interest.

<sup>2</sup>This refers to the land title only as there are local, regional and Territorial interests in other aspects of the management of the areas. For example, note section 5.1.5 in regard to wildlife where it is suggested that it may be advisable to leave the GNWT the responsibility to manage game populations that only seasonally occupy federal conservation areas.

<sup>3</sup>An exception to this was the creation of Wood Buffalo Park to protect bison. This arrangement dates back to the 1920's when no other legislation was available for that purpose.

Wildlife Act to protect the national interest in endangered species. Therefore, if for example the range of the Porcupine Caribou herd is to be protected, the creation of a new form of National Park is not required. If this population is endangered, the Canada Wildlife Act is designed to cope with that concern, including the inter-jurisdictional aspects of it. If the population is not endangered, but measures are required to protect the habitat, it is the interest of the Territorial Legislative Assembly to act accordingly, unilaterally or in cooperation with the Yukon. Although the GNWT could arrange cooperative programs directly with the Alaska State Government, the involvement of the two Federal Governments would lend considerably more weight to the agreement.

Migratory Bird Sanctuaries are created to protect a regional, national and international interest in these species. In the North, sanctuaries have been created to protect major populations of birds from disturbance in certain areas during the critical period when young are reared. In many cases, maintenance of these populations is dependent upon the protection of these areas. Accordingly, these Sanctuaries should be reserved in right of Canada. The process for the creation of new Sanctuaries should be the same as that used for the creation of new National Parks. Migratory Bird Sanctuaries would be most efficiently administered by the GNWT (on behalf of, and on the direction of the CWS) in a manner similar to Sanctuaries administered by the provinces.

As is the case elsewhere in Canada, the Federal Government will continue to be guaranteed access for federal installations.



#### 2.4.2 *The Territorial Interest*<sup>1</sup>

##### Community Lands -- Unincorporated Settlements

Reinstatement of the procedure allowing the creation of further block land transfers which enable the Territorial Department of Local Government to administer community lands directly on behalf of those communities would be more efficient than the present "freeze" policy, and would advance the political development objective. The current legal and administrative necessity of going through the Federal Government for such transactions is inefficient. The Federal Government has no residual interest in these lands and it is highly unlikely that lands within the communities will be granted to the Native claimants as a result of the claim process.

##### Economic Development

The N.W.T. Act grants the Legislative Assembly provincial-type jurisdiction for matters that are local in nature; however, this has limited meaning since the GNWT does not have the control over land use to enable it to exercise this responsibility. The national goal of regional economic and social development in the Territories can most effectively be met by enabling those most directly affected to have the tools to make the basic choices for defining and plotting the course to attain those goals.<sup>2</sup>

The controls that are associated with regional land use planning and implementation of the resultant management programs would provide the GNWT and/or regional institutions with effective tools to attain economic and social goals.

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<sup>1</sup> Again, "Territorial" here also includes the possibility of regional institutions.

<sup>2</sup> The former Minister of the DINA formally acknowledged the need for economic development for the north rather than of the north, with meaningful public participation. The Hon. J. Hugh Faulkner, "Notes for a Speech to the Territorial Council", Jan. 20, 1978.

### Renewable Resource Management

There is no residual national interest in the forestry resource of the Northwest Territories.<sup>1</sup> On the other hand, this resource can be significant to the local and regional economy in the Mackenzie Valley, and is important as a tool to integrate the management of renewable resources. The same is true of a Territorial Park System which can be used to attain conservation, recreational and economic objectives, if the full range of Territorial Parks originally envisioned are developed. The GNWT has the responsibility to manage game and accordingly should have the mandate to manage habitat critical to the maintenance of these populations. Further, "ownership" of land by the GNWT brings with it proprietary rights in renewable resources -- including fish, wildlife, forests and waters.

The Ecological Reserves proposed by the International Biological Program could also be managed by a Territorial authority, without new legislation being required. Although, the reason for the future designation of these sites is national and international in scope, the degree of protection they require is widely variable and usually minimal. Since in most cases, a number of alternate sites exist, a Territorial authority would have the means and the flexibility to respond to the requirements to manage these sites within an ongoing management regime.<sup>2</sup> For the few

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<sup>1</sup>Under the "trade and commerce" head of the BNA Act the Federal Government may become involved in the control of external trade of timber and wood products. The export of timber will not be a major consideration in the North for the foreseeable future. Limited national interests relate to effects of forest management practices on watersheds and perhaps any effects on critical habitat of endangered species of wildlife.

<sup>2</sup>For example, the mechanism the Federal Government presently envisions using in most cases is the Territorial Land Use Regulations.

sites where a clear national interest can be demonstrated, consideration should be given to using existing Federal legislation (i.e. the National Parks Act or the Canada Wildlife Act).

#### 2.4.3 *The Local Interest - Public and Private*

The administration of lands within community boundaries should be transferred to those communities that wish to have that responsibility. Planning and other support services should continue to be available from the GNWT. There is no compelling reason (after the settlement of Native claims) to discourage private and corporate ownership of surface lands in the N.W.T.

#### 2.5 A Structure for Land Management Planning

The arrangement of ownership and legislative jurisdiction outlined above for surface lands in the N.W.T. must be supported by an appropriate land use planning structure and process. Without integrated resource use planning that encourages full public participation, there will be no consensus on the goals, objectives or policies for northern development or for the most appropriate strategies.<sup>1</sup>

Naysmith<sup>2</sup> recommended the formation of a Territorial Land Commission that would be responsible for land use planning and for reviewing major proposals for the use of Crown lands. This Commission he proposed would

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<sup>1</sup>The former Minister of DINA publicly recognized this recently when he called for an "integrated strategy for economic development" and the "devising (of) institutions and joint working arrangements for planning and carrying out such a strategy". "Political Development ..." paper, op. cit., p. 1259.

<sup>2</sup>Naysmith, op. cit., p. 142.

also provide advice on the request of the Native corporations relating to the management of their lands. The proposed Commission was to consist of members appointed by the N.W.T. Commissioner-in-Council, the Native corporations, and the Governor-in-Council. The GNWT was to provide administrative and technical support to the Commission.

In the Inuvialuit Agreement in Principle,<sup>1</sup> a Regional Planning Commission is outlined similar to that suggested by Naysmith; however, the appointments to it are to be made by the Minister of DINA and it would report to him. The Commission would consist of two representatives nominated by the Inuvialuit native corporation, one by the Federal Government, one by the GNWT, and one directly by the Minister.<sup>2</sup> The Commission would plan the management of all lands because the Government would administer lands held in fee simple by the Inuvialuit since the laws of general application apply.

Experience in Alaska has demonstrated the desirability of using comprehensive land-use planning as a procedure in land selection.<sup>3</sup> Land selection (and commitments -- formal or otherwise) by the various interests has created the present concern that individual decisions may bypass other

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<sup>1</sup>"Inuvialuit Land Rights Settlement Agreement in Principle," op. cit., section II, pp. 57, 58.

<sup>2</sup>It is interesting to note that, even though he did not discuss land ownership, Naysmith envisioned equal participation by the two levels of government and by the Native corporation. The Inuvialuit agreement also ignores the question of which level of government "owns" the land. Whether ownership will eventually be vested with a regional or Territorial level of government is to be considered by the current constitutional review.

<sup>3</sup>See Kenneth P. Beauchamp, Land Management in the Canadian North, Ottawa: Canadian Arctic Resources Committee, 1976.

legitimate interests and prejudice future options.<sup>1</sup> The Alaskan Federal-State Land Use Planning Commission recommended land selection for the state, the village and regional Native corporations as well as identifying Federal withdrawal areas. The Commission recommended a land use plan but because it was purely advisory in nature it had no regulatory functions. The members of the Commission apparently believed that this characteristic was a key factor in its success because the decisions ultimately were the responsibility of the elected officials. Based on these considerations, it is recommended that:

- i. land use planning be started in each region<sup>2</sup> of the N.W.T. when an Agreement in Principle is reached with the Native people of the region but prior to the land selection process;
- ii. the land planning commission(s) should consist of appointees of the two levels of government and the Native people;
- iii. the role of the planning commissions should be advisory in nature and include recommendations for the selection of 'Native Lands' and lands to be retained by the Federal Government for conservation purposes;
- iv. the planning commission(s) should be given administrative and technical support by the GNWT at the region; and
- v. the planning commission(s) should initially, report at least semi-annually to a sub-committee of the Legislative Assembly responsible for natural resource development management or development.

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<sup>1</sup>This is particularly apparent in Espie's review of park policy in the N.W.T. (T. Espie, Ibid). The concern is justified given the recent unilateral action of the Federal Government to set aside the arctic slope for a single use purpose. Nay

<sup>2</sup>The diversity in an area as huge as the N.W.T. (1 ½ million square miles) is a strong argument for much of the planning process to be based in the regions rather than there being a single planning authority for the N.W.T. Regional structures will also aid the early involvement of residents in ongoing regional resource development planning process. Naysmith's model involving a central Commission supported by regional boards still seems appropriate.

## 2.6 Summary of Recommendations

The administrative and legislative changes required to give effect to the arrangement for the ownership and control of lands proposed above would be considerable, but they would be relatively simple to implement. Recommendations are made within two time frames<sup>1</sup> - immediate, and subsequent to each land claim agreement in principle - in recognition of the necessity of there being a popular consensus and a clear mandate from all Northerners for resource planning and management programs to be effective.

The recommendations that follow are a summary of those previously made in this chapter arranged in consistent jurisdictional and administrative framework. The basic principle is that prior to there being an agreement in principle for each regional Native claim, the GNWT should not receive proprietary or legislative rights in surface lands or the ability to unilaterally dispose of or alienate lands; however, the GNWT should administer the land management programs within the existing legislation and a policy framework ultimately controlled by the Minister of Indian and Northern Affairs.

### 2.6.1 *Interim Changes - 1980*

The "ownership" of surface lands and the legislative authority for the management of land use and disposition in the hinterland should remain with

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<sup>1</sup>In the case of other resources, three time frames are recommended to facilitate change. In the case of lands a third time frame is implicitly assumed, this is that upon the final agreement of each Native claim final action on jurisdictional matters (such as resource transfer acts) can be taken. The reason for the difference is that in the case of lands, the fiscal and manpower resources are adequate and in place. They simply need to be transferred. However in the case of fisheries for example the management programs are so obviously lacking that a transition period is required to bring the programs up to an adequate level which requires the closely coordinated efforts of both governments.

Parliament at this time. To do otherwise would probably be viewed by the Native organizations as subverting their interest which would in turn jeopardize the acceptance of the land management administration and the credibility of government in general. However, the administration of lands (excepting National Parks and Migratory Bird Sanctuaries) should be transferred immediately to the GNWT to maximize the efficiency of the administration, particularly in the Arctic as discussed in section 2.2.1 and 2.2.2. The transfer of the administration would also advance the effectiveness and responsiveness objectives as land administration would be better integrated with other GNWT resource management programs and would also be more responsive to resource development policies developed in the North.

The Legislative Assembly would also be able to more effectively lobby its views with the Minister of Indian and Northern Affairs as it would be supported by its administration which would be more aware of all relevant resource management considerations. The creation of policy within the existing legislative framework for land use (but not disposition) could be the responsibility of Territorial elected officials subject to the explicit over-riding authority of the Minister of Indian and Northern Affairs. Territorial land policies could be the responsibility of a resources sub-committee (or Resource Development Committee as it is presently called) of the Territorial Executive Committee, including the Ministers responsible for renewable resources, economic development, local (affairs) government, and possibly social development.

To enable this change, and to facilitate further changes, the complete budget and staff of the forest protection and management components of the NWLFS, and the DINA regional (N.W.T.) administration for Land Resources should be transferred to a GNWT Department of Renewable Resources. The Department of Renewable Resources should have the responsibility of

managing lands (beyond surveyed municipal lands),<sup>1</sup> forests, fisheries wildlife resources and a Territorial Park system. Assuming similar changes occur in the Yukon, the regional planning and land-use project planning positions presently in Ottawa (the Northern Resources and Economic Planning Branch - later to become the Corporate Planning Branch) should be transferred to the N.W.T. and Yukon Territorial Governments. The present staff of the Northern Environment Branch if given the assistance of other federal departments with appropriate mandates could provide adequate policy analysis support to the Minister of DINA with a national perspective in social, economic and environment matters and in particular focus on offshore developments.

The specific recommendations for change that follow (based on the assessment in section 2.2 and the subsequent discussion of interests) would facilitate the broad changes noted above.

#### Land Use and Disposition - beyond community boundaries

- i. The review of applications for class A land use permits and for land disposition should be the responsibility of a Lands Committee<sup>2</sup> in Yellowknife which would advise the Lands Division of the Department of Renewable Resources. The Committee should consist of the

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<sup>1</sup>As noted earlier B.L.T.'s should be arranged for community lands. These lands should be administered by the communities that are prepared to do so and by the Division of Town Planning and Lands of the Department of Local Government for those communities that are not prepared to administer these lands. Buffer-zones (immediately around communities - the present Commissioner's Lands) should also be administered by Town Planning and Lands, as is presently the case.

<sup>2</sup>In essence, this is a combination of the existing land use and lands committees.



Territorial Department of Renewable Resources (the Lands, Wildlife and Fisheries Divisions), the Federal Department of Fisheries and Oceans (FMS), and the Department of the Environment (CWS and EPS). Where appropriate, other agencies should contribute - including the Territorial Parks Division, Town Planning and Lands - to ensure program and policy coordination. The Committee should also recommend land management policies to the Minister of Renewable Resources for consideration by the Natural Resources Sub-committee, and, should draft a Territorial Lands Act, and respective sets of regulations for consideration by the Territorial elected representatives prior to the next stage of jurisdictional change.

- ii. The Regional offices of the Department of Renewable Resources should convene a regional equivalent of the headquarters Lands Committee to advise the regional office on the issuance of Class B permits. The Committee should also provide advice to the Lands Committee on Class A permit applications, land disposition, and provide the regional perspective of Territorial lands policy. The Regional Lands Committee would consist of the regional office of the Department of Renewable Resources (all divisions) and Town Planning and Lands Division. The Regional Lands Committees should be supported by the advice of the regional Hunters and Trappers Association which have a key interest in land use (and generally resource) issues beyond the community boundaries. The HTA's would provide public input in respect to general operating criteria in the region and specific recommendations on applications of particular interest. It would be desirable to have representative(s) of the HTA's on the Regional Lands Committee.
- iii. The research requirements related to land use (i.e. currently the ALUR program) should be subject to the review and joint decision making authority of the Directors of the two departments responsible for renewable resources of the two Territorial Governments, and the Regional Director of N.W.T. regional DINA office. (If research in support of the environmental review of off-shore drilling is to be involved than the Director General, Northern Environment in Ottawa should be included). These directors would also be aware of other natural resource research programs and thereby be able to assure the efficiency and effectiveness of the program. The ALUR Advisory Committee should be retained but the membership should be changed. The Committee should continue to include members of the academic community and industry as well as senior resource program managers. As recommended by the consultant (I.D.S.), the program should be redirected, perhaps combining it with other resource research programs and it should be more adequately funded.

- iv. Any major proposal for a linear industrial development (pipeline, highway, etc.) should be subjected to a public inquiry. For such inquiries, special interest groups requiring financial support should be funded and any person should be granted legal standing before the inquiry. For other large developments (such as mines) formal inquiries may not be required but all projects should be subject to screening for the Federal Environmental Assessment and Review Process. In certain cases it may be more desirable to use the EARP Environmental Review Board (which is independent of Government) rather than the usual EARP Panel. The GNWT should arrange to appoint members to the Panel or Board. During the interim period, the panel should report to the Territorial Minister of Renewable Resources or Commissioner and simultaneously file its report with the Minister of Environment. The Department of Renewable Resources should administer the application and the licensing review process. During this interim period the Minister of Environment would have access (in the national interest) to the over-riding authority of the Federal Minister of Indian and Northern Affairs if a disagreement arose with the GNWT over the operating conditions or procedures.

#### Forestry

All proprietary and legislative rights in the forestry resource should be transferred to the Territorial Legislative Assembly. The existing Federal and Territorial legislation is inadequate to manage the resource and should be replaced by a new ordinance and regulations. A Forests Protection and Management Division should be created in the Territorial Department of Renewable Resources.

The development of policies, and the development and implementation of management programs proposed but not carried out by DINA, must be implemented. A small unit of foresters will be required at headquarters and in the Fort Smith and Inuvik regional offices. No increase in other field staff should be required. Research should continue to be contracted with the federal Forestry Service and the academic community as required. The process of drafting a new Territorial Forestry Act should begin immediately. The process should begin with a draft statement of Territorial imperatives,

then precepts, then policies, then the Act itself. These statements should be subjected to public review with other natural resource related strategies as the transfer of responsibility occurs.

#### Archaeological and Historic Sites

The Federal Government should reserve the authority to designate the Archaeological and Historic sites through the (Federal) Territorial Lands Act. However, once designated the complete authority to manage these sites and the necessary manpower and budget should be transferred to the Territorial Legislative Assembly. An increased budgetary commitment is required for this program, particularly to avoid the destruction and loss of historical material during major development projects. Redrafted Territorial legislation is required to remove the current outdated, inadequate and overlapping legislation.

#### Departmental Organization

A line management relationship between the Directorate of Renewable Resources and regional departmental superintendents will be required to ensure sufficient regional authority to apply established policies in the region with adequate flexibility. The field staff in the communities should be resource management officers rather than officers with only divisional (single resource) responsibilities.

#### 2.6.2 *Further Changes Subsequent to Agreements in Principle*

When an agreement in principle toward the settlement of a Native claim is established in a region, a regional land use planning board (or Commission as outlined in section 2.5 should be formed to recommend regional land (i.e. resource) management plans and the selection of "Native Lands", and to identify any residual federal lands.

The ownership and legislative jurisdiction for lands can be transferred from Parliament to the Territorial Legislative Assembly when the final agreement is reached for the settlement of the Native claim in each region. This progressive transfer of administration, and proprietary and legislative rights will facilitate responsible assumption of these responsibilities. The transfer could take the form of the provincial Resource Transfer Agreements, which have proven to be a successful tool elsewhere in Canada.

The management regime should allow for public hearings; have legal references to integrated resource management; and, include annual formal reports to the Legislative assembly on the process of land management programs. (The experience with this approach in British Columbia is discussed in Appendix II - 2.3).

If substantial special authority for lands were to be transferred to the regions it would subvert the broader territorial interest. The Territorial role would simply become that of an administrative coordinator which would be a useless duplication of effort.<sup>1</sup> If, from a political perspective, there is no substantive Territorial interest, a more efficient and effective approach to land management would be simply to divide the N.W.T. into three or more political entities. Land could be effectively managed at a regional level to meet local and regional goals. To meet the challenge of broader resource management and economic development goals, a different perspective is required with the legislative tools necessary to attain those goals. The relative importance of regional versus Territorial goals is a political question.

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<sup>1</sup>This would be limited to coordinating operational planning on the order depicted in the discussion of Langford's analysis in the Appendix.

## CHAPTER III

### FISHERIES

The legislative review which follows, outlines the constitutional and administrative arrangements that exist in Canada for the management of fishery resources.<sup>1</sup> This review indicates the scope of alternatives available for a legal framework for the management of fisheries in the North and the unique position of the two Territories.

To clarify the role of the many agencies involved in the management of fisheries in the Northwest Territories, a historical overview of the departments and agencies concerned and the broad activity areas in fisheries management is provided. The delivery of current programs is assessed in the main activity areas--inspection, development, research, management studies, habitat management, enforcement, and management processes.

The recommendation for a new approach to fisheries management is based on the legislative options, program assessment, goals of integrated resource management and concerns peculiar to the management of northern fisheries.

#### 3.1 Legislative Review

In the N.W.T., the Federal Government has full legislative jurisdiction for fisheries although it has delegated the administration of the sport fishery to the GNWT.

Elsewhere in Canada, both the Provincial and Federal Governments have legislative jurisdiction in matters related to fisheries. Section 91(12)

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<sup>1</sup>Note the definition of "fisheries" given in Section 1.6 includes marine mammals and crustaceans as described in Interpretation Section of the Fisheries Act. R.S.C. 1970, c-14.

("Sea Coast and Inland Fisheries") of the BNA Act gives the Federal Government exclusive legislative authority to manage all (inland and marine) fisheries. In general, this is interpreted as the right to exercise the authority necessary to conserve the resource including the control of the fish harvesting, certain equipment and activities in areas where there are fisheries, and activities which can have an effect on fish habitat (such as the control of effluents or toxic substances).

Provincial legislative rights spring from their proprietary rights in the inland fishery as well as control over "local matters" which enable the provinces to legislate activities associated with all fisheries based in the province--inland and marine--but not those matters which are directed specifically at controlling the harvest or conservation of the resource,<sup>1</sup> or health inspection of the facilities or products.

In general, this has led to an arrangement whereby the provinces, excepting Newfoundland and the Maritimes, administer and in effect, manage their inland fishery while relying on the Federal Government to give effect to the management legislation. With two exceptions, the Federal Government directly manages the anadromous and marine fishery.

To help distinguish between the legislative rights (i.e. the legal interpretation of legitimacy of the interests) of the respective governments, several basic concepts are summarized below. The relationship of this legislation to the special interest of Native peoples is discussed. Comment is also provided on the adequacy of the existing legislation to conserve the fishery resources of the N.W.T., to provide access to special interest groups in the

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<sup>1</sup>The direct involvement of Quebec in the management of the marine fishery off the coast of Quebec is noted subsequently.

management process, and to integrate fisheries management programs with the management of other resources.

3.1.1 *Federal Legislative Jurisdiction--The Inland Fishery*

This Federal Fisheries Act is the enabling legislation which fleshes out the Federal mandate to manage fisheries. Several sections of the Fisheries Act relate directly to inter-jurisdictional and intergovernmental concerns. The strong habitat protection and pollution control clauses of section 31 of the Act allow for the functioning of other federal legislation (such as the Canada Water Act and the Northern Inland Waters Act) by s.33(4)(a),(b) to avoid total control of water quality by those responsible for fisheries management.<sup>1</sup> These subsections require consultation with "the governments of any province" and "departments or agencies of the Government of Canada" prior to taking action against projects that affect fish habitat, which permits unilateral action only in case of emergency. Section 33 10(1)(b) assigns liability to any polluter who causes a loss of income to the fishermen. The latter clause has important jurisdictional implications because it permits a downstream fisherman (or a local government on his behalf) to take action against polluters in other provinces or territories.<sup>2</sup>

In summary, the Fisheries Act is a strong tool for managing the use of the fishery. The Act not only enables the agency to control the harvest of the resource, it also enables control of impact on fisheries habitat.<sup>3</sup>

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<sup>1</sup>In particular, the Canada Shipping Act is referenced as the appropriate legislation that lists the limits of discharge materials into waters occupied by fish.

<sup>2</sup>It is also important to note that the Fisheries Act is explicitly binding on the Provincial and Federal Governments as well as their agents.

<sup>3</sup>Usually, the provincial resource agencies (as ex officio fisheries officers) use section 31 of the Fisheries Act to regulate water quality in lakes and streams inhabited by fish.

It also has the flexibility to accommodate the management of other related resources in a coordinated, if not integrated fashion.

The federal role in health and section 91(2) "The Regulation of Trade and Commerce"<sup>1</sup> of the B.N.A. Act enables Parliament to legislate the control of quality and export of fish products. This enables the Department of Fisheries and Oceans to carry out the inspection role. In addition, federal authorities can regulate the activities of its nationals on high seas.<sup>2</sup>

Pursuant to the Fisheries Act, a separate set of regulations exists for each province and territory as well as for the conservation of each specie of marine mammals. In addition, Canada is a participant in international treaties and agreements to protect fishery resources where joint action is required with other countries. Table 4 lists the federal legislation that is directly relevant to the management of the fishery resources in the N.W.T.

### 3.1.2. *Provincial Proprietary Rights--The Inland Fishery*

Despite the exclusive legislative jurisdiction granted Parliament by the B.N.A. Act to manage fisheries, case law has demonstrated the proprietary interest of the provinces in the inland fishery. This proprietary right of the province springs from the underlying ownership of the beds of water bodies being with the Crown in right of the province.<sup>3</sup> This grants the

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<sup>1</sup>The Courts by "mutual modification" have restricted the power of Parliament to inter-provincial and international trade, and matters relating to trade affecting the whole nation. Peter W. Hogg, Constitutional Law of Canada, (Toronto, Carswell, 1977), p. 268.

<sup>2</sup>See S.V. Ozere, "Survey of Legislation and Treaties Affecting Fisheries", Resources for Tomorrow Conference, Vol.2, Dept. Northern Affairs and Natural Resources, (Ottawa: Queen's Printer) 1961, p. 799, also Fisheries Act, sec.69.

<sup>3</sup>This relates to s.92(5) "Public lands belonging to the province" and s.92(13) "Property and Civil Rights in the Province" of the B.N.A. Act. Peter C. Thompson, "Institutional Constraints in Fisheries Management", Journal of Fisheries Research Boards, 31.1965, p. 1972.



TABLE 4

Federal Legislation Directly Relevant to the Management  
of Fisheries in the Northwest Territories\*

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1. Department of Environment Act (Government Organization Act SC 1970-71-72 c.42, sec.2, Part 1 -- Presently Proposed Department of Fisheries and Oceans Act) -- assigns the responsibility for fisheries management to the Minister of Fisheries including the functions of "conserving, developing, and generally regulating all Canadian fisheries."
  2. Fisheries Act (R.S.C. 1970, c.F-14) -- provides for the conservation of fish and fish habitat, handling of fish, operation of fishing vessels and export of fish.
  3. Fisheries Regulations -- a set of regulations exist for each province and territory, and for particular specie of marine mammal -- Beluga Whale (P.C. 1979-367), Narwhal Regulations (P.C./C.P. 1978-1783), Walrus (P.C.C.P. 1975-1391) and Seal (P.C./C.P. 1978-677) Protection Regulations.
  4. The Fish Inspection Act (R.S.C. 1970, c.F-12) -- regulates canning and processing of fish and sets standards for industry. Other Acts relate to the development and marketing, including the Fisheries Development Act (R.S.C. 1970, c.F-21), Fisheries Price Support Act (R.S.C. 1970, c.F-23), and Freshwater Fish Marketing Act (R.S.C. 1970, c.F-13).
  5. Navigable Waters Protection Act - sections 18, 19, and 20 prohibit the dumping of deleterious materials into water inhabited by fish; and, section 21 appoints Fisheries Officers to enforce these sections.
  6. Coastal Fisheries Protection Act (R.S.C. 1970, c.C-21) and the Territorial Sea and Fishing Zones Act -- control fishing by foreign vessels of fisheries being managed by Canada and to control Canadian vessels from bringing fish into Canada.
  7. Whaling Convention Act (R.S.C. 1970, c.W-8) enables Canada to restrict the harvest of large whales to comply with the International Whaling Convention; and U.N. Trade Convention in Endangered Species Requires export controls on narwhal and walrus ivory.

\*After "Jurisdiction in Fisheries" an anonymous, unpublished report, Department of Fisheries, pp. 12, 13.

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province the right to allocate the right to capture fish, or more specifically the right to legislate regarding the "conveyance, disposal, and rights of succession."<sup>1</sup>

Parliament, in exercising its jurisdiction to manage fisheries, may incidentally (but not directly) affect provincial proprietary rights in the inland fishery.

Resource royalties and license fees generally accrue to the province,<sup>2</sup> although both levels of government may impose license duties in the form of taxation.<sup>3</sup>

### 3.1.3 *The Marine Fishery--The Public Right of Fishery*

In tidal waters, there are no proprietary rights in the fishery. Proprietary rights are replaced by the "public right of fishery" which provides that "there is general and common right of citizens to participate in the capture of fish and that the right to fish cannot be limited to the privilege of a person or group of persons."<sup>4</sup> The public right is applicable not only to the Atlantic and Pacific coasts, but as well in Hudson Bay, James Bay and the Arctic Ocean.

Although all citizens have access to the marine fishery by right, the Federal Government manages the fishery in general through controlling the harvest by means of setting seasons, quotas, types of equipment, and/or the number of commercial fishing licenses issued. The provinces have the

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<sup>1</sup>Thompson, *ibid.*, p.1975 citing the Judicial Committee of the Privy Council A.G. of Canada v. Ontario, 1898

<sup>2</sup>Thompson, *ibid.*, pp.1975, 1980

<sup>3</sup>Ozere, *op.cit.*, p. 96.

<sup>4</sup>Thompson, *op.cit.*, p. 1973. The implication of this right for the negotiation of Native claims is discussed subsequently.

right to control the shore-based activities associated with the marine fishery.

#### 3.1.4 *Federal-Provincial Arrangements*

The split jurisdiction for fisheries has specific implications for the regulation of the use of fisheries. The Federal Government cannot delegate its legislative responsibility to the provincial governments but does delegate the administration of its legislative responsibilities for the management of the inland fishery except in the Maritime provinces and Newfoundland. This gives the provinces *de facto* management control over their inland fisheries in addition to their proprietary rights. Unfortunately, the legal necessity of a federal order-in-council to give effect to new regulations drafted by the province may take from several to nine months. This encumbrance continues even though the federal authorities rarely, if ever, require changes to the proposed legislation.<sup>1</sup> In these provinces the only federal role is inspection of fish processing facilities and basic research.

The Federal Government can, with the provincial government, delegate its legislative authority to an independent agency such as the Freshwater Fish Marketing Corporation.<sup>2</sup> It could also delegate authority to a level of government that exists by virtue of that delegation such as either of the Territorial Governments or local or municipal governments.

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<sup>1</sup>Proposals for new regulation, or amendments to existing regulations, are forwarded from the provincial authorities to the Deputy Minister, Department of Fisheries and Oceans in Ottawa, who then circulates them for comment within the Department prior to arranging the regulation change. K. Doan, Head, Fisheries Branch, Government of Manitoba, pers.comm., April 9, 1979.

<sup>2</sup>In common law, neither of the two levels of government can delegate their legislative authority to each other, and thereby change the division of powers, although both can delegate their authority to an independent agency, thus enabling for example, full management of a resource (or an aspect of it). Hogg, op.cit., pp. 213-237.

Another way in which the two senior levels of government can ensure legislation which is completely complementary in areas of dual aspect is through the use of referential legislation. In this case, one level simply passes legislation that, to the extent of its powers, gives effect to the legislation of the other government.<sup>1</sup>

The marine fishery and anadromous fish in fresh water, are generally managed and administered by the Federal Government, including all aspects of development, inspection, enforcement, management, and research. Exceptions to this practice are found in British Columbia and Quebec. By agreement, the Government of British Columbia has administered the oyster fishery since 1912 (which is recognized in the Fisheries Act);<sup>2</sup> and it has managed steelhead salmon which is an anadromous species, by "informal agreement" since 1937.<sup>3</sup> Quebec administers all fisheries, including marine.<sup>4</sup>

In summary, although the Federal Government has primary legislative jurisdiction over fisheries, there is a significant provincial legislative role in addition to a *de facto* management role in the inland fishery and certain anadromous and marine fisheries. Legal tools are available to assist coordination between the two levels of government to a certain degree.

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<sup>1</sup>For example, Manitoba (by the Manitoba Fisheries Act, 1969) has delegated its authority for the regulations of fish marketing, by simply stating that the Federal regulations (under the Freshwater Fish Marketing Act, R.S.C.1970, c. F-13) shall apply. Apparently the same arrangement applies in Newfoundland and Nova Scotia with regard to the Saltfish Act of 1970 (R.S.C.1970, c.37, 1st suppl.) Thompson, op.cit., p.1979.

<sup>2</sup>"Jurisdiction in Fisheries", unpublished anonymous paper, Freshwater Fisheries Institute, Winnipeg, p.5, see also, Fisheries Act, s.46.

<sup>3</sup>The reason for this arrangement is noted as being "...primarily because, as an outstanding game fish, steelhead can more conveniently be managed by those administering other game fish resources." "Jurisdiction in Fisheries" *ibid.* p.8.

<sup>4</sup>J.R. Dymond, "The Organization of Wildlife and Fisheries Research in Canada", Resources for Tomorrow, op.cit., 1961, p.902.

As long as the GNWT is a territorial (versus provincial) government, it is in a unique constitutional position that will enable partial or complete delegation of legislative authority from the Federal Government.

### 3.1.5 *N.W.T. Legislation*

In addition to the Territorial government's administration of the sport fishery, the N.W.T. Commissioner-in-Council (i.e. the Legislative Assembly) indirectly affects fisheries management when it exercises legislative authority over matters delegated to it by the Federal Government. Areas of delegated authority most directly associated with fisheries management are the regulation of tourist facilities.<sup>1</sup> The same can be said of the domestic and commercial fishery because of the fishery development role of the Departments of Renewable Resources, and of Economic Development and Tourism. The GNWT also participates in (and has delegated authority to) the Freshwater Fish Marketing Corporation in the same manner as the prairie provinces. Relevant Territorial regulations are listed in Table 5.

### 3.1.6 *The Interest of the Native People in the Fishery and Local/Regional Institutions--A Legal Interpretation*

The Federal Government has the right to make regulations for the protection of fisheries on Indian reserves, as long as it does not impose :

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<sup>1</sup>Stephansson, in a study of fisheries management in the N.W.T., states "Even though the Government of the Northwest Territories depends on the Federal Fisheries Service for assessment, monitoring and managing the fish stocks, it effectively controls the development of the sport fishing industry." S.E. Stephansson, "The Fisheries Potential of the Northwest Territories: A Method of Inventory and Assessment and the Organization and Transportation Trends Affecting Future Fisheries Development", a practicum toward a MNRM degree, Natural Resources Institute, University of Manitoba, 1973, p. 62.

TABLE 5

Government of the Northwest Territories  
Ordinances and Regulations Effecting Fisheries<sup>1</sup>

1. Travel and Outdoor Recreation Ordinance

- 271-68: The Outfitter's Regulations  
042-69: An expansion of 271-68 and cited as the Tourist  
Establishment Regulations

2. Public Health Ordinances

- 375-64: The Eating or Drinking Place Regulations  
297-68: The Tourist Accommodation Health Regulations

3. Other Ordinances and Regulations

- The Business License Ordinance  
Ordinance to Provide for Labor Standards  
Northern Building Code  
Archeological Sites Regulations  
Small Vessel Regulations  
Fire Prevention Ordinance  
Forest Protection Ordinance  
Game Ordinance

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<sup>1</sup>Stephansson, S. E., "The Fisheries Potential of the Northwest Territories: A Method of Inventory and Assessment and the Organization and Transportation Trends Affecting Future Fisheries Development", Natural Resources Institute, Winnipeg, 1973.

restrictions which specifically discriminate against Indians.<sup>1</sup>

Indian Bands can regulate fishing on reserves through Band by-laws provided these by-laws are not struck down within a certain period by the Minister of Indian and Northern Affairs. This veto would be exercised on the request of the Minister of Fisheries and Oceans.<sup>2</sup>

Joint management of fisheries on reserves may be permitted by the proposed revisions to the Indian Act that are currently being discussed by DINA officials and Indian leaders.<sup>3</sup> The proposal is to revise section 88 of the Indian Act to make the federal laws of general application (in this case the Fisheries Act and Regulations) subject to the terms of the treaties. The result would be to increase the statutory protection for Indian treaty rights and grant the Bands jurisdiction over the management of fish and game on reserves. The by-laws would be subject to overall controls required by DFO and, in essence would allow joint resource management regimes including the Bands and the Provincial and Federal Governments.

Recent Native claim settlements have resulted in the retention for the Crown of the underlying proprietary rights<sup>4</sup> in inland fisheries, the public

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<sup>1</sup>It should be noted that the right of the Federal Government to regulate the fishing by Indians on unoccupied Crown lands in the prairie provinces is currently being challenged. The argument is based in part on the definition of game as used in the Resources Transfer Agreement. If "game" is found to include "fish" then the Fisheries Act presumably will not apply which is the case presently with provincial game legislation.

<sup>2</sup>For example, see "Control of Salmon-Big Controversy", Winnipeg Tribune, November 14, 1978.

<sup>3</sup>Department of Indian and Northern Affairs, "Indian Act Revision--Discussion Paper: Hunting and Fishing", 14 September, 1978.

<sup>4</sup>The Crown in right of Canada in the case of the Territories, and the Crown in right of the Province, in the case of Quebec see The James Bay and Northern Quebec Agreement, Section 24, "Hunting, Fishing and Trapping", pp. 359-391. Also, "Inuvialuit Land Rights Settlement: Agreement in Principle", ibid.

right of fishery in tidal waters, and the over-riding responsibility of Parliament to conserve all fishery resources. Native people are being given the right to sub-allocate harvest quotas under certain conditions for certain lands of special interest to them. However, these quotas are within the overall limits set by government to conserve the resource. This arrangement is given effect by the Bands and regional institutions being granted the right to pass by-laws that are more restrictive than the provincial and federal legislation. In addition, legal entities that are largely advisory in nature (that include the Native people and government personnel) have been created to ensure local involvement in resource management.

Certain special legal considerations on the question of interests are noted in section 3.3.2.

## 3.2 Programs and Assessment

### 3.2.1 *Organization--Historical Overview*

The first permanent presence in the Northwest Territories of government personnel specifically for the management of the fishery occurred in the early 1940's in response to the commencement of commercial fishing on Great Slave Lake. Until the late 1960's, the inspection, enforcement and management roles were carried out entirely by federal Fisheries Officers located in Hay River. Lakes were opened or closed to commercial fishing, quotas were set and regulations were amended based on little or no directly relevant biological information. Although there was considerable relevant research conducted by the Fisheries Research Board, the only communication that existed between the Board and the management staff in Hay River was between



the Board and the management staff in Hay River was between individuals on a personal basis. There was no regular channel to provide advice to the managers based on current biological research, nor for the managers to influence the research priorities of the Board.<sup>1</sup> Recently, the Board has been disbanded in an effort to internalize and direct Departmental research toward fishery management objectives.<sup>2</sup>

The Freshwater Fisheries Institute (a unit of the Board) was established in Winnipeg as the focal point for Departmental research associated with the inland fishery. This also became the administrative headquarters for the Prairie and Northern region (i.e. the prairie provinces and the Northwest Territories). Besides having responsibility for research on freshwater fisheries, the Institute also has assumed the responsibility for research associated with anadromous fish from the Arctic Biological Station at Ste. Anne de Bellevue in Quebec.

The Station at St. Anne de Bellevue retains responsibility for research on marine fish and in general, biological oceanography in the Arctic. The responsibility for research on marine mammals, which is currently with the Station, is now under discussion and may also be transferred to the Prairie and Northern regional office at the Freshwater Institute.

A limited amount of research on freshwater fisheries is also conducted by the Canada Centre for Inland Waters--Burlington, in the Ontario region.

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<sup>1</sup>H. Trudeau, District Manager, Department of Fisheries and Oceans, Yellowknife, pers. comm., November 1978.

<sup>2</sup>Dr. G.H. Lawler, Director General, Department of Fisheries and Oceans, Central Region, Winnipeg, pers.comm., 3 April 1979.

Whether or not the Ontario and Central regions should be joined, with Ontario becoming a district is currently under review.

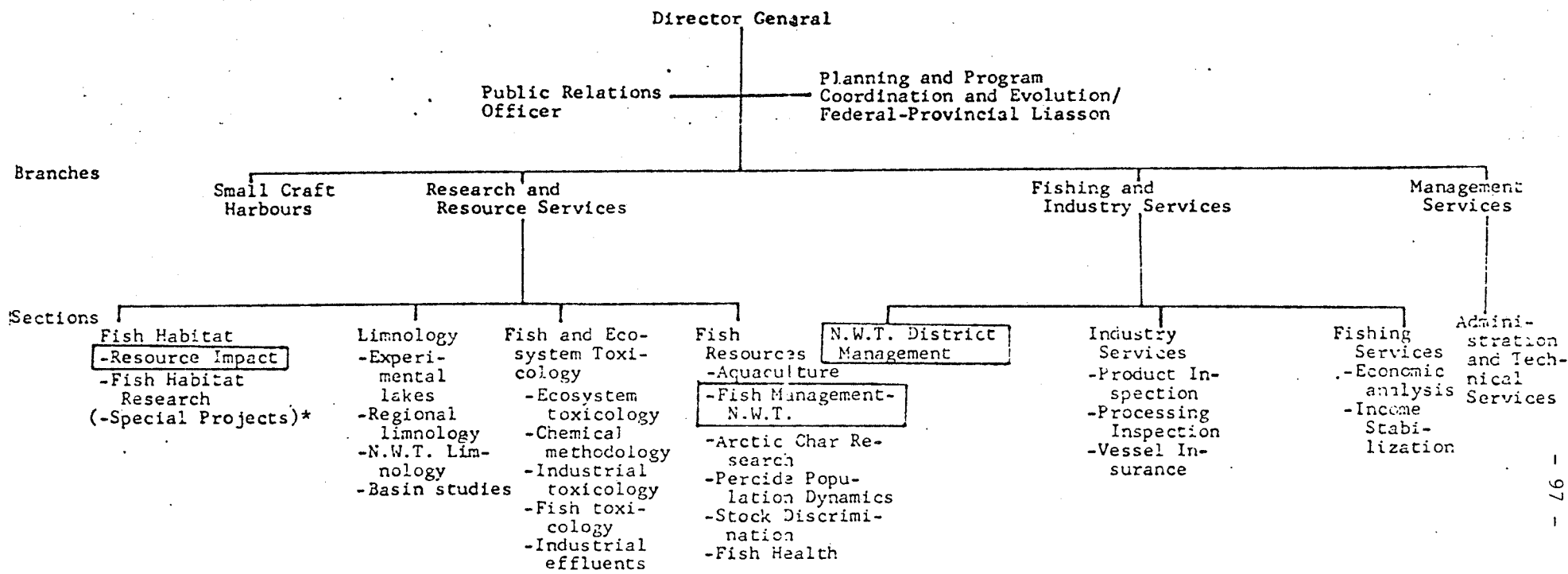
Physical oceanographic studies in the Eastern Arctic are the responsibility of the Bedford Institute of Oceanography in Dartmouth, Nova Scotia. The Ocean and Aquatic Affairs regional headquarters in British Columbia has similar responsibilities for the western Arctic (Beaufort Sea).

The N.W.T. District office moved from Hay River to Yellowknife in 1970 to be closer to the northern operations headquarters of other resource agencies involved with the interdepartmental advisory committees that advise DINA on the regulation of industrial exploration and development.

A Fisheries Management Section was created in the Fisheries and Marine Service (FMS) and the first biologists were hired to manage the N.W.T. fishery during the early 1970's. Although the responsibilities of the Management Section were completely in the N.W.T. District, these positions were located at the regional office in Winnipeg. The Management Section later became absorbed by the Fisheries Resource Section of the research wing of the regional office. A fish habitat Section was subsequently created to provide the Department's input on the review of developmental proposals. The present organization of the Prairie and Northern Region is shown in Figure 5.

During the early 1970's, the northern operations of the regional office of the FMS expanded rapidly, largely because of the field studies required to assess the impact of the proposed Mackenzie Valley Pipeline. Upon the completion of those studies, the Department's commitment to northern fishery management studies steadily declined.

The Department of Fisheries and Oceans is presently organized into two main responsibility areas--Fisheries Management and Research, and Ocean and



-Resource Impact -These units carry out the roles in the N.W.T. that are *de facto* delegated responsibilities in the western provinces for inland fisheries.

\* Particular projects undertaken with external funding (e.g., Arctic Islands Pipeline Proposal project).

Figure 5: Organization of the Prairie and Northern Region  
Department of Fisheries and Oceans--April 1979

Aquatic Affairs. The programs for fisheries management and research are directed toward

ensuring maximum economic and social benefit to Canada from the use of fisheries and other aquatic living resources of coastal and inland waters, and of maintaining and conserving these resources and the aquatic environment in a healthy, productive state.<sup>1</sup>

To attain these objectives, departmental programs are conducted in conservation (management), protection (or enforcement), development and assistance, and inspection (maintenance of standards for fish and fish products for human consumption). The Ocean and Aquatic Affairs programs are primarily directed toward the objectives of contributing "to the management and development of non-renewable ocean resources" through aiding an "understanding of ecological processes within the aquatic and marine environment" and the requirements "to restore and protect that environment and associated resources".<sup>2</sup>

The GNWT became involved in fisheries development almost immediately upon its formation with the assumption of responsibilities from the Industrial Division of DINA. The Territorial Department of Economic Development was involved in the negotiations leading to the formation of the Freshwater Fish Marketing Corporation. The Department was (and is) instrumental in the development of most new commercial fisheries through the presence of extensive field staff and considerable developmental funds. The GNWT has also played a key role in developing the sport fishery and the domestic fishery through the Tourism and Game Management (later the N.W.T. Wildlife Service) divisions.<sup>3</sup>

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<sup>1</sup>Canada, Organization of the Government of Canada, op.cit., para.1920.

<sup>2</sup>Ibid., para. 1940.

<sup>3</sup>In some cases the Game Management Division assessed and developed the fishery after which time the administration of the commercial enterprise was transferred to the Economic Development Division.

The GNWT became actively involved in fishery management studies in the early 1970's, and in enforcement in the mid 1970's to support the FMS which could not keep pace with the management and enforcement requirements associated with the rapid development of fisheries in the N.W.T.

The increased involvement of the Territorial administration was not in isolation of the wishes of the N.W.T. Council. In 1969, Council passed a motion directing the Commissioner to begin negotiations with the Minister of Fisheries with the objective of the GNWT assuming the overall responsibility for the management of both inland and anadromous fish. The Minister declined any change, stating that the FMS would readily consider proposals by the GNWT for changes to the N.W.T. Fishery Regulations. In 1974, the N.W.T. Council passed a further motion requesting the Minister's agreement to the direct involvement of the GNWT in fisheries management. The response was more positive, and in 1975, the GNWT assumed the responsibility for the administration of the sport fishery. However, to date this has remained primarily a licensing function. Furthermore, the direct working relationship with the district office in Yellowknife was eroded by the reclamation of most of the management authority (other than enforcement) from the District FMS office in Yellowknife by the Regional office in Winnipeg in the mid-1970's.<sup>1</sup>

### 3.2.2 *Inspection*

The fisheries inspection program primarily involves the surveillance of fish processing facilities and the quality of fish products. The inspection of food products for inter-provincial trade causes this responsibility to be in the Federal sphere.<sup>2</sup> Legally, this responsibility can be delegated to an

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<sup>1</sup>Mr. R. Tinling, Acting Coordinator of Technical Services, Wildlife Service, Government of the N.W.T., pers.comm., 21 November 1978.

<sup>2</sup>In southern Canada, inspection of fishing vessels is a related responsibility but this is not apparently a significant consideration in the N.W.T.

independent entity; however, there is no obvious advantage to such an arrangement in consideration of the common shared need for the supporting laboratory services for central and western Canada.

This program requires field staff primarily in Hay River where there are five Inspection Officers located. The laboratory and administrative support staff of the Industry Services Section at the Regional Office, also support this Departmental responsibility. Thirteen of the Prairie and Northern Regional Laboratory Inspection staff of 50 are classed as N.W.T. District personnel based purely on a pro-rated formula of total staff at Region in relation to services provided for the three provinces and the N.W.T.<sup>1</sup> The Hay River Inspection staff are a part of the N.W.T. District Office for administrative purposes; however, functionally they report to the Industry Services Section in Winnipeg.<sup>2</sup> This reporting relationship exists because the Inspection role is specialized, relies on standardized inspection procedures, and does not significantly relate to the enforcement of management regulations in the field which is the primary function of the remainder of the District Office.

The over-riding national interest in the Inspection role obviates any need for measures to respond to any particular local or territorial interests. The only exception is that this service should be adequately provided for by the Federal Government to ensure that fish processing is not hampered due to

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<sup>1</sup>"F.M.S. Budget--Prairie and Northern Region/N.W.T. District", pers.comm. Mr. F.J.O. Josephson, Department of Fisheries and Oceans, Winnipeg, April 20, 1979. The operating budget (excluding salaries) for inspection is \$58,000., most of which is consumed at the Freshwater Institute.

<sup>2</sup>Mr. H. Trudeau, pers.comm.

a lack of Inspection staff. There is no apparent need to change the functional reporting relationship that is presently in place with the Regional Office for the Inspection staff.

### 3.2.3 *Research*

The value of biological research transcends regional political jurisdictions. The need for the Federal Government to play a lead role in research directed to supporting the provincial management responsibilities for the inland fishery has long been recognized. If effective access is available for "management" to determine the priorities of the research program, there is no particular advantage in having a close physical or geographic association of management agencies and research organizations. Morale of the researchers and high standards of quality in research must be maintained. This is difficult to accomplish in the fray and turmoil of "trouble shooting" problems that are constantly confronted by management agencies. The ability to permit research to focus on the longer term issues is important.

The original purpose of the Freshwater Institute was to develop and maintain a high quality of research to support the management of the inland fishery. The Institute is well suited to this goal. It was purposefully built in association with a university campus and is located in the centre of its service area--the three prairie provinces and the N.W.T. Ultimately it may be possible to base large scale research programs in inland fisheries in the N.W.T., however, this is not practical at present. The provincial governments have mainly focused their efforts on management studies and on research geared to the application of generally accepted techniques and principles in their local area.

The important consideration in reviewing the fisheries research program is not to assess options for involvement of northern agencies in the conduct

of the research but rather to enable those agencies to influence research priorities and the level of research activities necessary to support regionally defined management objectives.

Unfortunately, Federal funding for fisheries research has decreased considerably in real terms and the mechanisms intended to ensure that the research programs are responsive to client (Provincial and Territorial) needs are not meeting their objectives. The two concerns are probably not unrelated. To ensure an adequate response, what is required is a reassertion of the objectives of research, an agreement on priority, and ongoing rigorous review of priorities by those responsible for management of the resource in consultation with local and territorial groups. These considerations, along with budgetary problems and organizational factors are expanded on below.

#### Responsiveness of Research Programs to Client Interests

The "management oriented" research conducted by DFO is directed toward the Departmental objectives of conservation, the development of fisheries and assistance to fishermen, and inspection.<sup>1</sup> If research is to support all aspects of fisheries management, the provinces who "own", develop and manage the inland fisheries should play a key role in providing direction to much of the research carried out by the Department.<sup>2</sup> Since DFO presently has the responsibility for managing fisheries in the N.W.T., the research it conducts should be responsive to the Fisheries Management unit of the department, and in turn to the developers (the latter being the GNWT and northern public in general who are the primary beneficiaries). Research directed

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<sup>1</sup>Canada, Organization of the Government of Canada, op.cit., para. 1935.

<sup>2</sup>It is recognized that research directed toward supporting the Inspection role is purely a Departmental matter.



toward the development and testing of fishing equipment and the economies of marketing are of common provincial and territorial interest.

The Provincial and Territorial Governments do not at present, effectively participate in the determination of research priorities for the Prairie and Northern Region, despite the primarily supportive intent of the research at the Freshwater Institute. In part, the reason is the preoccupation of these Governments with their dissatisfaction with the Marketing Corporation to the exclusion of pursuing other services offered by DFO.<sup>1</sup>

This leaves the Federal Government to interpret the research priorities as they best understand them. Unfortunately, the Institute's review system is better designed for ensuring quality of research than for ensuring responsiveness of research priorities to management requirements.<sup>2</sup> The problem is

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<sup>1</sup>The Federal Provincial Freshwater Fisheries Committee is the forum for the provincial governments (at the Assistant Deputy Minister level) to advise the Prairie and Northern, and Ontario regions of Departmental programs. In recent years, the committee has almost entirely focused its discussions on the problems the Provincial and Territorial Governments associate with the operation of the Freshwater Fish Marketing Corporation. (Pers.comm., Lawler). An example of the lack of communication was provided by one senior provincial official involved in fisheries management who frankly said he did not know what supporting research service the Institute was providing his agency. This is apparently not uncommon despite the annual publication of a listing of all projects conducted by the Institute. The exchange of information seems to be directed internally within the Institute and the Department. The provinces do not seem to see the need to change this situation.

<sup>2</sup>All research proposals are submitted to an internal peer review committee--the Research Advisory Council--which consists of research scientists at the Institute. This Council rules on the scientific merit of the proposals. The committee may also provide recommendations to the Director General on the relative priority of projects. This approach seems to be very positive to ensure quality control; however, priorities should clearly be influenced by the line managers who are in the provincial agencies, or the FMS resource managers in the case of the N.W.T.

even more pronounced with research on Arctic marine species which is the responsibility of the Ste. Anne de Bellevue Station. No formal mechanism exists for the Territorial Government (or "publics"), or the regional office (which has the management responsibility) to influence the marine mammal research priorities of the research program.<sup>1</sup>

If the DFO regional structure remains similar to that presently in place,<sup>2</sup> the forum exists for those responsible for fisheries management to provide direction to Federal research programs. The regional office simply needs to be re-focused with a reaffirmation by the Department that the role of the Institute in general, and its research program in particular, is to respond to the needs of the fisheries managers. The Federal Provincial Freshwater Fisheries Committee (of Deputy Ministers) could be used as a forum to advise the Department on the relative priority for funding between programs, as well as the relative amount of research that should be directed toward management problems of northern fisheries versus those in southern Canada. The Regional Advisory Committee to Fisheries and Marine Service Western and Ontario Regions can advise the respective Directors General on Departmental programs and priorities in the regions.<sup>3</sup>

Although the administrative links for reviewing research directly related to the harvest of the resource have been tenuous, the FMS is closely

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<sup>1</sup> Recently an Arctic Environmental Steering Committee has been formed to include all program managers with programs in the Arctic (including the Yukon). Ironically, the Committee's first task is to develop a position in response to the current constitutional review.

<sup>2</sup> As noted earlier, the Departmental structure for the inland fishery is currently under review. It is possible Ontario region could become a part of the Prairie and Northern Region or alternatively, the region could become dismembered with the Districts reporting directly to the Departmental headquarters in Ottawa.

<sup>3</sup> "Regional Advisory Committee to Fisheries and Marine Service Western and Ontario Region--Terms of Reference", Fisheries and Marine Service files, Winnipeg.

tied to DINA to respond to research related to major proposals for industrial development that could effect fisheries habitat. This occurs both through the Interdepartmental Environmental Review Committee (ERC) in Ottawa and through the various Regional committees in Yellowknife.<sup>1</sup>

#### Research Budget

The current level of internal funding for the Arctic Biological Station seriously hampers its effectiveness in contributing to the management of marine resources. Despite the almost consistent lack of information on which to base marine mammals management programs throughout the Arctic,<sup>2</sup> the Station has only two permanent staff (one research scientist and one technician) and an operating budget of \$18,500 to fulfill its research mandate for marine mammals.<sup>3</sup> Because of the availability of funding from external sources (usually DINA) for field studies associated with environmental impact studies, the research staff focus on research related to industrial disturbance at the expense of research or management studies directed at the

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<sup>1</sup>The research programs directed at physical oceanographic studies under the Ocean and Aquatic Affairs programs at Dartmouth (The Bedford Institute) and Victoria (Centre for Oceanography--Patricia Bay, B.C.), liaise directly with DINA to support the assessment of development proposals in the marine environment.

<sup>2</sup>The informational deficiencies were documented in detail in an internal unpublished report in October 1974 in "A Federal-Territorial Study on the Status of Marine Mammal resources in the Northwest Territories" by the Northwest Territories Marine Mammals Working Group. More recently, this status (largely unchanged) is depicted in "The Present Status and Future Management of Arctic Marine Mammals in Canada" by R.A. Davis, K.J. Finley and W.J. Richardson of L.G.L. Ltd. in a study for the Science Advisory Board of the Northwest Territories.

<sup>3</sup>Dr. A.W. Mansfield, Director, Arctic Biological Station, Ste. Anne de Bellevue, Quebec, Pers.comm. April 9, 1979. This compares with the combined annual direct expenditures of the N.W.T. Wildlife Service and Canadian Wildlife Service on polar bear, a single species in the marine environment, of approximately \$450,000 ongoing operating funds with a staff of 7 in addition to the assistance of field staff and the cooperative assistance of the Governments of the Yukon, Manitoba, Ontario, Quebec and Newfoundland.

harvest of marine mammals in the N.W.T. The Regional Office in Winnipeg, has no substantive budget for management studies of marine mammals. While a position exists for the management of marine mammals, it has not been filled due to the lack of operating funds.

Although the Ste. Anne de Bellevue Station has a staff of one research scientist and two technicians involved in the study of marine fish, the operating budget of \$21,800<sup>1</sup> ensures that no substantive research is conducted.

The majority of the staff at the Station (five research scientists and five technicians with an operating budget of \$56,400), are responsible for the Departmental biological oceanographic studies in the eastern Arctic mainly directed at assessing the impact of proposed offshore drilling for hydrocarbons.

Despite the dearth of basic information on arctic marine ecosystems,<sup>2</sup> the ongoing funding of the Station for long-term research in the Arctic marine environment is not only abysmally low but is decreasing. It has shrunk in real terms by more than 30 percent in the past five years.<sup>3</sup> This is of particular concern because the arctic coastal communities are heavily dependent on marine resources.

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<sup>1</sup>Mansfield, ibid.

<sup>2</sup>See John B. Sprague, "Aquatic Resources in the Canadian North: Knowledge Dangers and Research Needs", Arctic Alternatives, edited by D.H. Pimlott, K.M. Vincent, C.E. McKnight. Canadian Arctic Resources Committee, Ottawa, 1972, p. 179. Further comment on the need for increased priority for such research was identified in the "Working Group Report on Aquatic Resources in the Canadian North", p. 193.

<sup>3</sup>This is based on figures provided by Mansfield, loc.cit.

The research budget at the Freshwater Institute has also been considerably reduced in the recent past. In the past five years, the operating funds (including personnel costs) have decreased by 30 percent<sup>1</sup> in real terms, with a staff reduction of 10%. Fisheries management oriented research that is specifically directed toward northern fishery management problems is limited to the Arctic Char project and the fish habitat research project.<sup>2</sup> These decreases also have occurred despite a considerable lack of basic information.<sup>3</sup>

Unless these Federal agencies are actively supported by the provinces and the N.W.T., they are likely to continue to receive further cuts. On the other hand, if the prairie provinces are not aware of the benefits of the Federal research program, or if the benefits do not exist, or are not thought to be required, Provincial and Territorial support cannot be expected. The GNWT should, in its own interest, determine whether or not the provinces are actively interested in obtaining research assistance from the Freshwater Institute. If the provinces see a need for research support from the Freshwater Institute, the Federal-Provincial Freshwater Fisheries Committee can be used as a policy forum with the Council of Resource Ministers being the point at which the discussion on relative priority for research to

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<sup>1</sup>This is based on a conservative annual inflation rate of 6 percent. Figures from Josephson, loc.cit.

<sup>2</sup>Three positions are assigned to the Arctic char project (R. Peet, Acting Head, Fish Resources Section, pers.comm.) Seven positions and an operating budget of \$60,000 is assigned to the habitat research project. G.Stein, Resource Impact Division, pers.comm., April 26, 1979.

<sup>3</sup>See P.J. McCart and J. Den Beste, "Aquatic Resources of the Northwest Territories," a report for the Northwest Territories Science Advisory Board, December, 1978.

support the inland fishery could be negotiated.<sup>1</sup>

If the provinces are not interested in this approach, the GNWT should negotiate a reasonable level of research support from the DFO that is responsive to Northern interests as defined by Northerners, within the framework of the current constitutional review. These services will be required in the areas of inland, anadromous and marine fisheries involving the services of both the Freshwater Institute and the Arctic Biological Station.

#### 3.2.4 *Fisheries Development*<sup>2</sup>

The economic tools used in fisheries developmental programs have a considerable influence on management of the use of the resource.<sup>3</sup> The GNWT presently administers fisheries development programs and has the ability to manipulate the various incentives as required to effect the use of fisheries resources for domestic, commercial or other purposes. The DFO plays a relatively minor role in this field in the N.W.T.

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<sup>1</sup>I was unable to find any substantive evidence that the Canadian Environmental Advisory Council (to the Minister of Environment) presently carries any influence on such matters.

<sup>2</sup>The development of fisheries is discussed only to the extent that it influences the management of the resource. The analysis of developmental programs (including marketing) are beyond the terms of reference of this study and are being analyzed by the Territorial Department of Economic Development and Tourism.

<sup>3</sup>For example, economic incentives such as the availability of loans for boats and equipment, directly affect entry or exit of fishermen from a particular fishery which may be used to meet resource management objectives or if not coordinated, may subvert management objectives, to meet social goals such as maximum employment, economic incentives that would tend to discourage a high degree of capitalization and encourage a labour intensive operation would be applied. If efficiency of production is the objective, then incentives toward the use of a high degree of technology would be used.

The Regional office of the DFO provides technical and research assistance to the fishing industry in the form of economic analysis (largely to the Marketing Corporation), an indemnity program (for boat insurance), advice pertaining to the handling of fish and products, and equipment testing. Technical support of this type by Regional office (which encourages innovation in the inland fishery) has economies of scale that do not exist in any individual province or territory.

At times, the developmental objectives of the GNWT and the fishery management objectives of the Federal Government have been in conflict.<sup>1</sup> How serious these problems of communication are in frustrating the effective delivery of programs of the two governments is not clear, but managers in both governments readily acknowledge the problems.

The developmental and management objectives for the fishery resources were probably most effectively integrated to meet northern social and economic goals in the early and mid-1970's.<sup>2</sup> This was a product of the combined efforts of the District and Regional office of the FMS, and the GNWT section responsible for fisheries development. Unfortunately, this close working relationship between those responsible for the development and management roles has declined considerably since that time. The decline was largely caused by the erosion of the role of the FMS District

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<sup>1</sup> A case in point was the unilateral action by the Department of Economic Development to aid fishermen to purchase boats (and thereby encouraging the entry of more fishermen) for the Great Slave Lake fishery while the Fisheries and Marine Service was attempting to decrease the harvest on the Lake.

<sup>2</sup> This was immediately after the production of "Where to Now? Fisheries Development in the Northwest Territories", which was the product of a Federal/Territorial Task Force. This document for the first time, provided basic objectives and criteria for the development of fisheries in the N.W.T. In particular, it provided a mechanism for the integration of management and development objectives.

office in Yellowknife (by the Regional Office) without strengthening the working relationship between the GNWT and the FMS Regional Office in Winnipeg.<sup>1</sup> Isolation of interests has resulted--the DFO in research and management, and the GNWT in development. The end result was poorer communication and a separation of management and development functions which does not encourage a balanced approach by either Government or a close integration of objectives or programs between the two governments.

### 3.2.5 *Management Studies*

In practice, the responsibility for management studies of the inland fishery is provincial in nature. In the N.W.T. this responsibility lies primarily with the N.W.T. Fisheries Management unit (which is one project group) of the Fisheries Resource Section of DFO in Winnipeg. The unit also has the responsibility for conducting management studies of anadromous fish. This unit (unlike other parts of the regional office) exists solely for the N.W.T. program, and it provides no services to provincial or other federal agencies or special interests.

The limitation to consistent contact between the management studies staff and other clients because of the staff (which being based in the south) works against Departmental responsiveness to management problems as perceived by Northern clients. Despite the efforts of the Federal staff involved, the location of this unit in Winnipeg also works against the integration of Departmental programs with other resource agencies<sup>2</sup> as a means of meeting local and

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<sup>1</sup>This Regional response was apparently induced by the reduction in the Regional budget and the uneasiness toward the GNWT which was attempting to expand its role in fisheries management.

<sup>2</sup>The other resource agencies have their management units located in the N.W.T. except for the C.W.S. which responds primarily to national and international interests in the management of migratory birds which are of limited seasonal importance to Northerners.



territorial goals. Furthermore, the Departmental organizational arrangement at the Freshwater Institute results in the placement of the Management Studies unit in a research oriented Section (and for that matter the Institute) which works against the normal line management responsibilities of a resource management agency.

The financial commitment of the Federal Government toward fisheries management studies has declined considerably in real terms since the early 1970's and at far greater rate than in the Regional budget as a whole.<sup>1</sup> This has occurred despite the relatively recent beginnings of management studies (in the late 1960's and early 1970's) and the considerable lack of management information, particularly in the case of Arctic fisheries. The effects of this decrease has been compounded by a considerable reduction in cooperative studies funded by the GNWT.

The reason for the reduction of effort by the GNWT in fisheries management studies, despite increasing budgets for the NWTWS, was due to the lack of legal mandate, and when pressed where it did have a mandate (for game management), the GNWT de-emphasized its involvement in fishery studies and shifted the resources to wildlife issues. The relationship has also deteriorated because of a lack of feedback from DFO on cooperative studies including on data collected by GNWT field staff.<sup>2</sup> This experience would suggest

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<sup>1</sup>The rate of cuts to the N.W.T. program have been nearly three times those of the other Regional programs. In five years the staff reduction in this role has been 37% (from 19 to 12 positions) while the O&M operating budget has been reduced by 42% in real terms (\$184,000 to 120,000 and assuming an annual inflation rate of 6% ) (from Josephson, *Ibid*) There is almost a total lack of data on the domestic harvest of fish throughout the N.W.T., and very little management information on which to base management programs of the Central and Eastern Arctic. The status of the management information was noted previously.

<sup>2</sup>For example, the Territorial Government contributed financially to the Dianna River char study for several years--in one year, approximately \$50,000. The study has been completed for over 3 years, however, the Territorial Government has not as yet received a report. Pers.comm., R. Tinling, *Ibid*.

that if the two levels of government are to work cooperatively, the division of labour (with consistent lines of communication and commitments) must be firmly established between the two agencies and rigidly adhered to.

The Management Studies unit of this Regional DFO office (4 biologists-- including the team leader, and 8 technicians) is organized to specialize functionally to manage the commercial fishery, the sports fishery and arctic char. The unit determines its priorities for studies (and thereby for management programs) informally through contact with various special interest groups and government agencies. In practical terms, the priorities of the unit are determined by the Head of the Fish Resources Section of the Research and Resource Service Branch.<sup>1</sup> What responsibility that position has for the management of the fisheries in relation to the Fisheries and Industry Services Branch which contains the District staff is not clear.

The disadvantages (identified in section 3.2.3) of basing the fisheries Research program in the North do not apply to the Management Studies unit. Established techniques are used and the field biologists do not require elaborate laboratory facilities or constant exchange with peers in the academic world to maintain a top level of professional expertise. The Management Studies unit does not need to be, nor should it be shielded from the on-going "fire-fighting chores" and changing system of priorities inherent in resource management agencies. These conditions must be recognized as a fact of life by those involved however comfortable it may be to be removed from scene, excepting for periodic visits.

The management studies budget reductions have occurred despite the increasing demand for use of the fish and marine mammal resources,

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<sup>1</sup>Mr. R. Peet, Head, Fisheries Resource Section, Department of Fisheries and Oceans, Winnipeg, pers.comm.

particularly in the Central and Eastern Arctic. Because of this situation, the Department is forced to struggle with current management demands and certainly will not be able to respond effectively to the demands of regional economic planning and resource development which require anticipatory resource management planning. Regardless of any structural responses of the DFO to the current constitutional review, the GNWT will be required to at least assist the Department to ensure the adequate management of the fishery resources of the N.W.T. The Federal Government should be requested to make a clear statement on the financial resources which it intends to commit to the management of the N.W.T. fisheries.

#### 3.2.6 *Habitat Management*

The Resource Impact Division of the Fish Habitat Section has the responsibility of managing the effects of industrial projects on fish habitat. The Division represents the Department on all major reviews of developmental proposals in the N.W.T. In the provinces, the protection of waters occupied by inland fish is carried out by the Provincial Governments while the Federal Government protects the habitat of anadromous fish in coastal areas.

The Resource Impact Division has a staff of 10 (1 manager, 4 biologists, 4 technicians and 1 engineer). Divisional funding permits on field project per year. The purpose of the project is largely to maintain some ongoing contact with field conditions through fish inventory projects in areas where there is likely to be industrial development.<sup>1</sup> Continued funding is threatened, because of the limited 'scientific merit' of such an inventory project. This field project, like the projects of the Management Studies

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<sup>1</sup>Mr. G. Stein, Head, Resource Impact Division, Department of Fisheries and Oceans, Winnipeg, pers.comm. April 26, 1979.

unit, is subject to the review of the Research Advisory Council. The Division may direct studies supported by external funding (such as in the case of the Arctic Islands Pipeline Proposal) or provide a guidance and review role to consultants conducting such studies for industry.

Although the Resource Impact Division is referred to as a Regional unit, in excess of 90% of its effort is directed at developmental proposals in the N.W.T. In the past, the unit specialized according to the various review responsibilities (hydro, pipelines, mines, and highways); however, with recent budget cuts, the Division was reorganized in 1978/9 into a pool, assigning one biologist and technician to each of five geographical areas, only one of which is in southern Canada.<sup>1</sup>

As with the Management Studies unit, there are no compelling reasons for the impact assessment function or staff to remain in the South. It could be more actively involved in impact assessment if it were located in the North. More importantly, the Division could be directly involved in resource planning programs with other resource agencies prior to the submission of projects for regulation review if it were located in the North. If the overriding "interest" in the inland fishery resource is local, regional and territorial this function should be under the influence, if not the control, of northern public institutions (as it presently is in most provinces) which are in the best position to determine how they wish to make the compromise between the maintenance of renewable resources and the development of non-renewable resources. It is particularly important that the Habitat Management role reflect Northern perspectives because of the strength of the habitat protection sections of the Fisheries Act can be an effective tool to facilitate an integrated approach to resource management.

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<sup>1</sup>In southern Canada, the Division only becomes involved in projects which qualify for review by the Federal Environment Assessment and Review Process. The engineer position has been involved in cooperative work with the provinces--particularly Manitoba. Stein, ibid.

### 3.2.7. *Enforcement*

Enforcement of the Fisheries Act for all inland fisheries is a provincial responsibility in southern Canada.

The enforcement staff, with the District Manager, is the only Departmental unit entirely based in the North. The District staff focus their efforts almost exclusively on their enforcement role and accordingly are generally better trained for enforcement than other renewable resource agencies in the North. Because of this orientation, all officers are located in the key centres which require that function: Hay River and Yellowknife--primarily because of the Great Slave Lake Fishery with periodic forays into the Central and Eastern Arctic; Fort Simpson--because of highway access to the middle Mackenzie; and, Inuvik--primarily for surveillance of hydrocarbon exploration in that region.

During the 1979-80 fiscal year, two officer positions were created for Frobisher Bay. Their purpose will be primarily for surveillance of the offshore hydrocarbon drilling programs proposed for the Eastern Arctic. With the addition of these two positions, the total staff compliment in the N.W.T. has remained constant for eight years.<sup>1</sup>

N.W.T. Wildlife Officers who are ex-officio Fishery Officers enforce the Fisheries Act and Regulations throughout the Territories where there are no Fisheries Officers. Prior to this arrangement, the Department was unable to effectively enforce the Act and Regulations, or more importantly identify resource management problems.<sup>2</sup> A key responsibility of a resource field

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<sup>1</sup>Two positions had been deleted due to budgetary restraint, H. Trudeau, *ibid.*

<sup>2</sup>The problem of the Territorial Government being identified by the public with fishery management problems but not having the authority to change policies, lead to the political decision in 1978 to change the name of the N.W.T. Fish and Wildlife Service to the Wildlife Service.

officer is the early warning of problem areas in resource management.<sup>1</sup> Enforcement along, without the other valuable roles of a field officer, does not, and will not, justify the presence of officers in most communities in the arctic and only a few communities in the Mackenzie.

The degree of success attained by the DFO in the N.W.T. has largely been a result of District staff who maintain ongoing contact with the northern public, industry, and other government agencies.

Similarly, the degree of success that has been achieved by the N.W.T. Wildlife Officers in assisting the DFO in the enforcement of the Fisheries Act and Regulations, in the collection of fisheries harvest data, and other related duties, is largely attributable to the direct working relationship of the N.W.T. Wildlife Service with the resource harvesters in the communities and with the District office in Yellowknife.

However, even with the existing division of responsibilities and the present working relationships, there are no compelling arguments, (that relate to public service), for maintaining separate fishery and wildlife officer field positions. Combining the two field units would certainly be more efficient in terms of manpower committed to resource management and would avoid duplication of facilities in the few communities where the DFO has field officers. The confusion to the public of the artificial separateness of fisheries and wildlife management programs would also be removed if the two field units were combined.

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<sup>1</sup>For example, the concern raised about the high kill of marine mammals in the Eastern Arctic was raised by Territorial Wildlife Officers.

### 3.2.8 *The Management Process*

An effective resource management process requires a close coordination of three key functions--research, management and enforcement. Regular feedback is required between the three elements, and between these elements and the public (the client), to ensure the effective attainment of pre-determined goals and objectives and the appropriateness (responsiveness) of relevant policies. The management processes presently in place to manage fisheries do not consistently work toward these principles.

Until 1972, there were no explicit goals or objectives for management of N.W.T. fisheries despite the very active development of fisheries by the Territorial Department of Economic Development. "Where to Now? Fisheries Development in the Northwest Territories"<sup>1</sup> was produced by a Federal-Territorial Task Force to provide some direction to the development of the N.W.T. fishery for the period of 1972 to 1977. This report identified the primary beneficiaries of fisheries development projects--"long term northerners"; management strategies--to avoid harvest methods that would depress the resource base, as a tool to maintain future options; priority for available harvest--for domestic over commercial and sport fishery development; a criteria for the development of the fishery; and, a "Program Review Committee" consisting of involved agencies of the two governments and a northern resident, to apply the criteria and to report to the two governments.

The Task Force report was successful in giving direction to fishery management programs. The close working relationship of the two governments

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<sup>1</sup>"Where to Now? Fisheries Development in the Northwest Territories" A Federal-Territorial Task Force Report, N.W.T. Information Services, April, 1972.

led to the Territorial government's contribution to resource inventory and management studies until the mid-1970's.<sup>1</sup> Subsequently, however, this working relationship was eroded by circumstances discussed earlier. The direction for fisheries management was not reviewed by the Department in 1977 as suggested by the report, nor was the Program Review Committee formed.

Another federal-territorial task force, the Northwest Territories Marine Mammals Working Group, was formed in November of 1973 to investigate the status of marine mammals in the Arctic. The impetus for this review was pressure from N.W.T. Wildlife Officers in the Eastern Arctic who were concerned about the lack of programs to manage marine mammal populations despite the escalating harvest of these resources. The Working Group consulted widely in the North with resource harvesters, managers and research scientists. A very detailed report on the status of marine mammal management (or more specifically, the lack of it) was completed in 1974 with 34 specific recommendations for research, the collection of management data, management programs, and changes to legislation and enforcement arrangements.<sup>2</sup> Since then, nothing positive happened as a result of this report.<sup>3</sup>

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<sup>1</sup>In particular, there was a clear and cooperative division of labour between the two agencies in studies in the Keewatin.

<sup>2</sup>The Northwest Territories Marine Mammal Working Group, "A Federal-Territorial Study on the Status of Marine Mammal Resources in the Northwest Territories". Draft confidential report of December, 1974, Govt. of the N.W.T. files.

<sup>3</sup>The one position the Department had for marine mammal management in Winnipeg was vacated in 1975 and it has not been refilled. The District staff are unable to contribute as they have had no staff in the communities involved. The vacuum continues due to continuing budget constraints and a lack of priority by the Federal Government for this management requirement at the Regional office in Winnipeg as well as the continuing uncertainty of negotiation by the Regional office for the two research positions from the station at St. Anne de Bellevue.



Not only has the DFO failed to maintain the cooperation of the GNWT but it has not succeeded in involving northerners in the management of the fishery resources in the Northwest Territories. During preliminary negotiations with government, the Inuit Tapirisat of Canada (ITC) identified the need for resource harvesters to become more directly involved in the decisions affecting resource management. Toward this end, in 1976 a N.W.T. Game Advisory Council was formed by the GNWT. All proposed policies and game management are reviewed by this Council. Similarly, on a territorial level an Aquatic Resource Environment Advisory Committee was proposed and terms of reference drafted by the Fisheries and Marine Service but it never came into existence. There are also no consistent avenues for local participation in review of DFO programs, policies or legislation.<sup>1</sup>

Recently an Aquatic Resource Utilization Review Committee was formed by the Resource Management unit in Winnipeg to involve the District departmental staff and the GNWT in review of fishery harvest quotas. This is a positive step; however, to integrate resource management programs, broader terms of reference are required which should include the determination of priorities for research and management studies, and other facets of management, within a set of objectives that are complimentary to overall northern resource development strategies.

The GNWT should be directly involved in the development of fishery management programs through the Regional Advisory Committees to the FMS Western and Ontario regions. There should also be effective mechanisms

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<sup>1</sup> Exceptions to this are the two highly articulate and specialized interest groups. These are the Tourist Lodge Operators Association (of the N.W.T. Travel Industry Association) which reviews matters affecting sport fish lodges, and the Great Slave Lake Fishermen's Association which deals with management programs affecting commercial fishing on that lake.

for special interest groups--especially the resource harvesters (domestic, sport and commercial) to influence all aspects of fisheries management. If the Central region of DFO is abandoned, these mechanisms would also facilitate the effective representation of Northern interests in Federal-Provincial Freshwater Committee or the equivalent at headquarters in Ottawa, if it is feasible for the N.W.T. as a District or Region office of DFO to report directly to Ottawa. Other alternatives are explored within the framework of the following determination of interests.

### 3.3 Interests in Fisheries

The determination of the legitimacy of interests in a resource can be discussed from a number of perspectives. The constitutional arrangements that determine the present legislative and proprietary rights were discussed previously. A further parameter, the special interest of Native people, was also discussed. The other key constraint is related to the biological characteristics of each fishery resource that are to be considered within the legislative options that are available.

#### 3.3.1 *The Biological Constraint and the Interests of Resource Users*

The habitat requirements and the seasonal distribution of fish and marine mammals impose limitations to the range of management responses (including the institutions, structures and processes) that can be most effectively used to manage these resources. These are discussed below.

##### Freshwater Fish

From a biological perspective, inland fisheries can be managed by Territorial, regional, and in some cases--local (in the case of individual lakes) institutions, in the same manner that they are presently managed by provinces. Inter-provincial cooperation is required to manage those few

fisheries that are shared between provinces but this is routinely arranged by the provinces and has not required the intervention of the Federal Government. There is no significant multi-jurisdictional or any international border associated with the inland fishery in the N.W.T.

Therefore, from biological and socio-economic perspectives the northern inland fishery is predominantly a "local matter" excepting the national interest in external "trade and commerce" reflected in the inspection role.

#### Anadromous Fish

Anadromous fish pose different problems for the creation of a management regime. The biology of anadromous fish, such as arctic char, is not adequately understood to provide certain biological parameters for administrative arrangements. There is no assurance that anadromous species can be effectively managed by controlling the harvest at individual streams and populations certainly cannot be effectively managed below the sub-regional level if the harvest takes place in the marine environment.<sup>1</sup> This militates against management of this resource at the local level. Anadromous species (using char as an example) could be managed regionally, given the geographical extent of the current administrative regions in the N.W.T., although a very high degree of coordination between regions would be required. If harvest of this species is to be permitted in the marine environment, it would probably be desirable to have at least a Territorial (or Arctic coastal) management regime.

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<sup>1</sup>The relative discreteness of populations or sub-populations in the marine environment, or the fidelity of populations to streams is not known at this time. For example, movements of up to 400 miles for individual char have been recorded in the marine environment. In addition, the large reproductive fish have been found in streams other than those they may spawn in. Sexually immature fish, however, appear to be highly predictable. Dr. L. Johnson, Fisheries Resource Section, Department of Fisheries and Oceans, Winnipeg, pers.comm. May 3, 1979.

Given the extreme northern distribution of arctic char, presumably relatively few significant populations are shared with other political jurisdictions.<sup>1</sup> The Federal Government presently intends to give preferential consideration to northern Natives in the allocation of the fishery resource, even with the "public right of fishery". Therefore, the "interest" in the anadromous fishery is almost exclusively sub-Territorial.<sup>2</sup>

#### Marine Animals

The seasonal distribution of marine mammals is generally better known than that of anadromous species of fish; and, in some cases presents more complex jurisdictional considerations. The bowhead whale, clearly an international resource, is protected by the International Whaling Convention. They are not presently harvested in the N.W.T.<sup>3</sup>

Narwhal are found in the spring and summer, primarily in the vicinity of Baffin Island and in Jones Sound.<sup>4</sup> They are harvested by the residents in the Baffin administrative Region and residents of the north eastern portion of the central Arctic area. Narwhal are thought to winter primarily in Baffin Bay (part of which is Danish waters) where they are also harvested by Greenlanders. Since there is insufficient information on the population to determine the discreteness of the sub-populations at this time, the management program for this resource would require the cooperation of the

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<sup>1</sup>Stream runs are limited to the northern Yukon which are harvested by N.W.T. residents, the N.W.T., Labrador and northern Quebec.

<sup>2</sup>The abstention principle (Ozere, op.cit., p.801) which Canada has used internationally to protect fish populations presently being harvested to a maximum degree by its nationals, could logically be used internally as a principle to protect the northern interest in the marine fishery in the Canadian Arctic waters.

<sup>3</sup>Although there have been recent requests by N.W.T. Inuit to hunt this species.

<sup>4</sup>Marine Mammals Working Group, ibid.

Greenlanders.

Beluga whale are found in both the western and eastern Arctic (including Hudson and James Bays). The two populations are segregated into two stocks.<sup>1</sup> The limited information that does exist suggests that the western population could be managed exclusively for the harvest in the Mackenzie Delta. However, management of the eastern populations, particularly in Hudson Bay, would be more complex requiring the close cooperation of resident whale hunters in the Keewatin Region, south Baffin, and northern Quebec. Manitoba residents should also be involved in any management regime as they harvested this population in the recent past and without doubt have an on-going interest in this whale population.

Ringed seals which exist as local populations are found throughout arctic waters and are of major economic significance in all the arctic coastal communities. Ringed seals could probably be managed regionally.<sup>2</sup> Such is not the case, however, with Harp seals. The small harvest of this species by the Inuit of the eastern arctic is of limited economic value and minor in relation to the kill from the same population by Newfoundland and Labrador. The Harp seals migrate north along the east coast of Labrador and Baffin Island in the summer and back south to the St. Lawrence in the winter.<sup>3</sup>

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<sup>1</sup>Government of Manitoba, "The White Whale of Manitoba" Conservation Comment, Department of Mines, Natural Resources and Environment. January, 1979, p.14.

<sup>2</sup>The populations are generally local. Although ringed seals are probably more mobile in the western Arctic than in the eastern Arctic, the tendency in areas near communities is that these areas are overharvested however, this is compensated by in migration from the surrounding stocks.

<sup>3</sup>D.E. Sargeant, "History and Present Status of Population of Harp and Hooded Seals", Biological Conservation, 10, 1976, p. 97.

Accordingly, their "occurrence and numbers in the N.W.T. are greatly dependent upon management practices in eastern Canada, Greenland and international agreements."<sup>1</sup> The same is true of the Hooded seals which are rarely harvested in northern waters. Given the limited relative significance of hooded and harp seals to the people of Baffin Island in relation to other Canadians and Greenlanders, the regional and Territorial role in the management of these populations should be minimal.

Walrus occur both in the Western Arctic (as far east as south-central Victoria Island) and in the eastern Arctic including Hudson Bay. Atlantic walrus are presumed to winter in Davis Strait and off the Labrador coast. Not enough is known about the species populations are shared seasonally with Greenland and Quebec Inuit, but the majority of the walrus populations seasonally inhabiting marine waters in the N.W.T. are harvested in main by N.W.T. residents.

In summary, from a biological perspective, a Territorial level of government could effectively manage the inland and the anadromous fishery. The same is true for the management of some marine mammals--particularly ringed seals, bearded seals, western arctic beluga and walrus. This is less true with narwhal and beluga in the eastern Arctic.

A Territorial level of government could not, however, as a realistic priority, attempt to carry a major responsibility for the management of bowhead whales, or harp and hooded seals.

In those cases where cooperative measures would be required with other jurisdictions, these arrangements could parallel the current Territorial/ Provincial, national and international arrangements in place to manage

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<sup>1</sup>Marine Mammals Working Group, ibid.

polar bear<sup>1</sup> which respond effectively to the various interests leaving the primary management responsibilities within the provinces and Territories. Regional government within the N.W.T. could, theoretically, become involved in the management of the various resources to the same extent as a Territorial level of government. However, with the exception of the inland fishery, the arrangements become considerably more complex requiring a higher degree of inter-regional coordination and the inevitable inefficiencies associated with each employing personnel with the necessary expertise.

A national interest in the management of the various species, as is the case discussed with other species of wildlife, may be most easily argued on the basis of the Federal Government being an overseer to ensure that they are properly managed. The role of the Federal Government as a facilitator of inter-jurisdictional arrangements to manage resources from a legal perspective is considered below.

### 3.3.2 *Special Legal Considerations in the N.W.T.*

Although there may be a question of the legality of delegation of administrative responsibilities and legislative authority to a provincial Legislative Assembly (a coordinate authority), it is clear that the Territorial Legislative Assembly (a sub-ordinate authority) which owes its existence to delegation of authority from Parliament, can receive such delegated authority.<sup>2</sup> Conceivably, this could also apply in Canadian Arctic waters if the Morrow decision remains unchallenged. Morrow concluded that the Arctic Ocean, including all the islands therein are a part of the Northwest Territories.<sup>3</sup>

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<sup>1</sup>See Chapter V, Section 5.1.6.

<sup>2</sup>Hogg, *op.cit.*, p. 33, footnote 13.

<sup>3</sup>Morrow ruled in a Territorial Court of Appeal that by definition, the N.W.T. is "all that part of Canada north of the Sixtieth Parallel of North Latitude, except the part thereof that are within the Yukon Territory, the Province of Quebec or the Province of Newfoundland" and includes the islands of Hudson Bay, James Bay and Ungava Bay that do not belong to the adjacent Provinces. *Regina v. Tootalik*, E4-321 (1970), 71 WWR. 435.

Parliament could delegate its legislative authority to the Territorial Assembly for the management of fisheries by an addition to Section 13 and by an amendment to section 14 of the N.W.T. Act.<sup>1</sup>

Should the N.W.T. become a province, this legislative arrangement could possibly be sanctioned in a Resources Transfer Act, although this would be atypical. The legislative authority for inland fisheries (for which the provinces are presently pressuring) could conceivably be granted to the provinces before the N.W.T. receives provincial status. The interest of certain eastern provinces in the marine fishery which was exhibited during the 1979 constitutional talks of the First Ministers may also cause change in the influence of provincial governments in the management of marine fisheries.

Certain legislative authority received by a Territorial level of government could, within the constraints necessary to ensure overall conservation of the resource, be delegated to a regional municipal authority, or to local authorities who could arrange to exercise that authority in conjunction with other local authorities in a region. Examples of this would be granting local authorities more restrictive power through local by-laws.

Federal legal tools will continue to be required to control the processing of fish products that are to be exported from the Territories.

### 3.4 Alternatives and Analysis

When the organizational options are considered from the perspective of the interests previously discussed, the inspection role must be primarily

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<sup>1</sup>Section 14 limits the powers to be granted to the Commissionery-in-Council not to exceed those granted the provinces under sections 92 and 95 of the BNA Act.



identified as a national interest to be administered by the Federal authorities. Efficiency dictates that the Officers be on location in the North while the supporting laboratory facilities may be most effective at a central location such as the Freshwater Institute in Winnipeg. Similarly, the common benefits of research, and the advantages for permitting the researchers to be removed from the constant pressures of resource management problems, as well as the benefits from the facilities and ongoing contact with the academic community (such as is offered at the Freshwater Institute) are strong arguments for there being no change in location or focus for those units of DFO charged with the research role and the technical/laboratory inspection roles. All alternatives assessed below assume this arrangement of responsibilities for the research and inspection roles. What does vary in the analysis of options for change is the method of determining research priorities, the type of management process, the responsibility centre for management programs, and the physical location of the units that contribute to the management of the fishery resources.

(i) *The Status Quo*

This alternative would entail maintaining the full legislative mandate and the administration of fisheries (with the exception of the sport fishery) with the Department of Fisheries and Oceans. The enforcement and inspection functions would be based in the North while management studies, habitat management, and research would continue to be based in southern Canada, primarily in Winnipeg. The GNWT would assist with enforcement, collect a limited amount of harvest data, and administer the sport fishery.

Arrangements could be made to reactivate the previous processes for coordination between the two levels of government to make the working relationship more dynamic than it is at present.

This alternative is rejected because it would not advance the objectives of efficiency, effectiveness, responsiveness or territorial political or constitutional development in the areas of legitimate interests previously discussed. Other resource agencies have found that they can carry out projects such as management studies more efficiently by being based in the N.W.T., and in some cases, based in the regions. Clearly the effectiveness of resource management programs could be improved by locating the managers and field staff in the N.W.T. with their primary clients and with the other resource agencies with whom they should be integrating their programs. This is particularly apparent when other agencies are actively decentralizing their operations within the N.W.T., while the bulk of DFO northern operations have not as yet even been transferred to their headquarters in the N.W.T.

This lack of direct involvement of many parts of fisheries management process in the N.W.T. will be particularly apparent in regional resource development planning programs which will be located in the N.W.T. regions in the near future. Would this mean there will be no fisheries management component in resource development planning component programs? Under these conditions, consistent responsiveness to the same degree as other resource management components will not be possible. The DFO record has been consistently inadequate where formalized structures in the N.W.T. are required to aid responsiveness to special interests.<sup>1</sup> Perhaps this can be attributed to the location and focus of the Institute which emphasized research and where managers periodically travel from the south to their clients rather

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<sup>1</sup> None of the structures recommended in "Where to Now...", *ibid.*, the Marine Mammal report, or the Aquatic...Resource Council were ever formed. Those that have been formed at the region are bureaucratically oriented and for whatever reason have become of limited use.

than being resident and in constant contact with other northern natural resource managers.

The considerable decline of the northern fishery management budget in real terms, and its decline relative to the regional budget as a whole, are causes for concern. Given the considerable lack of data and apparent declining ability of the DFO to maintain even the present level of service, the ability of the Department to cope adequately with its mandate are uncertain. Furthermore, the disproportionate cuts to the N.W.T. program suggest a declining interest in the North in relation to its interests in the provinces. With no mandate, the GNWT likely could not reassert its interest sufficiently to obtain funding from Treasury Board to compensate for the DFO deficiency.

Clearly, these considerations lead to the conclusion that the *status quo* is an unsatisfactory alternative.

(ii) Reorganization within the Department of Fisheries and Oceans--  
Moving Fisheries Management to the North

A reorganization of the DFO could involve combinations of changing lines of communication and actual transfer of some roles to the N.W.T. as a district or regional Departmental office.

For reasons of national interest the inspection role should remain under central direction, and the need to insulate researchers from the turmoil of ongoing management has definite advantages. However, for the opposite reasons, the management staff (managers, management studies biologists and technicians, and enforcement staff) should be located in the Territories. Ongoing interaction with client groups (primarily northern) and liaison with other resource agencies is essential. Furthermore, clear lines of communication are required to ensure responsiveness of research priorities to meet

the long term requirements determined by those responsible for fisheries management.

If the N.W.T. remains an administrative district with the regional office in Winnipeg, representation of District management staff would be required on a regional review board that would determine the district budget and level (and priorities) of research support.

The advantage of the N.W.T. being a separate region would be that the N.W.T. region could propose and defend Northern program requirements independent of the Central Region. A separate N.W.T. region for DFO would be legitimate as the Department has no other fisheries management responsibility in the central region since the Provinces are the *de facto* fishery managers. The regional budget would be relatively small in relation to other DFO regional budgets, but the area involved is one third of Canada.

A consideration which would probably aid responsiveness, if not representativeness, would be the requirement for presentation of an annual report by the DFO directly to the client--the N.W.T. Legislative Assembly.

The location of management staff in the N.W.T. would yield benefits from the closer working relationship with the GNWT, which, even without special funding, could lend considerable support to fishery management programs. The Department's role in the North would be reinforced if units of the Department responsible for managing the northern fishery were located in the N.W.T.

This alternative would be superior to the *status quo*; however, the management of the northern fisheries resources would still not be fully accountable to northern elected officials, and hence would not fully advance accountability or political development.

(iii) Federal Fisheries Management Programs Located in N.W.T. and Administration of the Inland Fishery by the GNWT

This arrangement would have the benefit of increasing the participation of the GNWT while permitting the Federal Government to focus research in general and management programs for the anadromous and marine fisheries and marine mammals. This division of labour between the two governments would be quite clear bureaucratically with the distinction of responsibility focusing on the resource.

This arrangement could, however, cause problems because fisheries management in the Mackenzie Valley would in effect be administered by the GNWT while the Arctic fisheries would, with present patterns of resource use, be largely managed by the Federal Government. The problem arises in the almost complete lack of field staff of the Federal Government in the Arctic, while the GNWT already has regional structures in place as well as staff in most communities. When the inland fishery becomes more highly developed in the Arctic, there would be ongoing confusion because of the focus of the agencies being on the resource rather than on the user of the resource.

This alternative would require a geographical division of labour between the two agencies for habitat management to avoid duplication of efforts. In practice, there would likely be much overlap and corresponding inefficiency. Since habitat management for fish begins at the watershed, the regional interest in the management of other resources requires effective integrated management of all natural resources which argues strongly for a one-uniform government approach.

There are obvious advantages in amalgamating the field staff of the DFO and the N.W.T. Wildlife Service at the Officer level. Administrative costs would be reduced, and the use of the same facilities and equipment would occur.

The staff would be directed toward objectives defined in the Territories and the officers would be able to focus on all aspects of field officers' duties rather than purely enforcement. In certain locations, fishery enforcement specialists within the single uniform staff would be required, such as for the Great Slave Lake commercial and sports fishery.

This alternative would be better than the present situation, or simple reorganization of the DFO, because there would be a considerable increase in Departmental effort (and effectiveness of that effort) to manage fisheries in the N.W.T.; and, it would facilitate a gradual assumption of responsibility by Territorial and local or regional governments.

This alternative would require a close working relationship between several agencies to ensure an integration of fishery management programs (including research and planning) with wildlife, water and land management programs in the Arctic administrative regions. This problem would be compounded by the inability (or lack of desire) of the DFO to decentralize beyond Yellowknife (assuming a transfer of authority to the N.W.T.). Also, the DFO would have to have assurances of the support of Territorial regional structures to enable it to fulfill its mandate. Even with the latter, this alternative should at best be considered as being only a marginally acceptable interim solution.

(iv) Transfer of Administration of the Responsibility for the Inland Fishery, the Anadromous Fishery and Certain Marine Mammals.

The review of local, regional and territorial interests in anadromous fisheries made it clear that the management objectives should be largely determined by northern residents. Furthermore, the inefficiencies inherent in artificially dividing resource management in an arctic environment that only has a few key species for domestic use and economic ventures are powerful

arguments for having a single fisheries management administration that is responsible to northerners. This is particularly true for residents of Arctic communities who depend heavily on the resources of the marine environment. Such an arrangement would not be unique in Canada.<sup>1</sup> The addition of certain marine mammals (specifically ringed seal, narwhal, walrus and possibly beluga whale) would compliment the need for unified administration of all fish and wildlife resources.

Split administrative arrangements do not serve the primary interests which are local and regional nor do they enhance the residual national interest. The residual federal legislative role would ensure that the central government has the necessary tools to arrive at cooperative management programs between the Northwest Territories and the other jurisdictions that share the use of certain of these resources.

An argument against the transfer of this administrative authority could be its "complexity" in comparison to the simplicity of one agency (DFO) having full responsibility and authority. However, the requirements to manage polar bear are infinitely more complex, yet polar bear have been routinely (and effectively) managed through interjurisdictional cooperation (nationally and internationally) in this manner for over ten years.

This alternative would require a considerable commitment by the GNWT. Because of the scope of such a change, a transition period would be beneficial. During this transition period, it would be necessary to focus existing Federal management staff and budget on specific areas of the anadromous

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<sup>1</sup>For example, the management of steelhead salmon in British Columbia and all fisheries in Quebec discussed previously, are existing arrangements that recognize the strong local and regional interests in fishery resources.

and marine fishery to attain fishery management objectives which would be determined largely by Northerners. Responsible resource management would require an increased ongoing federal research effort directed to resource management problems identified by the resource managers.

Habitat protection in the marine environment presents unique problems. Territorial agencies and special interest groups could contribute to resource planning and the regulative review process to advance northern socio-economic interests. However, physical oceanography and most areas of biological oceanography will continue to be areas of interest and expertise of the Federal Government. Therefore, the involvement of the GNWT in the management of the offshore environment could be that of an interested contributor but not of a manager. Because the development of non-renewable resources will occur primarily in the national interest, there will be a federal presence in this field. This must be balanced by the advancement of Territorial interests in the socio-economic field generally, and the management of renewable resources in the marine environment specifically.

In summary, this alternative provides the immediate *de facto* responsibility to the GNWT for the management of inland fisheries and a phased assumption of responsibility for the management of the anadromous fishery and certain marine mammals. The DFO would ensure the protection of a residual national interest (interjurisdictional matters and endangered species) and direct Federal resources toward supporting the management programs of the GNWT to facilitate the transfer of authority over a specified period.

(v) Delegation of Legislative Authority

Delegation of legislative authority to the Territorial Government for the management of the inland fishery (including recognition of proprietary rights) would leave the inspection role and primary responsibility for



research with the Federal Government. This arrangement would avoid the time consuming and purely procedural formality of the Federal Government making regulative changes for the inland fishery as the procedure presently occurs for the provincial governments. This assumes that the GNWT (or the regional equivalents) develop a full fisheries management capability.

Delegation of legislative authority by Parliament to the Territorial Legislative Assembly could be one of simple and complete delegation of the right to legislate in the field or it could involve a more narrow delegation of the right to pass only more restrictive legislation within the Fisheries Act. The latter would effectively make the present (federal) N.W.T. Fishery Regulations a Territorial piece of legislation. If the primary interests in the use and management of the resource are Territorial, then there should be no objection to the delegation of legislative authority to the Territorial Legislative Assembly. This would place the inland fishery on the same standing as game resources.<sup>1</sup>

The same line of argument supports delegation of legislative authority for the management of anadromous fish, marine fish and certain marine mammals, subject to certain provincial and international interests in these resources. The present application of Territorial Ordinances in the Arctic offshore area suggests that the offshore area could, from a legal perspective, essentially be treated as an inland fishery.<sup>2</sup> The use of more restrictive legislation by

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<sup>1</sup>The "Political Development..." paper suggests a willingness to consider innovative approaches. The basic difference in the constitutional status of the Territories may diffuse any provincial claims of special treatment being granted to the Territories. Further, the provinces may succeed eventually in attaining *de jure* provincial control over the inland fishery which at present they have *de facto*.

<sup>2</sup>This could incidentally also mean the lack of a "public right of fishery"

the N.W.T. Legislative Assembly would ensure an overriding federal right to provide for the management of resources shared interjurisdictionally.<sup>1</sup>

Flexible arrangements such as this would not seem to be out of the question because of the administrative precedents in British Columbia and Quebec discussed earlier.

The arguments against delegation of legislative authority to the Territorial Legislative Assembly may be twofold. A special constitutional arrangement would be required should the Territories eventually attain provincial status, although presumably an atypical resources transfer act would accommodate this. The most compelling argument against such an arrangement is the practical consideration that despite the apparent advantages, delegation of legislative authority would involve a drastic change from almost no authority to what amounts to full control of the inland, anadromous and marine fisheries by the GNWT, unless the arrangement was phased in over a period of time.

(vi) Local and/or Regional Authority

Most of the arguments for and against granting the various levels of authority to the Territorial Legislative Assembly and administration also apply to regional institutions except that effective regional management resources would require a higher degree of coordination between regional authorities. In certain areas of responsibility, the regional institutions may be in a position to be equally or more efficient and effective. These areas would be the delivery of programs such as assistance to resource harvesters and the development and implementation of routine local resource management programs. The commonality of certain management studies and

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<sup>1</sup>Theoretically, as in the case of polar bear, this could be limited to an administrative coordinating role.

processes (particularly in the case of marine mammals), and the requirement for specialization, suggest efficiencies of scale at the Territorial level. However, these latter concerns are probably not compelling arguments against regional management of resources in the marine environment. These arguments are certainly not compelling in the case of the inland fishery.

The arguments against a rapid transfer of authority to a Territorial level of government are even more apparent when consideration is given to the recent development of local and regional institutions.

The interests discussed previously indicate that local and regional institutions should have the authority to sub-allocate harvest to individual resource users and among types of users respectively. The latter should be subject to the rights of minority groups being protected by a Territorial level of government and possibly protected at the time of required legislative and proprietary interests are made from the Federal Government. There could also be decentralized (non-legal) administrative authority, or in certain cases the ability to pass (more restrictive) by-laws, vested in local or regional institutions. These institutions should have direct access to management decision processes that involve matters directly affecting them. This is particularly apparent for shared fisheries.

The following recommendations for changes to the approach to fisheries management in the N.W.T. arise from and are contained in each of the previous sections dealing with the legislative review, the assessment of program delivery, the description of interests in fisheries and the analysis of alternative approaches to fisheries management. Considerable change is essential to advance the efficiency, effectiveness and responsiveness goals of the current constitutional review in respect to these programs. However, in a rapidly developing political system such as the N.W.T., these changes

should be phased in over time periods that will enable the N.W.T. Legislative Assembly and its administration to properly assume these responsibilities.<sup>1</sup> Furthermore, the phased transfer is required to gear up a full management capability that is presently not in place even in the DFO which is responsible for managing the resource. The time frames (immediate--1980, short term--1985, and long term --1990) are arbitrary and could be altered depending largely on the level of commitment of the GNWT.

### 3.5 Recommendations

#### (i) Immediate (1980)

The GNWT should assume administrative authority for all aspects of the inland fishery and become directly involved in the management processes for the utilization of anadromous fisheries and marine mammals to the extent necessary to ensure that the management objectives and priorities for those resources respond to Northern interests.

The structural and institutional changes should be:

- (a) The GNWT should not express any interest in acquiring the responsibility for the fishery inspection role. There is no reason to provide for a regularized or detailed working relationship between the Inspection Officers and Management staff.
- (b) The GNWT should also recognize the advantages (fiscal and practical) of leaving the primary responsibility for fisheries research with the Federal Government. However, it is essential that the GNWT be able to effectively influence the relative priority and budget levels given to fisheries research for Northern fishery management problems and be able to determine the objectives of these research projects. It may be advantageous for the GNWT to have a client relationship (contractual) with DFO. The Federal research agency is best suited to ensuring the quality of the research.

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<sup>1</sup> A preferable arrangement would involve the establishment of a fully functional fisheries management program within DFO in the North which could ultimately be transferred to the authority of the N.W.T. Legislative Assembly. However, it is not likely that DFO will accomplish that objective.

Both objectives would more likely be attained if the N.W.T. were recognized by the Federal Government as a separate DFO region from the prairie provinces. The GNWT should actively lobby toward this end. (Alternatively, northern fisheries--including coastal Yukon, northern Quebec, and Labrador and all of the N.W.T.--could be treated as a federal region for which the GNWT should lobby as a second best option if the former alternative is not acceptable to the Federal Government.)

In the meantime, the Advisory Committee to the (regional) Directors General could be used as a forum to propose northern fishery research projects. A preferable option would be for the DFO to conduct research under a contractual arrangement via a Federal/Provincial/Territorial agreement as presently occurs with mammalian research by the federal CWS. The Federal Provincial Freshwater Fisheries Committee should, with provincial support, be used as a forum for the GNWT Administration to encourage the Federal Government to recognize its responsibility to provide an adequate level of research support to the management of inland fisheries in general and specifically northern inland fisheries. The initial pressure should originate from the Territorial Executive Committee (from the Territorial Minister of Renewable Resources or Commissioner) to the federal Minister of Fisheries and Oceans.

- (c) The enforcement role (and positions) should be completely assimilated with the N.W.T. Wildlife Service to form a portion of the field staff of a Territorial Department of Renewable Resources (i.e. They would become Conservation Officers as they are commonly known in the provinces). Officers specializing in enforcement of fisheries legislation would presently be required only for the Great Slave Lake commercial and sport fishery.
- (d) A Fisheries Management Division should be created within a Territorial Department of Renewable Resources to manage the GNWT responsibility for the inland fishery, and to provide advice to the DFO who would for the interim be responsible for the management of anadromous fish and marine mammals. To provide a clear division of labour during this transition period, the Division should have a limited staff of biologists and technicians sufficient to manage the inland fishery. The Federal fisheries management unit (12 positions) should be transferred from the Freshwater Institute in Winnipeg to the Federal District office in Yellowknife. This unit (with the two residual marine mammal positions at St. Anne de Bellevue and one in Winnipeg) should focus on the management of anadromous fish and marine mammals.

The DFO district manager would necessarily work closely with the Territorial Fisheries Management Division, and rely on Territorial field staff and local structures (Hunters and Trappers Associations) for various local services. For

administrative purposes the Federal district management unit would report to the Regional office in Winnipeg if it continues to exist as a region; otherwise, it would report directly to Ottawa.

The habitat management role should be carried out by the GNWT for inland fisheries and transferring the current Resource Impact Division (currently 10 positions) of DFO to the District office to focus on coastal resource development concerns including marine mammals. This unit will have to be closely coordinated with Territorial Officers who should provide the same service for the protection of habitat for the inland fisheries. To avoid the inefficiencies associated with the overlap of the two agencies (as the federal agency becomes involved in inland habitat for anadromous species), it may be desirable to arrive at a geographical division of responsibility.

To maximize the benefits of decentralization, the GNWT should establish fisheries management biologist and technician positions at each regional office. This staff should participate directly in regional resource planning and management programs. The Territorial headquarters structure should be kept to a minimum -- sufficient to ensure coordination between regions and with the Federal district office, to maintain overall policy control, and sufficient specialists to support the regional staff. This arrangement would vastly increase the effectiveness of the current commitment of funds and manpower.

The local Hunters and Trappers Associations (HTA's) should be contracted for such tasks as the collection of harvest data and biological specimens necessary for management programs. The HTA's should also carry out subsidiary functions such as the sub-allocation of harvest quotas, participation in the limited entry system, and provision of representation to regional policy and legislative review committees.

The management process must be explicit, clear, short and as responsive as possible to the local and regional interests and ultimately to the Legislative Assembly. To enhance accountability and avoid confusion, the fisheries management decisions that are administrative in nature should in the main, be made by the Territorial Chief of Fisheries Management. In the case of inland fisheries, management programs should be regulated by a Territorial minister responsible for renewable resources. In the case of anadromous fish and marine mammals, the Chief of Fisheries Management should (primarily on the advice of the federal District Manager), recommend the regulations to the Territorial Minister (or his deputy) responsible for renewable resources for furtherance to the federal Minister of DFO for a decision. Local, and where applicable regional, review of the management proposals should be by the respective HTA's and other special interest groups.

(ii) Medium Term (by 1985)

The goal in the medium term should be the transfer of full management authority to the N.W.T. Legislative Assembly for the management of all fisheries (including marine mammals--excepting those species previously noted) with a legislative mandate subject to the Fisheries Act. (This assumes the settlement of the various claims of the Native peoples, with the DFO negotiating most aspects of the allocation of responsibilities of the fisheries component since the GNWT has to date had limited authority in these negotiations). The remaining federal district management staff positions should be transferred to the GNWT. The reporting relationship of the GNWT should be directly to Ottawa, the N.W.T. being a federal region. The feasibility and practicability of delegation of further authority to local and regional institutions should be assessed.

The involvement of the GNWT in habitat management in the marine environment should be only to the extent necessary to the Northern interest in the maintenance of marine resources managed by and for N.W.T. residents. The control of environmental quality in the marine environment should remain under federal jurisdiction, including the provision of expertise in the fields of physical and biological oceanography.

Accordingly, some federal fisheries research should be based out of northern research stations. In addition, cooperative arrangements should be made between the two senior levels of government to encourage universities to conduct research on northern fisheries. Where possible coordinated research programs should be developed with other northern regions. Research priorities should be determined by those responsible for management, subject to a negotiated level of funding. Quality control would continue to be a function of the research agency.

(iii) Long Term (1990)

The long term goal should be to obtain full legislative authority by the GNWT for the management of the inland fishery, anadromous fish, and certain marine mammals in Canadian waters north of 60° (and in Hudson Bay) excluding offshore Yukon and Labrador. Cooperative management regimes should be implemented with the provinces and the Yukon sufficient to manage shared populations of fish and marine mammals. Federal involvement should be limited to coordination of provincial/territorial management regimes with the use of Federal legislation to resolve provincial/territorial disputes, in addition to Federal responsibilities for protection of endangered species and for research and inspection. In the case of joint management programs with Greenland, the Federal government should be involved to the same extent



that it is at present with international arrangements to manage polar bear--  
as communicators and coordinators of territorial and provincial management  
authorities.

## CHAPTER IV

### INLAND WATERS

#### 4.1 Legislative Review<sup>1</sup>

##### 4.1.1 *The Constitutional Arrangement*

In common law, the proprietary right in water springs from the ownership of lands. Therefore, in Canada, the proprietary right in inland waters<sup>2</sup> is with the Crown-in-right of the province except in the two Territories (and for limited federal crown lands in the provinces) where the proprietary right remains vested in the Crown-in-right of Canada.

Legislative jurisdiction for the management of inland waters is with the provincial governments; however, related legislative rights of the Federal Government may have considerable impact on water management. Laskin refers to "the pivot of exclusive provincial regulatory power in respect of water management" since in the provinces the federal interest in water management is not strictly in respect of water but rather in the fish in that water, or navigational passage through it, unlike the province which may actually regulate in respect of the water.<sup>3</sup>

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<sup>1</sup>The writer acknowledges his indebtedness to D. Zbeetnoff who provides a thorough review of the legislative aspects of Northern water management, and in particular the interest of the Native people, in this resource in "Water Management and Native Land Claims: Problems, Issues and Alternatives for the Canadian North," a practicum toward M.N.R.M. degree, Natural Resources Institute, University of Manitoba, 1979.

<sup>2</sup>The term inland water is meant to include any fresh (non-marine) water bodies. In common law, lands by definition include the waters thereon.

<sup>3</sup>Bora Laskin "Jurisdictional Framework for Water Management", Resources for Tomorrow Conference, *ibid.*, vol. 1, p. 215. The province also receives relevant legislation authority from the BNA Act, sections 92(13) "property and civil rights the province," 92(16) "matters of local and private nature in the province," and 92(10) "Local works and undertakings" excepting "inter-provincial works and works for the general advantage of Canada."

The Federal Government is involved in interjurisdictional water management programs through its mandate for "peace, order and good government"<sup>1</sup> and its spending authority which enables it to influence provincial action by financial contributions to programs.<sup>2</sup> In Canada, there is presently no recognition of a special interest of the Native people in inland waters. On the contrary, the Inuvialuit agreement-in-principle and the James Bay agreement not only do not recognize any special interest (proprietary or involvement in the management regime) but explicitly indicate no such interest will exist.

#### 4.1.2 *The General Scope of Federal and Territorial Legislation*

Parliament expresses the national interest in inland water resources through the Canada Water Act.<sup>3</sup> The Federal Government allows for (and controls) the use of all inland waters in the two Territories through the Northern Inland Waters Act<sup>4</sup> (NIWA) which is the equivalent of provincial water legislation. The Navigable Waters Protection Act<sup>5</sup> and the Canada Shipping Act<sup>6</sup> enable the Ministry of Transport to ensure that navigable

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<sup>1</sup>Introduction to section 91 of the BNA Act.

<sup>2</sup>Other enabling sections include s.91(2) "trade and commerce", s. 91(27) defence, s. 91(29) and 92(10) "local matters" and undertakings beyond the control of a single province, and section 91(1A) regarding "public property". Laskin, loc. cit.

<sup>3</sup>Canada Water Act, R.S.C. 1970, c. -5.

<sup>4</sup>Northern Inland Waters Act and Regulations SOR/72-382, and amendments SOR/74-60, SOR/75-421.

<sup>5</sup>R.S.C. 1970, c. N-19.

<sup>6</sup>R.S.C. 1970, c. S-9.

waters are not obstructed and also to control dumping of effluents from motor vessels. Other Federal legislation directly controls hazardous wastes in the environment<sup>1</sup> and therefore has a direct and indirect bearing on water quality. The Migratory Bird Sanctuary Regulations<sup>2</sup> prohibit the deposit of substances deleterious to migratory birds in Sanctuaries subject to regulations under any other Act of Parliament thereby, presumably, permitting the NIWA over-riding control.

Legislation of the Territorial Legislative Assembly takes measures to protect water quality through its legislative mandate for public health (i.e. the Public Health Ordinance, General Sanitation Regulations and Camp Sanitation Regulations , and the Environmental Protection Ordinance). In general, section 13(x) of the N.W.T. Act ("matters of a merely local or private nature in the Territories") enables the Assembly to legislate pollution control on the same basis that the equivalent section of the B.N.A. Act (s. 92(16)) grants this power to the provinces. In the Territories, however, the over-riding power of Federal legislation limits the value of any legislation of the N.W.T. Legislative Assembly in the field.

The two key pieces of Federal legislation for managing inland waters in the N.W.T. and water basins are described below.

The Canada Water Act sets minimum water quality standards for inland water in Canada (indirectly through effluent standards set by the EPS)

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<sup>1</sup>For example, the Environmental Contaminants Act, the Pest Control Products Act, Transport of Dangerous Foods Act, and the Clean Air Act.

<sup>2</sup>Migratory Bird Sanctuary Regulations, Section 35.

and enables the Inland Waters Directorate (IWD) of the DOE to participate in the planning of national and international water resource management programs.<sup>1</sup> More specifically, it enables the IWD to "develop national policies concerning water quality and water quantity, and national policies and functional direction for comprehensive river basin studies under the Canada Water Act," cooperating "with the provinces and United States in developing joint programs for water resource management, and flood damage reduction."<sup>2</sup> A further federal interest in water management exists for federal lands, in particular in National Parks in Western Canada. The provinces are not permitted to restrict the flow of water to the Parks below a level necessary to preserve the scenic beauty of the Park<sup>3</sup> according to the BNA Act and the Resource Transfer Agreements with the Western provinces.

#### 4.1.3 *The Northern Inland Waters Act*

The Northern Inland Waters Act (NIWA) specifically reserves the proprietary right in Northern waters with the Crown-in-right of Canada subject to any previous commitments made under the Dominion Water Power Act. The NIWA reserves riparian rights but exempts from control the use of water for domestic purposes by land owners adjoining water bodies, and the emergency use of water. The Act enables DINA to control the discharge of effluents subject to minimum standards set under the Canada Water Act. It also enables the Minister of INA, with the approval of the Governor-in-Council, and subject to an agreement under the Canada Water Act, to enter

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<sup>1</sup>Canada, Organization of Government of Canada, *ibid.*, para. 1846.

<sup>2</sup>Op. cit., para. 1846, 1948.

<sup>3</sup>Zbeetnoff, op. cit., p. 26.

into agreements with the provinces to jointly manage shared water basins. (In essence, under the Canada Water Act, it would appear that the Minister of DOE treats the Minister of INA as a provincial resources Minister.)

The NIWA allows for public participation in the management of water through the membership to the N.W.T. Water Board and the ability of the Board to call public hearings concerning water use whenever the Board believes it is in the public interest. The Board shall hold public hearings when considering new licences, licence amendments or when considering cancelling a licence unless there is no interest in a hearing by the public or applicant. The Board is given wide terms of reference under the Act to:

provide for the conservation, development and utilization of the water resources of the ... (N.W.T.) ... in a manner that will provide the optimum benefit therefrom for all Canadians and for the residents of the ... (N.W.T.) ... in particular.

The Board is granted all the powers for a Commissioner under Part I of the Inquiries Act and provision is made for technical support staff to the Board from within the Federal public service.

The conditions the Board develops for the licences for water use must apply the Canada Water Act regulations as minimum standards; be subject to section 33(4) of the Fisheries Act; and, adhere to the minimum standards of the Regulations made pursuant to the NIWA.<sup>2</sup> The Board issues the water licence, although the Minister of DINA is ultimately responsible

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<sup>1</sup>Northern Inland Waters Act, section 9.

<sup>2</sup>NIWA, Section 26.

for approving the licence. The N.W.T. Legislative Assembly has recommended the appointment of members to the Board but has not passed legislation intended to directly or indirectly manage water.

The NIWA enables the Governor-in-Council to make regulations that, in summary:

- (i) set procedures for the licence application review process;
- (ii) require information for licence applications;
- (iii) establish water management areas, and determine the set priorities among the classes of uses of water based on the recommendations of the Minister and the Board;
- (iv) establish water quality standards in water management areas;
- (v) authorize certain types and amounts of water use without a licence (i.e. water use authorization); and,
- (vi) include other matters required to meet the purposes of the Act.

The relationship between land management and water management is recognized by the NIWA. The Act enables the Minister to expropriate private lands on the recommendation of the Board for a water licensee requiring such lands and the Governor-in-Council may reserve territorial lands to protect water resources, or to protect the lands and adjacent waters for use in the public interest. In addition, the broad informational requirements of section 11(2) permit consideration of the effects of proposed water use on the management of other resources. The Regulations also requires that domestic uses of water meet the waste water requirements of the Public Health Ordinance.<sup>1</sup> Use of the field staff of other

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<sup>1</sup>Northern Inland Waters Act, Section 16. Presumably the N.W.T. Environmental Protection Ordinance is not mentioned because it is relatively new and has not as yet been used to apply water effluent controls.

agenices (Territorial and Federal) is possible since the Minister may, according to section 29 appoint "any qualified person as an inspector or analyst for the purposes of the Act."

In summary, the NIWA, enables DINA to manage inland waters in the N.W.T. in essentially the same manner as a province. Public participation in water management is encouraged through administrative mechanisms (the Board) as well as through the hearings for the review of applications to use water or discharge wastes into water. The act also enables the integration of resource management programs and participation in watershed management. The over-riding Federal jurisdiction for setting minimum standards of water quality, the extra-territorial effect of water management, and the maintenance of navigable waters are maintained. It should be noted however, that after a water licence has been issued, the licensee, if acting in accordance with his licence conditions, probably is not subject to prosecution under the Fisheries Act because of the participation (and presumably concurrence) of a DFO representative in the issuance of the licence.<sup>1</sup>

#### 4.2 Water Management - Description and Assessment

##### 4.2.1 DINA - Water Resources Division

The Water Resources Division of the Northern Environment Branch of DINA is responsible for the:

planning, conservation and management of inland water resources "in the N.W.T. and" provides for the overall policy framework, program planning, surveys, studies, inventories, contingency

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<sup>1</sup>Darrell M. Zbeetnoff, "Northern Inland Water Management in the Canadian North," an unpublished paper, March, 1979. Zbeetnoff sites the example of Giant Yellowknife Mines where the court ruled that DFO was bound by the decision of the Board (of which it was a member) and it could not successfully prosecute the mine through the Fisheries Act.



plans, analysis and assessment for major water resources projects and short and long term planning; inter-governmental co-ordination on water programs and projects; and policy and legal interpretations for application and for enforcement of legislation.<sup>1</sup>

The role of the Water Resources Division in Ottawa is to recommend water management policy to the Minister, review and recommend legislation, maintain liaison with the IWD of the DOE which is responsible for national water programs, and coordinate water management policies and planning at the Ottawa level with other northern resource management units.<sup>2</sup> In practice, the Division also provides a check to the N.W.T. Water Board by reviewing the minutes of Board meetings and the licences recommended by the Board for the Minister's approval.

There is no published policy framework or criteria for water management in the N.W.T. This may in part be due to the limited competition for water use.

The relatively pristine water systems in the N.W.T., without the entrenched demands of huge urban and industrial users, present an opportunity for water resource and management planning that is perhaps unique in North America. Unfortunately, the current lack of integrated land and water management planning<sup>3</sup> will continue to commit the water resource to the first applicant to request it regardless of the optimal long

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<sup>1</sup>Zbeetnoff, practicum op. cit., p. 8 citing the DINA - Northern Affairs Activity Program Forecast (p. 91) for the fiscal year 1979/80.

<sup>2</sup>Mr. R. Hornal, Regional Director, DINA, Yellowknife, pers. comm. August 29, 1978.

<sup>3</sup>The embryonic effort at interjurisdictional watershed planning coordinated by DOE is referred to in section 4.2.3.

term use of the resource.<sup>1</sup>

The Water Resources Division (at headquarters) is represented on the Interdepartmental Environmental Review Committee (ERC) that is chaired by DINA in Ottawa. The Committee<sup>2</sup> provides a format for the initial review of request for approval-in-principle<sup>3</sup> for major proposals for development. This process enables consideration (and integration) of matters related to water management.

The Water Resources Division at region is responsible for the operational aspects of the program. This includes administration of authorizing water use that is too limited to come before the Board for formal hearings and licence applications (in support of the Board and Technical Committee);

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<sup>1</sup>For example, in recognition of this problem a "Public Meeting and Seminar on Water Resources Planning in the Yukon" was sponsored in December, 1978 by the Yukon Conservation Society, Canadian Arctic Resources Committee and the Westwater Research Centre of the University of British Columbia. Draft Seminar outline, (I.K. Fox), October 2, 1978. No such preliminary discussions has occurred in the N.W.T.

<sup>2</sup>The membership of the Committee also includes the Oil and Gas, Land Management, and Environment Divisions of DINA as well as representatives of the Regional Headquarters (N.W.T. and Yukon). The DOE also provides representatives, including EPS and the Environmental Management Service. The Fisheries and Marine Service is also represented. In addition, a maximum of four other representatives are permitted to participate in the review of a specific resource exploration or development program.

<sup>3</sup>The Committee also recommends environmental research priorities, advice on the adequacy and efficiency of regulations and guidelines within DINA, and is a format for liaison with other departments on issues relevant to northern resource management. "Environmental Review Committee - Terms of Reference". Department of Indian and Northern Affairs file, Yellowknife. Page 1 - "Objectives".

financial support to the Board; monitoring and enforcement of water authorizations and licences; and operational coordination of programs related to water management and pollution control.<sup>1</sup>

In general terms this Division at the (N.W.T.) Region seems to operate efficiently in attaining its operational objectives and seems adequately staffed.<sup>2</sup> With proper coordination and training, other agencies could adequately assist the Division with its monitoring and surveillance program.

#### 4.2.2 *The N.W.T. Water Board and the Technical Committee*

The N.W.T. Water Board is located in Yellowknife as required by statute. The Board is to consist of at least one nominee from each of the Federal departments most closely concerned with water management and a minimum of three persons named by the Commissioner-in-Council. Initially, the Board consisted of six representatives of Federal departments and the three nominees of the Commissioner-in-Council. This ratio has been reversed. The selection of the chairman and vice-chairman is the prerogative of the Minister of DINA. The Board presently consists of 4 private citizens and

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<sup>1</sup>DINA - "N.W.T. Region Fiscal Forecast - Summary of 1980/81 Sub-activity Elements" for water management, an unpublished document. The forecasted 1980/81 budget at region (N.W.T.) is 21 permanent positions and a total operating budget of \$1,253,000 (including personnel costs) up from a 1979/80 budget of 16 positions and \$808,111. Department of Indian and Northern Affairs monthly budget summary for 1978/79 Water Management - N.W.T.; and, Department of Indian Affairs and Northern Development - N.W.T. Region, Northern Affairs Program Organizational chart, August 16, 1977.

<sup>2</sup>This assumption is necessitated by a lack of anything in the literature to the contrary (the references relate only to policy issues) and the writer's subjective opinion based on personal exposure to the Regional administrative and technical operations of Regional program. Any operational shortcomings are likely to be fairly minor and of an administrative nature. One exception to this existed in the past where the Division was unable, due to a lack of staff, to sample effluent levels at such isolated places as the Cantung mine. Remarkably, the Division relied on the mines to collect water samples for the Department. This practice has since been discontinued. For references on water management in the Territories, see W. MacLeod, Water Management in the Canadian North, Ottawa, Canadian Arctic Resources Committee, 1977.

1 representative of each of DOE (EPS), the Federal Department of National Health and Welfare, and DINA (the Assistant Director of Renewable Resources). The chairman is a private citizen and the vice chairman is a GNWT Regional Director.

The Board has been supported by a Technical Committee which consists of one representative appointed for each member of the Board in addition to there being observers as required. The Board is presently considering several options to reorganize the Technical Committee which will involve a series of specialist committees each to be chaired by a member of the Board.<sup>1</sup> The Board is also considering having technical support staff attached directly to it to provide more administrative support and to provide the non-government members of the Board with independent technical advice (i.e. free of departmental ties) to permit them to participate more effectively on the Board.

The Board appears to be dynamic and innovative. It represents a cross-section of Northern perspectives and it incorporates the views, technical expertise and policies of the participating Territorial and Federal departments as well. The independence of the Board (particularly with a non-governmental chairman) has aided the credibility of the Board with the public and the licence applicants. The credibility of the Board is demonstrated by the fact that the Minister inevitably approves the rulings of the Board.<sup>2</sup>

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<sup>1</sup>The committees would specialize to review the following broad categories of applications for water use - municipal, mining, hydro-electric, hydro-carbon, and water engineering projects. W. J. Bryant "N.W.T. Water Board Discussion Paper on Alternatives for Board Technical Advisory Support," N.W.T. Water Board files, September, 1978.

<sup>2</sup>For example, recently in the case of the Board's decision to renew the water licence for Giant and Con Mines in Yellowknife, the Minister (on advice of Departmental staff in Ottawa) requested the Board to review its decision, in effect questioning the Board's decision. The Board did not change its position and it prevailed. The Minister complied with its recommendation. Pers. comm. Mr. R. Hornal, loc. cit.

#### 4.2.3 *Programs of the Department of Environment*

The Department of Environment serves both national and provincial roles in the N.W.T. that relate to the management of inland waters. The IWD provides a national service in support of water management in the north while the EPS contributes to both national and provincial type tasks relating to pollution control.

Nationally, the EPS serves "as the point of contact for the public and other government departments with Environment Canada on matters relating to the implementation of environmental protection matters."<sup>1</sup> In the provinces, the role of the EPS is to establish and maintain minimum national air and water quality standards in general, and for federal works in particular. The EPS accomplishes this primarily by acting as an advisor to the provinces. Toward that end, the EPS maintains a broad range of professional expertise, organizes pollution control enforcement training programs, and provides incentives such as research for technological development for pollution abatement. It sets air quality objectives under the Clean Air Act and coordinates the implementation of all federal legislation (mainly the Fisheries Act) that can be used to give effect to water quality objectives.<sup>2</sup>

The EPS is presently developing regulations pursuant to the Environmental Contaminants Act which will deal with the control of specific

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<sup>1</sup>A.C.N.D., op. cit., p. 69.

<sup>2</sup>For a thorough review of EPS national objectives, goals, and targets, see "EPS 1977-78 Program - EPS Objectives, Goals and Targets", August 30, 1977. This internal document provides a complete listing of EPS objectives, program objectives, 1980 program goals and EPS 1977-78 program targets.

chemicals. The Service plans to implement appropriate enforcement, surveillance and monitoring programs. The Service's waste management program is concerned with the effects of such materials on human health and the environment.

In the N.W.T., in addition to the usual EPS national role, the Service acts as a provincial environmental protection agency (i.e. the N.W.T. is treated as a "federal work")<sup>1</sup>. There is considerable overlap between the role that the EPS perceives itself as having, that which DINA carries out as the agency responsible for water management, and the embryonic environmental protection role of the GNWT.<sup>2</sup> Although this confusion of roles has caused a certain amount of interdepartmental infighting, the EPS has nevertheless provided valuable expertise at its District level (Yellowknife) and access to expertise and technical support at their Regional (Edmonton) and Ottawa headquarters levels. The EPS has ensured a higher level of pollution control than would otherwise be the case in the N.W.T.

The expertise of the EPS could be more effectively used to meet resource management objectives in the North if the Service were directed toward integrated and resource management objectives rather than independent

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<sup>1</sup>The N.W.T. District Director of EPS in the fiscal year 1977/78 has a staff of 22, all located in Yellowknife. Approximately 20% of the resources of the Service are presently directed toward provincial type programs in the North. W. E. Bryant, Director, N.W.T. District, Dept. of the Environment, Yellowknife, pers. comm. July, 1979.

<sup>2</sup>For example, an EPS objective relating to the Ecological Impact control (Prevention) Program is "to ensure that new activities initiated, funded by, or under the jurisdiction of the Federal Government are environmentally acceptable." ("EPS 1977-78 Program ...", *ibid.*) This incorrectly implies essentially a pre-eminent role in resource management in the North. A further example of overlap is the apparent EPS role in response to "environmental emergencies."

Service and Department criteria and objectives for resource management and environmental quality. Since the national objectives are fairly broad, considerable latitude is used in applying these standards in the N.W.T. Although the latitude is necessary given the different characteristics of the Northern environment, the fine tuning of EPS programs must be responsive to the requirements of overall resource management policies and strategies determined by a government responsible to Northern residents.

The program of the Inland Waters Directorate is purely national in scope. The programs of the IWD include: planning and implementation of plans for river basins; setting of water quality objectives; flood damage reduction; regulation and interjurisdictional allocation of water; forecasting of water supply and demand; and, research on water quality and socio-economic factors related to water management.<sup>1</sup> The main role of the IWD staff in the N.W.T. is to maintain a data collection network. In the N.W.T. the IWD also provides financial support to, and coordination of, an interjurisdictional baseline study of the Mackenzie Water Basin. The IWD Regional office in Regina has provided this service through an intergovernmental agreement (enabled by the Canada Water Act) between the Federal Government (DOE and DINA), the two Territorial Governments, and the Provincial governments of Alberta, Saskatchewan and British Columbia which share the Mackenzie Basin.<sup>2</sup> The Mackenzie River Basin Committee consists

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<sup>1</sup>A.C.N.D., op. cit., pp. 76, 77.

<sup>2</sup>The Federal Departments of Environment and Transport pay 50% of the studies while the contributions of the provincial contributions are prorated based on the relative area of the watershed in each jurisdiction. The DINA is committed to pay 26% of this study because of its jurisdiction for the NWT and Yukon portions of the watershed. The total cost of the study is \$1,600,000 over five years. Mackenzie River Basin Committee, "Study Program 1978 - 1979", Inland Waters Directorate, Regina, Saskatchewan.

of senior officials of the various Federal and Territorial departments. Unfortunately these studies are not related to complimentary baseline studies for land management planning.

In summary, management of inland waters of the N.W.T. occurs through a series of individual regulatory decisions, in a policy vacuum and without the benefit of integrated resource planning. Fortunately the commitments of water use to date are limited; however, since the present system recognizes the prior rights of existing water users, it is imperative that water management planning occur, and that planning take place within a broader framework for regional resource development planning. This is particularly important because of large scale proposals for altering flow regimes of the Slave and Liard Rivers by the provinces of Alberta and British Columbia. Because of the importance of water resources the inevitable increasing rate of demand for large scale use of these resources it is important that the Basin be proposed for optimal use.

#### 4.3 Interests in Water Management

##### 4.3.1 *Interests - A Legal Interpretation*

Following is a summary of the legislative rights of the two senior levels of government based on the review in section 4.1. The Federal Government may:

- (i) Establish minimum standards for water quality in cooperation with the provinces and territories;
- (ii) Coordinate the management of interprovincial water-basins; negotiate international agreements to manage boundary water; and, regulate interprovincial works;
- (iii) Protect fish habitat;
- (iv) Maintain access to navigable waters; and,
- (v) In certain cases, ensure the adequacy of water quantity (and quality) entering national parks.



The Provincial/Territorial Governments may:

- (i) Allocate water use and receive the benefits therefrom;
- (ii) Manage water quality within national standards;
- (iii) Manage water to meet provincial social and economic objectives (including the integration of water management with other resource management programs and thereby prescribe environmental quality).

Local governments may provide recommendations pertaining to water use for domestic and commercial purposes as well as comment on water quality standards in general as an integral part of environmental quality.

#### 4.3.2 *Characteristics of the Resource and Other Factors as Considerations in Determining Roles in Water Management*

From the perspective of a water management planner, the ideal unit for a water management area is a water basin or drainage. However, this determination of the management area does not usually focus sufficiently on uses or users of the resource. Bourer<sup>1</sup> suggests that the characteristics which should influence the organizational structure necessary to manage water fall into three broad inter-related categories: physical, technological, and economic. He raises the following considerations which are relevant to the assessment of options for an approach to managing inland waters in the N.W.T.

- (i) A major consideration should be the proposed products of the water management system (such as hydro-electric power) which will vary over time. Since the geographical extent of the demand for these products will vary with economic conditions, the areal extent of the administrative unit should not necessarily be a watershed (or drainage). The uncertainty of economic and

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<sup>1</sup>Blair T. Bourer, "Some Physical, Technological, and Economic Characteristics of Water and Water Resources systems: Implications for Administration", Natural Resources Journal, Vol. 3, No. 2, October 1963, pp. 215-227.

social conditions in the N.W.T. suggests whatever size of unit is chosen initially that it should permit a planning process that is sufficiently flexible that it can respond to changing conditions. These social and economic conditions do not relate to the geographical extent of watersheds.

- (ii) There are economies of scale in planning and managing water resources. The sparse population and lack of industrialization in the North, and the consequent limited management requirement (except for planning) suggests that at this time sub-territorial management of water cannot be justified on economic grounds because of the expertise and administrative structures required. Indeed even at the territorial level there should probably be a continued reliance on the Federal agencies in the South for highly specialized expertise.
- (iii) The requirements of integrated resource planning (Bourer refers to complimentary uses)<sup>1</sup> suggest the more varied the interests of the administrative agency in the products of the system, the greater are the possibilities for taking advantage of these complimentary uses. This argues for the inclusion of water management with the responsibilities of a Department of Renewable Resources. Since the other interdependent renewable resources will be administered by the GNWT, the responsibility for Water Management should be transferred to it as well.
- (iv) Bourer argues that all aspects of the management of the resource should be within a single agency for reasons of efficiency and effectiveness. This is presently the case with DINA and would be within the GNWT if there is a complete transfer of responsibility and fiscal resources. The Water Board would not be an anomaly if it continues to serve the regulative or adjudicative function within Departmental policy.
- (v) Since some products of the water system are non-marketable and common goods management decisions must reflect value judgements which require political decisions. This is partly accomplished by the membership of the Water Board and would be further advanced by having the Administration and Board reporting to the GNWT Minister of Renewable Resource after legislature and proprietary rights in renewable resources have been transferred to the N.W.T. Legislative Assembly.

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<sup>1</sup>For a discussion of the advantages of an integrated approach and complimentary uses of water resources see Larkin, Resources for Tomorrow Conferences, op. cit., and K. Kristjanson and W. R. D. Sewell, "Water Management Problems and Issues in Canada", *ibid.*, Vol. 1, pp. 205-210.

#### 4.3.3 *The N.W.T. Water Board's View - An Analysis*

The Water Board, in a recent submission<sup>1</sup> to the Special Representative, supported the proposed transfer of the responsibility for renewable resources - including water - to the N.W.T. Legislative Assembly. The Board recommended that the transfer of responsibility for water management occur in stages through amendments to the Northern Inland Waters Act. It suggested that the Water Resources Section of DINA and the appropriate administrative functions be transferred to the GNWT. The Board recommended that when the Territorial Executive Committee has comparable powers to a provincial cabinet the Board should report to the appropriate Territorial Minister and that responsibility for water management should be transferred to the Legislative Assembly, with repeal of the Federal legislation. In the interim it suggested that the Water Resources Section staff in Ottawa not be permitted to encroach on the authority of the Board or to duplicate its work. The Board indicated its intention to look into the possibility of becoming involved in the comprehensive planning and policy development roles; to respond to inter-jurisdictional issues; and, to establish an administrative and technical staff reporting directly to it.

The phased transfer of responsibilities recommended by the Board is generally consistent with the recommendations in this study for the transfer of other resources. Consistency between the management of resources

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<sup>1</sup>Northwest Territories Water Board, "Submission by the Northwest Territories Water Board to the Special Representative for Constitutional Development in the Northwest Territories," June, 1979.

is important to facilitate coordination of program delivery. I assume the Board's time frame for the administrative transfer is immediate. Whether the Board's licencing decisions are approved by the Minister of DINA (as it suggests) during the interim period or by the Commissioner is largely symbolic matter.<sup>1</sup> A more progressive step would be for a change in the Northern Inland Waters Act to authorize the Commissioner to approve the licences.

The Board's request that the interference of the "shadow Board" in Ottawa be curbed is logical since hopefully the federal Minister's future involvement would be limited to political (rather than technical) considerations. The positions presently in both the Water Resources Section and the Northern Economic Planning Section in Ottawa could be transferred to the GNWT to add a badly needed planning component to the water resources administration.

The Board's desire to get control of the issuance of the water authorizations, and the handling of licence applications, is consistent with the regulatory function of the board. Toward this end, the Board will need administrative support staff and professional staff. The Board, and those presently administering the water management program, are in the best position to judge the fiscal and personnel requirements.

It is not logical that the Board become responsible for "comprehensive policy and planning" and interjurisdictional matters. It is a responsibility of government to determine an overall system of priorities for the use of

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<sup>1</sup>The Commissioner functions with the approval of the Minister of DINA.

water systems and to ultimately be responsible for the management<sup>1</sup> of water within overall policies and priorities for economic and social development. This must be reflected in a system of resource allocation within a region of which water is only one component. To do otherwise would in effect grant the Board the authority to indirectly manage the other inter-related resources. This would create policy by default which is the problem that presently exists. The Board must plan and adjudicate within overall governmental resource management strategies.

Similarly, it is a government responsibility to negotiate with other governments (Federal, Provincial and Territorial) for the management of inter-jurisdictional watersheds. Resource planning of the Board then should occur within this framework and be largely operational in nature. Similarly it should develop strategies to meet resource use priorities and water quality objectives within a framework of increasing use of the resource and cumulative impacts. Accordingly, it may recommend general regulative mechanisms and such tools as financial incentives (or disincentives) to meet water quantity and quality objectives as well as prescribe specific controls through its licencing regulative role within general resource management guidelines.

The Board suggests that the determining factor in the granting of full provincial type legislative authority for water management to the Territorial Legislative Assembly, should be the attainment of full cabinet type responsibilities by an Executive Committee which is responsible to the

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<sup>1</sup> Similar to other resources, the term water management includes the collection of data, research, planning, design and construction of engineering structures to regulate water flow, establishing and enforcing water quality standards, monitoring water quality, and managing water use. The Board's key responsibility, ruling on applications for water use (and the related administration and operational planning), is a part of the management process, not the whole process.

Legislative Assembly. Presumably this criterion is related to the settlement of Native claims, with the latter being a pre-requisite to the former. If so, this is consistent with the recommendations for scheduling of full proprietary and legislative changes recommended in this study for other resources.

#### 4.4 Recommendations

The recommendations that follow are based on the above considerations in water management, the assessment of the legislation and programs, the characteristics of the resource and resource uses, and the review of the Boards' views. To a large extent what follows is a condensation and structuring of recommendations made throughout the chapter.

In practical terms, after the settlement of Native claims,<sup>1</sup> the Federal Government should have no ongoing control of the management of inland waters in the N.W.T. Parliament will retain the tools to maintain minimum national standards of water quality as it does elsewhere in Canada. It is not feasible to devolve or decentralize any aspects of water management to the local or regional governments for the foreseeable future. For this reason the N.W.T. Water Board should contain individuals from all regions of the N.W.T.

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<sup>1</sup>It is of interest to note that there is no other local or regional user of inland waters downstream from the N.W.T. The minimum national standards will ensure adequate quality of fresh water reaching the Arctic Ocean and Hudson Bay.

#### 4.4.1 *Immediate Changes*

- (i) The responsibility for the administration (including planning, policy development, monitoring and enforcement) of inland waters should be delegated to the GNWT. The proprietary and legislative rights and responsibilities should remain primarily Federal as they are at present. The NWT Water Board should report to the Commissioner (with appropriate change to the NIWA and Regulations) who should have the authority to grant formal approval to the licences issued by the Board. (The Minister of DINA can override the Commissioner's authority in the interim period).
- (ii) A single Water Board should: continue to review applications and water licences for all areas in the N.W.T.; assume control of the water use authorization process; and develop policies and strategies within overall water use and quality criteria and policies determined by the Commissioner.
- (iii) To give effect to this arrangement the present staff of the Water Resources Section of the DINA regional office and the operating budget should be transferred to a GNWT department of Renewable Resources. A planning section should be created within this Territorial Division with the positions and budget presently in the relevant Northern Affairs program in Ottawa.
- (iv) Provision of adequate administrative and professional positions to support the Board will be necessary. This can likely be accommodated by the existing budget and manpower resources in DINA.
- (v) The expertise of the EPS must continue to be available to the GNWT. However, the EPS should be directed toward resource management goals that are determined within the Territories (subject to the minimum national standards), and that the present areas of overlapping roles be sorted out. Toward this end a contractual agreement should be negotiated between the Commissioner (presumably involving the Minister of DINA) with the Minister of DOE to ensure the continued level of service of the EPS in the North for at least a five year period to meet national and Territorial objectives. Standards more stringent than national targets should be subject to policy established by the GNWT. Territorial authorities should take more advantage of the expertise (such as in technology development and economic research related to regulative mechanisms) available from EPS at the Regional and Headquarter levels.

- (iv) A similar contractual agreement should be reached with the IWD to ensure the continuance of the Directorate's inventory and monitoring program in the N.W.T., and to more fully take advantage of the technical and financial assistance available from the DOE for water management planning. The GNWT should continue to be represented on both the Mackenzie Basin Task Force and Working Group for such agreements.
- (vii) An agreement should be negotiated with the DOE so that the Federal Environmental Assessment and Review Process will apply in the North to water projects in the same manner that has been recommended for land use in section 2.6.
- (viii) A mechanism should be created to ensure there is a comprehensive and coordinated response by the Lands Division (on land use permits and tenure agreements) and the Water Board, to applications for resource development. The N.W.T. Resource Development Committee should provide an appropriate policy framework.
- (ix) The interdepartmental Environmental Review Committee (ERC) in Ottawa should be kept informed of approved-in-principle reviews conducted by a senior committee in Yellowknife. The Yellowknife Committee should be the focal point for industry/government contact. ERC should be the forum for liaison for the residual roles of the Federal Government in Ottawa so that adequate information and advice on policy matters is available to the Minister of DINA. The primary residual role of the ERC would relate to regulation of exploration and development in the offshore marine environment.
- (x) An Environmental Protection Division should be created within the GNWT consisting of perhaps a senior manager and several support positions to provide Territorial coordination for monitoring programs and assessment of pollution control and to coordinate this program with the remaining tasks being carried out by EPS. This unit should be located within the Department of Renewable Resources.<sup>1</sup>

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<sup>1</sup>Spinks suggested that the effects of pollution are related to the human health, effects on animal life, effect on further industrial processes and the effect on persons living nearby (i.e. aesthetic concerns). (J.W.T. Spinks, "Achieving Effective Pollution Control", a workshop on, Resources for Tomorrow Conference, Vol. 3, op. cit., p. 161). These concerns suggest the environmental protection unit could logically be placed with either the departmental protection unit for public health or the management of renewable resources. The latter is recommended since most of the contact of the unit will be with the interdisciplinary committees of the Department of Renewable Resources.



- (xi) The Territorial Environmental Protection Ordinance and Regulations should be fleshed out as required to enable management of pollutants and environmental hazards in a more restrictive manner than enabled by Federal legislation. (It is doubtful that there is any advantage to updating the Territorial health and sanitation legislation at this time).

4.4.2 *Medium to Long Term Changes - Subsequent to the Settlement of Native Claims*

The Territorial Legislative Assembly should request normal provincial proprietary and legislative rights for water resources in each region of the N.W.T. as the respective Native claims are settled. This will require:

- (i) The withdrawal of the Northern Inland Waters Act and DINA from the Region and the creation of Territorial legislation which should be modelled after the N.I.W.A.
- (ii) It will be necessary to promulgate and exercise a fully fleshed out Territorial environmental protection legislation. It may be desirable to avoid overlap with health regulations. A fully functional environmental protection unit will be required.
- (iii) The option of regional water boards should be reviewed.

## CHAPTER V

### WILDLIFE

The format for the review of the wildlife component of this study is the same as for the other resources, however, the emphasis is different since the N.W.T. Legislative Assembly has responsibility for game<sup>1</sup> management. Accordingly, the emphasis is on the degree to which responsibilities can be further devolved or decentralized to local or regional institutions and structures. A further consideration is the changing roles of the Federal and Provincial Governments in wildlife management, and the effect of these trends on the division of responsibilities for wildlife management in the North.

#### 5.1 Legislative Review

The legislative jurisdiction for migratory birds and fish has been the subject of considerable litigation resulting in a fairly clear understanding of the respective responsibilities of the Federal and Provincial Governments. Although the constitutional basis of that relationship is different<sup>2</sup>, the responsibilities of the two levels of government for migratory birds is similar to that previously described in Chapter II for inland fisheries. The respective legislative rights of the two levels

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<sup>1</sup>Game, for the purposes of this paper, is defined in Section 1.6 as all wildlife excepting migratory birds. The GNWT may in the future wish to assume a Provincial type role in the management of migratory birds with the Canadian Wildlife Service.

<sup>2</sup>Parliament has the exclusive legislative jurisdiction for fisheries by Section 91(12) of the B.N.A. Act while in the case of migratory birds Federal jurisdiction was obtained through the Federal treaty making power prior to the Statute of Westminster which precludes a change in jurisdiction resulting from treaties after 1931.

of government for game is far less clear and is currently of considerable interest to game managers in both Provincial and Federal agencies.<sup>1</sup>

The lack of case law relating to jurisdiction over game in Canada (except in the case of the special rights of the Native people) leaves only general principles in common-law and some indirectly related case law that can be used to predict what may eventually be the division of labour between the two senior levels of government. This is speculated on below. It should be noted that there may be a considerable difference between the legislative rights of the Federal Government and the degree to which that Government actually chooses to exercise those rights in the field of game management.<sup>2</sup>

#### 5.1.1 *Proprietary Rights in Wildlife*

The English common-law position on ownership of wildlife may be summarized as follows:

"no one owns wildlife in the natural state. The only property right that one can have is a qualified one viz the right to reduce wildlife to one's possession. This right, at common-law, belongs to the owner of the land. The qualified right in property in wildlife is, in substance, an exclusive right to reduce the wildlife into one's possession."<sup>3</sup>

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<sup>1</sup>"Ownership" of game and the relationship of this to legislative responsibilities were discussed during the 1978 Federal-Provincial Wildlife Conference in Quebec City. The respective legislative responsibilities of the two levels of government were discussed during the 1979 Federal-Provincial Wildlife Conference.

<sup>2</sup>Given the current sensitivity surrounding Provincial rights in the area of natural resources the Federal Government may well choose not to insert itself into the field of game management, or to do so in a cooperative fashion rather than arbitrarily.

<sup>3</sup>Correspondence from Mr. Alick Ryder (Cameron, Brewin and Scott - Barristers and Solicitors) to Dr. N. M. Simmons, Superintendent, Fish and Wildlife Service, Government of the Northwest Territories, 16 June 1978.

By extension in Canada the public landowner, usually the Provincial Government, has the initial qualified proprietary right in wildlife. This is reflected in the wildlife management legislation of some provinces where in the province specifically identifies the initial property right for wild animals as being vested in the Crown-in-right of the province.<sup>1</sup> The initial ownership of wildlife on Federal crown land is with the Crown-in-right of Canada, which is the case in the N.W.T.<sup>2</sup> Federal ownership of land however does not bring with it exclusive legislation jurisdiction for wildlife.

#### 5.1.2 *Legislative Rights in Game - General*

Game management in Southern Canada is generally accepted as a provincial legislative responsibility.<sup>3</sup> In 1886 Judge Killam<sup>4</sup> ruled that game must be within the legislative competence of the province because that responsibility was granted in the Northwest Territories in 1875<sup>5</sup> despite

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<sup>1</sup>For example, the Manitoba Wildlife Act R.S.M. 1970 c. W-140 s.7.

<sup>2</sup>The ownership of game in the Yukon is explicitly vested in the Crown-in-right of Canada. Yukon Game Ordinance R.O. 1971 c. g-1. No mention is made of property rights in the recent N.W.T. Wildlife Ordinance - perhaps for political reasons.

<sup>3</sup>The responsibility is generally thought to fall within two heads of the B.N.A. Act - s. 92(13) "Property and Civil Rights in the Province" and s. 92(16) "Generally all Matters of Merely a Local or Private Nature".

<sup>4</sup>Queen v. Robertson, Manitoba Court of Appeal (October 5, 1886) - Reference cited in correspondence from E. J. Psikla, Director, Field Services, Enforcement, Fish and Wildlife Division, Government of Alberta to G. R. Kerr, Assistant Deputy Minister, same Department. 10 January, 1978.

<sup>5</sup>N.W.T. Act, 38 Vic., c. 49, s.7.

the fact that the Northwest Council clearly had less responsibility than a provincial legislature. The same is true today of the present N.W.T. Act.<sup>1</sup> Apparently no rulings since have eroded the provincial legislative rights in this field (except in respect to "Indians and lands reserved for Indians"), while numerous decisions have confirmed the Killam judgement.

There are, however, a number of factors which suggest that Parliament may directly and indirectly influence game management through its legislative rights. The most likely areas where Federal intrusion may be possible are the protection of endangered species; management game populations shared between provinces or internationally (or where laws having extra-territorial effect are required); game management on land "owned" by the Federal Government and in offshore areas; and, to legislate matters relevant to the usufructuary right of the Native people, and for Native people.

### 5.1.3 *Endangered Species*

Under the Federal power for "peace, order and good government", an argument can be made for there being a Federal role in the management of endangered species as a "national concern" which permits a sustained response by Parliament.<sup>2</sup> Constitutionally, a national concern is essentially anything Parliament declares it to be.

The concept of endangered species may not have been understood in

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<sup>1</sup> R.S.C. 1970 c. 48 section 13(q).

<sup>2</sup> In contrast to a stop gap effort permitted under the "emergency concern" suggested by Lederman's analysis. Hogg, op. cit., p. 264.

Killam's time (1886); however, it was understood as long ago as in 1924 when the Federal Government acted to prohibit the killing of muskoxen in the N.W.T. (including by Indians or Inuit) by declaring it a species in danger of becoming extinct.<sup>1</sup> Similar action has been taken in regard to wood bison (1964) and polar bear (1967) to provide control over hunting by Native people of these species on unoccupied crown land. A progressive interpretation of our understanding (and the general public acceptance) of the concept of endangered species would suggest the "duality" of game management despite Killam's ruling.

If the Federal Government acts in the national interest to protect endangered species, the underlying Provincial proprietary rights would not be affected but the provincial legislation would apply only to the extent that it would be consistent with the Federal legislation.

The same objectives could, in most cases, be accomplished by the Federal Government exercising its spending authority to in effect buy compliance.<sup>2</sup>

The Federal Government has not taken strong measures in Canada to protect endangered species that are otherwise under provincial jurisdiction. The Canada Wildlife Act<sup>3</sup> is the only relevant enabling legislation and it relies essentially on cooperative measures with the provinces. The timidity of the Federal Government may be based on lack of political

<sup>1</sup>By Federal order-in-council P.C.555 Ottawa, April 8, 1924. It is recognized that the jurisdictional position of the (Federal) Territories are different than the provinces. It is important to note that this order-in-council overrides the usufructuary rights guaranteed to the Native people by treaty.

<sup>2</sup>An aspect of section 91(a) of the B.N.A. Act, the Federal spending authority permits the Federal Government to have considerable influence (through conditional grants) in areas of provincial jurisdiction.

<sup>3</sup>1973, c.21, section 9 empowers the Minister of the Environment "in cooperation with one or more provinces having an interest therein, take such measures as he deems necessary for the protection of any species of non-domestic animal in danger of extinction." A Federal/Provincial/Territorial committee is presently preparing a Canadian list of endangered species.

will rather than constitutional limitations.

5.1.4 *Inter-provincial, National and International Measures to Manage Game*

Inter-governmental agreements to manage migratory wildlife populations play an ever-increasing role in game management. The Federal Government has always had the power to enter into extra-territorial agreements. Since the Statute of Westminster in 1931, Canada signs treaties on its own behalf but the legislation necessary to give effect to matters otherwise under the legislative jurisdiction of the provinces must be provided for by the provincial legislative assemblies. This ensures that a transfer of jurisdiction does not occur purely to accommodate an international treaty.<sup>1</sup>

On the other hand, "the argument for a Provincial treaty making power is far from conclusive"<sup>2</sup> and is generally not accepted in Canada. This does not mean provincial governments cannot make agreements with sovereign states. They can, but the agreements are not enforceable in international law. Within Canada, the inability of provincial legislation to have

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<sup>1</sup>Accordingly, if the Migratory Birds Convention were signed today, Parliament would not have the power to pass the Migratory Birds Convention Act" Ryder, *ibid.* The Federal Government may sign the international treaty with a "Federal state" clause, indicating the necessity of Provincial compliance to live up to the intent of the agreement. It should however, be noted that the view on this is not unanimous.

<sup>2</sup>Hogg, *op. cit.*, 195.

direct affect to matters beyond the province was noted earlier.<sup>1</sup> The GNWT has a further limitation since it cannot enter into an agreement with the Federal Government (or presumably with a province) without approval of the Governor-in-Council.<sup>2</sup>

Two international agreements relate directly to the management of game in the N.W.T. The first is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (10 November, 1976) which limits the export of certain species of plants and animals (or by-products of them) for any non-scientific purposes. There is a dual aspect to this Convention since export of game relates to the federal head of power (s. 91(2) "Trade and Commerce")<sup>3</sup>.

The other agreement is the Agreement on the Conservation of Polar Bears.<sup>4</sup> The Agreement in effect obliges Canada to ensure the conservation

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<sup>1</sup>It may be possible in the future for Provincial legislation respecting a matter within the Provincial competence to incidentally "destroy or modify rights outside the Province." This was not the case in the ruling of *Interprovincial Cooperatives v. The Queen* ((1976) L.S.R.C. 477) where the Court ruled against Manitoba being able to take action against an upriver polluter (in Ontario) that affected a Manitoba fishery. (The fact that this is now possible under the Federal Fisheries Act is irrelevant here). However, there were 3 dissenting views that pointed to the extra-provincial effect as being incidental to the pursuit of "local provincial purpose." In citing this (and *Ladmore v. Vennet* (1939) A.C. 468) as an example in "good law" Hogg suggests that provincial legislation may eventually have (incidental) extra-territorial effect. *Ibid.* p. 210.

<sup>2</sup>N.W.T. Act, Section 15.

<sup>3</sup>The head is also the basis of the Federal Game Export Act. The Canadian summary of the Convention acknowledges the split jurisdiction for game management (and resources in general). "Convention on International Trade in Endangered Species of Wild Fauna and Flora, N.W.T. Wildlife Service files, November 10, 1976.

<sup>4</sup>Signed at Oslo, Norway, November 15, 1973 ratified by Canada, December, 1974. Treaty Series (Queens Printer) 1976, No.24.



of polar bear and polar bear habitat through national management programs and international cooperation. This has been accomplished by the Provinces maintaining management responsibilities and the Federal Government acting as a coordinator of the Provincial and Territorial initiatives.

#### 5.1.5 *Jurisdiction Over Game Management on Federal Lands*

The Federal Government is the game manager in national parks because the underlying title to the parks remains with Canada. In Western Canada Parliament also has full legislative authority<sup>1</sup> by the respective Resources Transfer Agreements in these areas.<sup>2</sup> Certain Provincial legislation could apply since national parks are part of the province and the laws of general application have effect. However this is meaningless in the field of wildlife management since provincial laws have to be more restrictive which is impossible in southern Canada given the ban on consumptive use of game in national parks. In the Territories, where the harvest of game is permitted in national parks the use of more restrictive legislation by the GNWT may be useful, when there is a change to the constitutional status of the Territories.

Although Territorial wildlife legislation is based only on delegated authority from Parliament, this relationship indirectly enables the N.W.T. Legislative Assembly to control hunting by Native people of game for food on unoccupied Crown lands. This control is denied certain Provincial

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<sup>1</sup>Gerard V. LaForest, Natural Resources and Public Property Under the Canadian Constitution, University of Toronto Press, 1962, p. 187.

<sup>2</sup>The Federal Government also owns certain lands associated with "fortifications", (s.117 of the BNA Act). Although it has been ruled that the province has the right to legislate in respect to game management on these lands there is some doubt as to the validity of the legislation and this decision may be reversed in the future - particularly if the federal authorities choose to authorize the use of wildlife. In *Regina v. Smith* it was ruled that legislative rights sprung from the provincial heads of "local matters" and "property and civil rights" rather than the common-law rights to gain from (federal) ownership of the land. (1942) 3 O.L.R. 764.

Governments. Administratively, the DOE (for the purposes of the Canada Wildlife Act and Federal/Provincial arrangements) accords the N.W.T. Wildlife Service essentially the same working relationship as provincial agencies.

#### 5.1.6 *The Offshore Polar Bear*

Polar bear are a game species and are therefore under the jurisdiction of the Provincial and Territorial Governments. However, polar bear seasonally occupy the marine environment which (including species therein) is normally thought to be under the legislative jurisdiction of Parliament. However, in 1970 Judge Morrow ruled<sup>1</sup> that all of the Canadian portion of the Beaufort Sea and Baffin Bay and all of the channels of the Canadian Archepalaigo, Hudson Bay and James Bay (below the low tide mark) are a part of the N.W.T. and that within that area the N.W.T. Game Ordinance applied. This gives the Legislative Assembly jurisdiction in the marine environment which is denied the provincial governments.<sup>2</sup>

#### 5.1.7 *Special Interest of Native People*

The exclusive Federal legislative jurisdiction for Indians and lands reserved for Indians, may make game management on Indian lands and matters relating to the use of game by Indians, within Federal jurisdiction. The

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<sup>1</sup>An appeal in Regina v. Toolatik E4-321 (1970), 71 W.W.R. 435. This was based on his statement that the N.W.T. contains all of Canada not described in the province. The judgement pertained to an Inuk charged with hunting a polar bear in contradiction of the Territorial Game Ordinance.

<sup>2</sup>Provincial control of polar bear hunting would seem to be limited to controlling polar bear hunting on provincial lands and the shore based activities of hunters. There could be an exception off the coast of Labrador to the extent that Newfoundland may (unlike the West coast) demonstrate a historical claim to the off-shore area prior to confederation.

doctrine of federal paramountcy would apply since this would be an area of dual jurisdiction. Whether this option is available to Parliament is uncertain. It is an important consideration since Indians (and Inuit by definition)<sup>1</sup> have a usufructuary right<sup>2</sup> to all unoccupied Crown lands in the prairie provinces and the two Territories. The uncertainty of this argument is acknowledged (and as a tactic, rejected for political reasons) in "Indian Act Revision - Discussion Paper: Hunting and Fishing" a working paper of the Department of Indian and Northern Affairs.

The end result is that hunting of game for food by Native people on unoccupied Crown land (or lands to which they have right of access<sup>3</sup>) cannot be controlled by the provincial governments. Provincial laws do apply to the harvest of game by Natives for purposes other than the taking of food. (For example, the trapping of fur bearers for commercial purposes is subject to provincial legislation.

In the eastern provinces (and British Columbia) provincial legislation applies to the harvest of game by Native people beyond reserves and treaty areas.

An important concept is the definition of what constitutes occupied lands because of the implication of Native hunting rights not being

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<sup>1</sup>The Supreme Court has ruled that Inuit as well as "non-status" Indians are included in the term "Indian" (re Eskimos (1939) S.C.R. 104), but that Inuit and Metis are not controlled by the Indian Act. Hogg, op. cit., p. 384.

<sup>2</sup>This right enables the Native people in the prairie provinces to take game for "food" with the provincial game laws having no effect. The respective Resources Transfer Acts specify the right of Indian people to hunt for food on unoccupied Crown land. This overrides section 88 of the Indian Act which allows for Provincial legislation of general application to apply to Indians.

<sup>3</sup>Provincial wildlife legislation does not apply to non-Native persons on reserves.

applicable in these areas. The term is gradually being defined by case law. It would appear that Provinces can change the status of (Provincial) Crown land from "unoccupied" to "occupied" by legislating management controls that are not specifically discriminatory toward Indian people.<sup>1</sup>

Despite the ability of a province to alienate lands, the bulk of Northern Canada (in the Provinces and Territories) is unoccupied Crown lands. In general, La Forest suggests that where the courts have had to consider the need for conservation on one hand and the Indian "right" on the other, the question has generally been decided in favour of the Indian "right". Despite this, there has been no general working relationship established with the Native people and the Federal Government to enable game management in areas where there is a substantial population of Native people. The provincial governments have recently acknowledged the necessity of including the Native people in game management programs, therefore in the reasonably near future, there is likely to be considerable experimentation with participation of Native people in game management.<sup>2</sup>

The harvest of migratory birds by Native people is entirely subject to the (Federal) Migratory Birds Convention Act.

Game management in the N.W.T. works within a considerably different legal arrangement. Although the Indian Act applies in the N.W.T., granting

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<sup>1</sup>Hogg suggests that provincial laws that single out Indians for special treatment are likely to be invalid, although La Forest op.cit. (p. 178) suggests positive (i.e. benevolent) discrimination by the Provinces in favour of Indians is permitted in law.

<sup>2</sup>For example, the Government of Saskatchewan has an advisory committee that is involved in the review of wildlife management legislation, policy and programs. The committee membership includes a representative of the Provincial Native Association. It is likely that the Native people will become involved in more than an advisory capacity in future wildlife programs in Western Canada.

Native people essentially unrestricted rights to harvest the game, the legal tools are in place to ensure conservation can prevail over Native rights to the extent that orders-in-council have been created respecting "declared" species (muskox, polar bear, caribou and wood bison)<sup>1</sup>. The harvest by Native people for food of species not so declared (moose, plains bison, Dall's Sheep, mountain goats, and black and grizzly bear)<sup>2</sup> can be abrogated by order-in-council.

The negotiation of recent claims in the North have been on the basis of the special rights or privileges of the Native people being protected but within the requirements of conservation as defined by government.

The Inuvialuit agreement-in-principle notes the continuing jurisdiction of the GNWT<sup>3</sup> over game management "subject to the provisions of the final agreement and settlement legislation."<sup>4</sup> This jurisdiction shall apply throughout the N.W.T. including on Inuvialuit lands which will be held by the Native corporation in fee-simple title rather than the southern "reserve" system. The Inuvialuit are to be granted special rights to

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<sup>1</sup>Section 14(3) of the N.W.T. Act enables the GNWT to regulate harvest by Native people of species that have been declared in danger of becoming extinct by a Federal order-in-council.

<sup>2</sup>Although the taking of grizzly bear east of the Mackenzie River (excepting the Reindeer Preserve) is prohibited, this control is by Territorial Ordinance, which is not supported by an order-in-council. Therefore, the Ordinance has effect only in relation to the hunting of bear for their hides. However, it would seem a Native person could take a grizzly bear for food. (At least in recent times, this has not been the practice).

<sup>3</sup>Jurisdiction for "the preservation of game" is explicitly granted to the N.W.T. Legislative Assembly by section 13(g) of the N.W.T. as well as implicitly by 13(h) "property and civil rights in the Territories" and 13(x) "all matters of a merely local or private nature in the Territories".

harvest game or allocate that harvest right to other persons. This right does not imply a proprietary interest in wildlife.

The special rights to harvest wildlife in the area of the Inuvialuit land settlement (the Mackenzie Delta region) and the division of responsibilities for wildlife management affect the reporting relationships and structures required to manage wildlife resources. The harvest rights include, the exclusive right<sup>1</sup> to harvest game on Inuvialuit lands (and in other areas if agreed to) and certain species (furbearers, black bear, grizzly bear and muskox) throughout the region; the preferential right to harvest other species of wildlife for subsistence purposes<sup>2</sup> throughout the region; and residents of the region (and the Inuvialuit in particular) shall have at least equal access to commercial (non-exclusive) species.

The intent of the agreement to ensure "conservation" leaves the determination of the total limits of harvest of game to government, but this is qualified in the case of species for which the Inuvialuit have the exclusive use. The quotas are to be set "by the Inuvialuit and government" and, the "subsistence quotas shall be jointly established,"<sup>3</sup> which clouds the dominant need for conservation. Whether the rights of the Native people or conservation, will prevail in the event of disagreement is not clearly stated, but presumably the requirements for conservation of resources

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<sup>1</sup>"Inuvialuit Land Rights Settlement Agreement in Principle", op. cit., Section 3(3)(b).

<sup>2</sup>Exclusive rights to harvest is defined as "the sole right to harvest wildlife ... and to permit non-Inuvialuit to harvest any such wildlife." Ibid., Section 2.

<sup>3</sup>"Subsistence usage" includes taking wildlife by Inuvialuit for their own purposes (food and clothing) as well as barter and trade among Inuvialuit.

will be defined by Government.

A number of "structures" are called for by the Agreement to provide for the ongoing involvement of the Inuvialuit in resource management and to implement their special rights pursuant to the Agreement. Besides the Land Use Planning Commission discussed in Chapter II, the Agreement calls for a Game Council, local Hunters and Trappers Committees, and a Natural Resources Research Board. These structures will initially fulfill only advisory functions ("excepting certain subsidiary, delegated functions such as the sub-allocation of subsistence quotas").<sup>1</sup> The Agreement leaves the door open for further delegation of responsibilities based on the recommendations of the Special Representative for Constitutional Development. The final agreement is to include roles that shall include provisions for "mandatory consultation"; the right to make recommendations on proposed legislation; and, "other powers such as the holding of public hearings in the ... region on any matters affecting the usage of wildlife."<sup>2</sup>

## 5.2 Programs and Assessment

Game management became the responsibility of the Commissioner in Council in 1948 and the first Game Ordinance came into effect in 1949.<sup>3</sup> The only federal legislation that has been promulgated for game management

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<sup>1</sup>Ibid., Section 14(6)(b).

<sup>2</sup>"Inuvialuit Land Rights ..." ibid. The membership of the Research Board consist of government agencies and the Inuvialuit while the latter make up the membership of the Game Council and the Hunters' and Trappers' Committee. The roles of these structures are to be detailed in the final agreement.

<sup>2</sup>Corresp. from Mr. N. M. Simmons, Superintendent, Wildlife Service, Govt. of NWT to Mr. E. F. Bossenmaier, Senior Wildlife Planner, Dept. of Mines, Resources and Environmental Management, Govt. of Manitoba. October 30, 1978.

since that time has been supportive of the administration<sup>1</sup>. The former Game Management Division of DIAND was transferred to the GNWT upon the establishment of a Territorial civil service in 1968.

The Game Management Division was responsible for all aspects of game management except research which was conducted by the CWS. Since the mid 1970's NWT Wildlife Service has conducted its own wildlife management studies to support management programs. An exception to this withdrawal by the CWS from the provincial type role are the limited wildlife habitat studies been carried out by the CWS under special funding for the assessment of specific development proposals (such as the proposed Arctic Islands Pipeline).<sup>2</sup> The CWS has continued to conduct research on polar bear in the Arctic to maintain some relevant expertise in support of the CWS role as a national coordinator for the international agreement on polar bear.<sup>3</sup>

The primary responsibility for the management of migratory birds in the North, as elsewhere, is federal. However, while the provincial governments are involved in all aspects of the management of migratory birds with the CWS, the NWTWS is only involved in the enforcement of the Migratory Birds Convention Act and to a limited extent in the collection of harvest data.

The objectives for wildlife management in the N.W.T. which are

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<sup>1</sup>This includes the declaration of "endangered" species to permit the control of game harvest by native persons discussed previously, and the establishments of Game Sanctuaries (pursuant to the N.W.T. Lands Act).

<sup>2</sup>The division of labour here was that all funding that related directly to research on game was assigned to the NWTWS while the funding for certain game habitat studies was allocated to the CWS.

<sup>3</sup>Mr. D. Surrendi, Acting Regional Director, Canadian Wildlife Service, Edmonton, Pers. comm. May 24, 1978.



stated below are complimentary to the published objectives for government in the North. These are summarized in the published goals of the N.W.T. Wildlife Service.

1. To maintain productive populations of native animals, birds, and fish in their natural habitats.
2. To encourage the wise use of wildlife within the limits of sustained yield to help meet the requirements of residents of the Northwest Territories.
3. To encourage the conservation of fish and wildlife habitat through coordination and cooperation with environmental management agencies.
4. To promote the aesthetic value of fish and wildlife for the enjoyment of all people.
5. To encourage the participation of residents in proper management and use of fish and wildlife resources through education programs and by supporting organizations representing subsistence and recreational users.<sup>1</sup>

These goals are supported by published objectives, policies and sub-objectives.

The new Wildlife Ordinance and Regulations which came into effect on July 1, 1979, allow for the management of wildlife (within the limits of the N.W.T. Act); and the protection of wildlife habitat, although the constitutional limitation of Territorial Ordinances limit the effectiveness of the latter control.<sup>2</sup> This legislation is the result of an updating of the previous Ordinance, and a review of relevant wildlife legislation in Canada and the United States. The new Ordinance does not

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<sup>1</sup>N.W.T. Fish and Wildlife Service, "Goals, Objectives and Policies". N.W.T. Dept. of Information Services, Yellowknife, January 1978.

<sup>2</sup>This limitation was discussed previously in Chapter II in relation to land management.

alter the aboriginal rights of the Native people. Within that constraint, and the constitutional limitations of an Ordinance in relation to habitat management, it will be an effective tool to conserve wildlife in the N.W.T. in the interests of all Northerners and Canadians. The Ordinance is also complementary to relevant Territorial and federal legislation relating to resource management, parks and recreation.

The Migratory Birds Convention Act enables the CWS to control harvest of migratory birds, although it presently lacks flexibility and the prohibition against the spring hunting of migratory birds by Native people is generally not enforced. (Negotiations are underway with the U.S. authorities to legalize the spring hunt.) The Sanctuary Regulations allow for the protection of critical habitat of migratory birds, although the Land Use Regulations may be preeminent. (See Chapter II).

#### 5.2.1 *Field Administration*

A line management relationship exists between the Wildlife Officer in the community and the Regional Superintendent and from him to the Superintendent of the NWTWS and the Director of Natural and Cultural Affairs (Figure 6). The Regional Directors of the GNWT play the role of a regional coordinators of GNWT services.

Until 1968 all of the Wildlife Officers were located in the Mackenzie Valley, except for Regional Superintendents in Frobisher Bay and Churchill (prior to the establishment of the Keewatin regional office at Rankin Inlet). The field staff has grown from 4 Regional Superintendents, 9 Game Officers and 9 Patrolmen to the present complement of 28 Officers and 12 Assistant Officers in 25 communities, in addition to Resource Development Officers, Biologists and administrative support staff at each Regional office. The total annual operating and capital budget (including

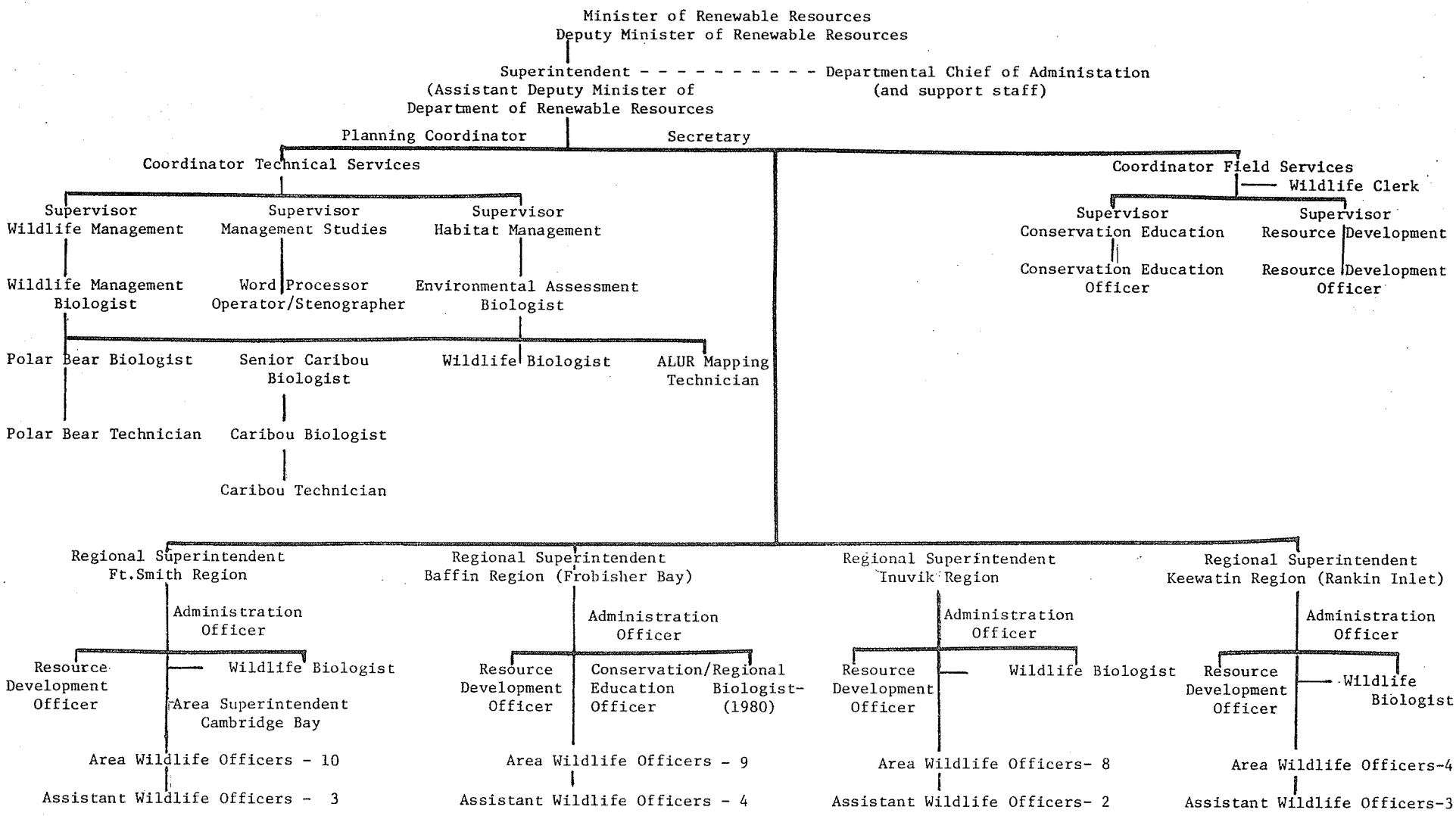


Figure 6: Northwest Territories Wildlife Service Organization Chart\*

\*The N.W.T. Wildlife Service staff of 88 positions does not include persons hired seasonally or for short periods for specific projects

headquarters advisory functions identified in subsequent sections) exceeds \$5 million.

The field officers carry out a variety of tasks in support of wildlife management, and fish and wildlife development, including the collection of harvest and population data; conduct fish and wildlife population inventories; provide public education programs; administer resource harvester assistance programs; and enforce the Wildlife Ordinance, MBCA, the Fisheries Act and respective regulations.

The resource development role in the past had commercial aspects (in the case of fisheries) when the Service was in the Department of Economic Development. At present, most developmental programs involve the domestic use of wildlife (except for trapping). Administrative and managerial assistance is provided to local Hunters and Trappers Associations (HTA's) and expertise is provided to demonstrate harvest techniques to the public as well as resource assessment assistance to the field officers. Resource development grants and loans are administered by the officers, on the advice of the HTA's. Certain local game quotas are either allocated to local hunters on the guidance of the HTA or are administered directly by it.

In general, the present complement of field officers is sufficient<sup>1</sup> except in the Central Arctic, to provide the existing programs, assuming continued delegation of

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<sup>1</sup>This is not meant to imply that the officers are adequately supported with travel funds (to service communities not having officers), administrative support or field equipment. They are not generally adequately supported. This is necessarily a subjective assessment.

developmental programs to the HTA's. This delegation will enable the field officers to concentrate on the wildlife management aspects of their role, including the increasing demands for enforcement. Harvest data in most cases could be more effectively gathered by the HTA's on a contractual basis.<sup>1</sup>

The level of technical skills of the field Officers is equal to that of Conservation Officers in the provinces. Although enforcement duties play relatively minor roles in most communities, formal training and refresher courses in enforcement are offered to maintain that capability in the staff, particularly for those officers in the Mackenzie Valley where a higher demand exists for these skills.

Assistant Wildlife Officers are on staff in many communities and 3 more per year are being added by the Service until each station has an Assistant Officer. The Assistant Officers are individuals who speak the local language and are familiar with their area and resource harvestors. They provide a valuable service, particularly in providing continuity in the dialogue between the Native people and the field staff as well as in field work.

#### 5.2.2 *Management Studies*

The operating budget (excluding salaries) for wildlife management studies and inventories exceeds \$400,000. In 1968 there were no field

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<sup>1</sup>This assumed that HTA's are given the means to obtain full time secretaries or administrative contract personnel to support the role, and the increasing administrative load that is being borne by (or demanded for) these organizations. This need will become particularly apparent if the administration of resource development programs is delegated to them.

biologists and almost no funding for wildlife surveys. No management studies were conducted by the GNWT. At present there are 4 biologists and 2 technicians in the Management Studies Section (in addition to the section head) at headquarters and a biologist in two of the four regions. There are plans to provide biologists to the other regions in the 1980/81 fiscal year. In addition, term and contract staff are occasionally hired for studies as required.

The key big game species in the N.W.T. are barren-ground caribou and polar bear because of their respective food and trophy values. Accordingly the bulk of the management studies manpower and budget are directed toward the management of these two species.

Polar bears are presently being adequately managed to protect the species although there is insufficient information on local populations to ensure maximum benefit is made available to the local economy. All kills are recorded (because of strict enforcement of a quota system which has been in place since 1968) and a system of collect biological specimens is provided by the field staff who also participate in surveys and other field studies. The program is coordinated by a biologist and a technician at headquarters with an annual operating budget (excluding personnel costs) in excess of \$120,000. Valuable assistance is provided to the program by the field staff under the direction of the headquarters biologist. In addition, considerable term funding has been available for polar bear studies associated with environmental assessment programs and specific additional studies have been contracted. The CWS has in the past spent an equal amount and had up to 6 man years involved in polar bear studies per year.

Close cooperation exists between the provincial and federal agencies on the Polar Bear Technical and Management Committees.

The N.W.T. headquarters commitment to management studies of barren-ground caribou involves 2 biologists and a technician with an annual operating budget of approximately \$120,000. Where appropriate, these studies are coordinated with other jurisdictions sharing these herds.<sup>1</sup> Often an equal level of funding as solicited from other agencies and private industry who have an interest in these resources. Considerable support is provided by the field Officers. Regional biologists are supported with approximately \$115,000 in operating funds for this species. Previous monitoring surveys were not sufficient to adequately manage the large mainland herds. At least one mainland herd (and perhaps a second) is experiencing a serious decline. The present budget and manpower (with improved population monitoring techniques) in combination with the application of legal measures<sup>2</sup> to control the harvest of the various caribou could permit sufficient management of the herds to ensure their preservation. However socio-economic conditions demand a "more finely tuned" management which will not be possible for many years to come given the current limited commitment of financial and manpower resources.

The harvest of all big game species in the Mackenzie Mountains (almost entirely through big game outfitters) has been monitored since

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<sup>1</sup>For example with the studies on the Kaminuriak and Beverly herds, the field studies are coordinated with complementary field work by the wildlife agencies in Saskatchewan and Manitoba. In the case of the Porcupine herd there has been cooperative studies with the Yukon and the State of Alaska.

<sup>2</sup>The ability to control the harvest of many species by regulation is possible as noted previously, however, the political will is occasionally lacking to protect the long term interest of Northerners and Canadians in general in these resources.

1967, initially by the CWS and more recently by the NWTWS.<sup>1</sup> In general, the area is being adequately managed and will be in the future with limited monitoring if the level of harvest continues to be restricted to a relatively light overall harvest. The harvest of Dall's sheep by Natives in a few local areas (such as west of Aklavik) despite an adequate data base, is not being adequately controlled because of the present inability of the GNWT to legislate controls (Dall's sheep not being declared as endangered) or obtain the cooperation of the local Native people without the imposition of regulations.

Moose are not adequately managed in the N.W.T. Personnel and budgetary resources have been insufficient to meet the requirements. The recent addition of regional biologists in the two Western regions will help remedy this situation.

Grizzly bear east of the Mackenzie River are not threatened (regardless of the lack of information on that resource) because commercial exploitation of them in that area is not permitted. An adequate level of management information would enable the conservative use of this resource.

The harvest of fur bearers is generally not managed. The problem is one of a lack of interest in the harvest. In many cases the management of fur bearers based on management studies to "fine tune" the rough and ready management practices used by the trappers is probably not economic

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<sup>1</sup>Although the CWS study focussed on Dall's sheep the harvest of all species has been monitored. This is also the case with the NWTWS which just completed a study of grizzly bear in the area.



given the vast areas not being harvested and the general ability of fur bearers to recover from local over or under utilization. Although local exceptions to this statement exist, the resource is certainly not threatened.

The withdrawal of the CWS<sup>1</sup> from conducting management studies in the North places the NWTWS in essentially the same position of responsibility as the provincial agencies except that the ability to control the use of wildlife habitat remains with DINA.

No studies have been conducted on the effects of industrial activities on wildlife or wildlife habitat by the NWTWS with internal funding rather funding is usually sought from DINA for this purpose. There are major deficiencies in this area. The NWTWS has participated recently in local and regional assessment study programs with funding from outside sources (largely DINA) but it has not succeeded in obtaining external funding for relevant baseline studies.<sup>2</sup> This is a deficiency that should be corrected by pursuing funding from internal sources as well as externally from ongoing sources such as ALUR. In most cases, maximum advantage can be taken of such studies by a management organization that can utilize the data (and additional complimentary field work) to develop the basis of management programs that consider harvest as well as industrial disturbance. The direct benefits of additional incidental data that are

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<sup>1</sup>The CWS does research on a "client" basis requiring financial support.

<sup>2</sup>An exception to this has been the ALUR mapping project which is carried out by the NWTWS for DOE who contracts the work for DINA. An example of the deficiencies is demonstrated by the Liard Highway. DINA planners focussed on the planning of physical installations but not the effects of highway on resource management programs. Neither did the Wildlife Service since the control of this type of development and the planning of resource management program is perceived by the Treasury Board as being a DINA mandate (rather than a legitimate matter for budgeting by the GNWT.) Therefore often major concerns simply are not presently coped with under the present division of responsibilities between DINA and the GNWT.

beneficial for management purposes are not fully exploited by consultants or an agency primarily concerned with meeting only research or industrial development assessment objectives.

The local, regional and national interests in management studies and research are discussed in Section 5.4

### 5.2.3 *Conservation Education*

A key element of the wildlife management in the N.W.T. has been the recent addition of a conservation education program. This section disseminates information in English and Native languages to the public, and in particular the HTA's, concerning conservation programs in the North. This is particularly important as a bridge between the scientific and traditional understanding of the requirements of wildlife management. It also ensures that the results of scientific studies are more rapidly made available in the communities in a manner that is clearly understandable.

This Section also coordinates the Service's involvement in the Renewable Resource Technology school at Ft. Smith. This program (which was instigated primarily because of the efforts of the Wildlife Service) is designed to train northerners at the technical level in renewable resource management. The NWTWS played a leading role in developing the technical school program in an attempt to replace a much narrower in-service training program that was to provide Wildlife Officers.

The specialized nature of the training role and the efficiencies of scale preclude delegation of the development of materials or training programs to the regions.

### 5.2.4 *Habitat Management*

Since the NWTWS has no mandate for habitat management it relies on the inter-agency committees described in Chapters II and IV) to minimize

the effect of industrial exploration and development on wildlife. Two biologists carry out this liaison role with the support of the biologists in the Management Studies Section, the field staff, and limited term and contracting funding and personnel.

In general, the NWTWS has not responded adequately to the need for review of major proposals for development because of the limited staff and budget devoted to this Section which result from the confusion of responsibility noted on page 192. The focus of the NWTWS has been toward the management of wildlife in relation to consumptive use of the resource. Since the main limiting factor to the maintenance of certain wildlife populations in the future will be industrial intrusion, it is essential that the Service be fully involved in the policy and regulative review of these proposals. In the future this Section will be required to provide some oversight of the Service's contribution to land use administration that will be delegated to the Regions.

The general requirement for a Service capability and responsibility in the management of wildlife habitat has been acknowledged as requiring a higher priority, however it is not clear if the necessary funds and positions will be made available.

#### 5.2.5 *Resource Development*

The Resource Development Section at headquarters has coordinated the development of programs and conducted policy studies on such things as the support of outpost camps. Continued emphasis on decentralization of the delivery of government services will require that the development function be placed almost entirely in the regions since the programs are largely a local concern. The Coordinator of Field Services can provide policy supervision of the regions with the aid of a senior Officer. Future

program assessment and policy analysis can be carried by a departmental central planning and policy unit. Administrative support will be required by the Regions to monitor the administration of developmental programs, which should be delegated to those HTA's desiring this role. Those that do will require financial assistance for administrative support.

#### 5.2.6 *The Management Process and Public Involvement*

The Northern public is involved in the wildlife management process in a number of ways. Firstly, long term northerners are involved in the administration as employees. For many years northerners have been hired preferentially and still are, although because of the requirement of technical training most new Officers have come from the South. To meet the goal of involving more Northerners, and also to increase the level of technical training necessary to meet the requirements of modern wildlife management, the original internal training program and the subsequent technical school courses were implemented.<sup>1</sup> In addition, the number of Assistant Game Officers (that do not require formal training) that are hired has been increased.

Secondly, the N.W.T. Legislative Assembly (the majority of members of which are Native persons) has legislative jurisdiction for game management and one member is selected as the Minister responsible for the Department that contains that responsibility.<sup>2</sup>

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<sup>1</sup>For at least a decade it will be necessary for Northerner's wanting training at an advanced level to attend Southern universities. Liberal assistance is available to all Northerners for that purpose.

<sup>2</sup>Section 3(2) of the Wildlife Ordinance enables the Commissioner to delegate any part or all of his responsibility for the administration of the Ordinance and Regulations to the Executive member (Minister) responsible for wildlife. The Executive member appoints the Superintendent of Wildlife.

Thirdly, legislation and various structures are in existence to ensure that local, regional and territorial special interest groups can advise the Wildlife Service (or Commissioner as the case may be) on wildlife related matters, and in certain cases make decisions relating to delegated responsibilities. The N.W.T. Game Advisory Council (GAC) advises the Commissioner and Federal Ministers on all legislation, policies and programs respecting wildlife management, including recommendations for a Canadian position on any international agreements affecting wildlife and provide participants where appropriate. It also can provide recommendations that will ensure the involvement of Native people in all phases of wildlife management.<sup>1</sup>

Although the GAC has only been in existence since 1977, it has proven that the approach can work. One of the council's first tasks was to review the entire redraft of the N.W.T. Game Ordinance. It has also reviewed and approved the goals, objectives and policies for the N.W.T. Wildlife Service as well as specific matters such as research programs. One weakness of the GAC has been that certain members appointed on the recommendation of certain Native associations were unable to maintain the support of the associations. A greater degree of continuity of support may be possible if the source of the nomination is a regional coalition of local

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<sup>1</sup>The members of the Game Advisory Council are appointed by the Commissioner. He appoints 2 members directly who have generally represented the interest of big game outfitters and resident sportsmen and the non-consumptive interests. The Native associations nominated representatives - the Indian Brotherhood (2), the Metis Association (2), COPE (1), and the ITC (3), who are "responsible to the people of their region." "Northwest Territories Game Advisory Council - Terms of Reference," Unpublished document, GNWT files.

H.T.A.'s which are less highly politicized.<sup>1</sup>

There are HTA's<sup>2</sup> in most communities in the North. Typically, the H.T.A.'s are the key local points of contact on resource issues that affect the area beyond the community limits. They comment on governmental programs, policies and legislation. In some cases, they allocate game quotas for polar bear and muskox to their membership and advise the Service on the administration of resource development and assistance programs. Most were formed on the encouragement of the Wildlife Service. Usually the active membership consists of persons relying primarily on hunting, trapping and fishing for their livelihood. Some HTA's in the arctic communities (where the members are more dependent on wildlife resources) are more active and successful than those in the Mackenzie Valley where most do not have a high profile in resource issues. Indian Band Councils are generally more active in the Mackenzie and will likely take over many of the functions not being assumed by the H.T.A.'s. This would create a problem by disenfranchising non-Dene trappers.

Regional HTA conferences are supported by the Service to enable the HTA's to discuss matters of regional interest. The regional representative on the GAC usually participates in these meetings to aid his effective participation in GAC meetings. Therefore, at present a direct advisory link exists from the local to the regional and Territorial (Commissioner's)

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<sup>1</sup>An N.W.T. wide Hunters' and Trappers' Federation may be formed shortly which may replace the GAC. The local HTA's have coordinated their activities at a regional level and are presently considering a federation. If this occurs then the membership of the N.W.T. body would be directly from the HTA's rather than primarily from the Native Associations which is the case with the GAC.

<sup>2</sup>Most of the HTA's are formally registered under the Societies Ordinance. They are given annual financial grants to assist with administration. The NWTWS is also willing to provide financial support to sportsmens' and naturalist clubs.

level on wildlife matters which are then ultimately subject to the review of the elected Legislative Assembly. The N.W.T. Wildlife Service administration is also linked to those groups at each level from the local Officer with the HTA to the Superintendent who provides secretariat assistance to the GAC.

The GAC is a more functional advisory body than the Coordinating Committee in Quebec that resulted from the James Bay Agreement. The latter has equal membership of Government (Quebec and Federal) and the Native corporations which forces a "they and we" standoff in many issues.

The views on the effectiveness of the advisory network in the N.W.T. are variable. In part the opinion depends on whether advisory or decision making roles are thought to be appropriate at each level. Some factors which are considered in the determination of the legitimacy of these levels of authority are discussed below.

### 5.3 Characteristics of Resources and Other Considerations in Determining the Appropriate Levels of Authority in Government

There is considerable variation in the geographical area over which control must be exerted to manage the various species of wildlife. For example, based purely on the biological characteristics of the species, muskox and certainly moose could be managed effectively at the local level if the powers to control the use of the species and the management of its habitat were delegated to that level. On the other hand, the Beverly caribou herd for example, seasonally occupies the central Keewatin, south eastern Mackenzie District, and northern Saskatchewan and Manitoba. The Porcupine herd is international<sup>1</sup> as are certain sub-populations of polar

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<sup>1</sup>In this regard, COPE has indicated the requirement "that wildlife management and habitat management produce an integrated result with result to migratory species" and advocates "the principle of caribou herd management." "Inuvialuit Land Rights Settlement Agreement in Principle", op. cit., Section 14(3) (h).

bear which present even more complex problems of management.<sup>1</sup> Most species of fur bearers display essentially local distribution while other species such as arctic fox have been trapped several hundred miles from initial capture sites.

As was the case with fisheries in Chapter 3, the various species of wildlife (excepting migratory birds) can be managed at the regional (versus Territorial) level by simply adding one more (regional) administrative and legislative level in the process. A balance must be struck between responsiveness to regional needs and the additional complexities inherent in adding another jurisdiction to the management of a shared resource. This balance is affected by the nature of the rights to harvest certain resources (i.e. exclusive or preferential) to be granted to residents of the region. These special rights would reinforce the case for greater regional involvement.

The relative effectiveness of the resource management unit (local, regional, Territorial or national) also depends on the aspects of game management to be considered. The fact that some caribou herds are inter-jurisdictional could be used as an argument for a Federal management regime however, regional cooperative efforts (provided they work) may be more efficient and effective if those levels of government already have a field organization present in the area for other matters and can benefit

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<sup>1</sup>The Canadian Technical and Management Committees for polar bear involve representatives from the N.W.T., Yukon, Manitoba, Ontario, Quebec, Newfoundland/Labrador and the Federal Government. The international participants also include the United States, the U.S.S.R., Norway and Denmark (Greenland).



from those efficiencies. In short, although the interjurisdictional aspect of management of the resource may legally enable Federal involvement, it doesn't require it, and local concerns may, in practical terms, preclude Federal involvement or control.

Enforcement is most effectively carried out by a field staff resident in the area but one that is not dependent on constant local support for that role.

The benefits of a national role in basic research which were discussed in relation to fisheries, are equally appropriate for the management of terrestrial mammals.

Management studies could be carried out effectively for all species of big game at the regional level with the probable exception of barren-ground caribou and polar bear where close coordination between regions is required. Population surveys can generally be carried out most effectively by local Officers with technical guidance from regional and headquarters specialists.

The determination of harvest levels for game populations can be accomplished regionally except for polar bear and caribou. The sub-allocation of harvest within a type of user group between communities within a region is best determined regionally. Similarly the sub-allocation of the local quota is best determined by the local HTA as it is presently for example for the local polar bear quota. The division of harvest between types of users will require the involvement of the GNWT to protect the rights of minorities within a general regime determined by the settlement of the Native claims which will identify the special rights of the Native people.

Unless regional control for land management were granted within a regime that would protect the interests of other regions, the ultimate responsibility for habitat management cannot be granted to the regional level since that would permit the subversion of interests of others in shared populations.

The legal perspectives discussed in Section 5.1 suggest a national interest in endangered species, game populations that are shared inter-jurisdictionally, and wildlife on Federal lands.

When the various factors are considered there is no clear and consistent determination for the roles of the various levels of government. Following is a subjective and arbitrary framework for the responsibilities suggested as one alternative. This is an attempt to rationalize the concerns identified above and the agreement in principle with the Inuvialuit. The respective responsibilities are:

#### National

- i. To protect species in danger of becoming extinct;<sup>1</sup>
- ii. To provide direction to Provincial and Territorial Governments to manage transboundary wildlife populations when the Province(s) and Territory(s) cannot reach agreement; and,
- iii. To conduct research related to wildlife that is,
  - in danger of becoming extinct,
  - on Federal Crown lands (National Parks), and
  - by agreement with the Provinces and Territories on other lands.

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<sup>1</sup>"Extinction" here is defined as "any indigeneous species of fauna or flora whose existence in Canada is threatened with immediate extinction through all or a significant portion of its range, owing to action of man," as defined by the Committee on the Status of Endangered Wildlife in Canada. "Approved Definitions", an unpublished working document, Government of Manitoba files.

### Territorial<sup>1</sup>

- i. To directly manage wildlife subject to the national interest;
- ii. To protect critical wildlife habitat; and,
- iii. To determine and allocate the level of harvest for non-Native persons.

### Local

- i. To allocate the predetermined level of the local harvest limit;
- ii. To pass by-laws more restrictive than the Territorial legislation, limiting the seasons and areas in which wildlife can be harvested for species available exclusively to Native persons; and,
- iii. To make representations to the Game Advisory Council (or its equivalent) concerning matters of local concern that can be given effect only through Territorial legislation or policy.

Regional associations such as a regional coalition of HTA's could select representatives to the GAC (or the N.W.T. Hunters' and Trappers' Federation if it replaces the GAC) and make representations to it concerning regional quotas of game populations shared between regions; advice regarding other legislative and policy matters respecting wildlife management in the regions.

### 5.4 Recommendations

The recommendations that follow are based on the legislative review, assessment of programs and the review of responsibilities in the preceding

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<sup>1</sup>This could be replaced by regional institutions or alternatively regional institutions could simply be a coordinated regional assertion of the powers of the local HTA's.

sections. The recommendations fall within two time frames. Since the GNWT has the delegated responsibility for game management some changes are recommended within the current constitutional arrangement (i.e. within NWT Act in its present form) and, secondly changes that should be made after the settlement of the various Native claims at which time a different constitutional framework can be considered.

5.4.1 *Immediate Changes (1980)*

Presently within the current N.W.T. Act, the GNWT should:

i. Habitat protection

- (a) Determine the effectiveness of the existing Game Sanctuaries as means of conserving wildlife (recommending abolition where they are no longer relevant, or protection through the cooperation of the land use administration in the interim period);
- (b) Strengthen the Habitat Management Section to support that role as well as encourage integrated resource management and policy planning within the GNWT;
- (c) Encourage decentralization of land use administration (while providing the regions broad criteria for the control of industrial activities to protect renewable resources and ensure consistency between regions in dealing with industry); and,
- (d) Draft a clear statement of the need and priorities for basic research required to manage industrial activities in relation to wildlife with DINA/GNWT financial contribution (including the use of ALUR funds).

ii. Management Processes

- (a) Continue to actively support the advisory and decision-making roles of local HTA's or Band Councils where appropriate (including regional coalitions of same), to allocate the local use of the predetermined level of harvest, and carry out advisory functions as well as contribute to

the role of the Game Advisory Council (or its successor), and contract the HTA's to collect game harvest statistics and the administration of programs designed to assist resource harvestors;

- (b) Encourage all agencies to consult with the HTA's (on Band Councils) as the primary local point of contact on all natural resource questions beyond community limits for those HTA's that want this responsibility;
- (c) Decentralize the collection of management data within broad species management plans coordinated and by headquarters except in areas where there are efficiencies in maintaining species biologists at headquarters (particularly in relation to inter-regional populations such as polar bear and barren-ground caribou);
- (d) Train, and encourage the participation of the field Officers in management studies (using Regional and headquarters biologists) to take full advantage of the technically trained field staff and the related operational efficiencies in field logistics and support;
- (e) Continue to actively support the interjurisdictional Technical and Management Committees for barren-ground caribou and polar bear;
- (f) Encourage the maintenance of a national role in wildlife research, (by the CWS) and influence those research priorities through the Canada Wildlife Act agreements to ensure compliance with jointly determined research objectives;
- (g) Limit the role of the Wildlife Research Board (proposed in the Inuvialuit agreement in principle if it is to exist), sufficient to ensure responsiveness of research to management priorities;<sup>1</sup> and,
- (h) Become active in the management of migratory birds sufficient only to encourage a more flexible approach to the Migratory Birds Convention Act.

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<sup>1</sup>Note the previous discussion of the former Fisheries Research Board. This recommendation would consistently grant decision-making authority at the Territorial level (the Minister) and the local level (the HTA's) leaving all other roles as being advisory, thereby having simple and clear lines of authority.

#### 5.4.2 *Changes After Land Claims*

The GNWT should:

##### i. Joint Management of Wildlife

- (a) Encourage the participation of the Native corporations in wildlife management through joint wildlife management studies and negotiation of joint research priorities;
- (b) Devolve sub-allocation and administration of local quotas for Native claimants to the local HTA's; and,
- (c) Enable local HTA's to pass more restrictive by-laws to manage the local methods, times and locations of wildlife harvest.

##### ii. In Offshore Areas

Negotiate the application of N.W.T. wildlife legislation to the offshore area for polar bear in the marine environment to ensure the GNWT will continue to have jurisdiction for the management of this species.

##### iii. Federal Lands

Negotiate the right for the GNWT to manage wildlife on any residual Federal lands (within the national interest)-either directly or by agreement to use such tools as referential legislation.

##### iv. Migratory Birds

Commit only sufficient resources to the management of migratory birds as to encourage responsiveness of Federal management programs to Territorial needs (in recognition of the over-riding national and international interest in migratory birds).

##### v. Critical Wildlife Habitat

Implement a management regime to protect critical wildlife habitat to be protected by wildlife management legislation but administered to by the Lands Division of the GNWT.

## CHAPTER VI

### A PROPOSED TERRITORIAL DEPARTMENT OF RENEWABLE RESOURCES AFTER THE CURRENT CONSTITUTIONAL REVIEW

#### 6.1 Departmental Organization - Basic Considerations

I concluded earlier that the delivery of renewable resources conservation services to the public in the communities can best be provided by a unified field staff.<sup>1</sup> Furthermore, the public is due a clear statement of responsibility, objectives and organization at the Regional and Territorial headquarters with a clear line of authority for decision making. The key is to shorten the technical chain leading to the policy makers and to clearly identify the responsibility centres to ensure accountability.

Another major consideration for the departmental organizational structure is to encourage active cross fertilization between the various Divisions responsible for lands, forests, inland waters, fisheries and wildlife. This integration can be accomplished without a complex organizational structure by the use of interdisciplinary committees. This is essentially what occurs at present, except it can be made more efficient and effective

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<sup>1</sup>In effect this is what is called for by the recent announcement of the agreement between the Department of Fisheries and Oceans and the GNWT for management of fisheries in the area of Inuvialuit land settlement (i.e. "The integrated result of the management of wildlife and the coordination of legislative authorities" whereby the administration of fisheries is transferred to the GNWT withdrawing the single Fisheries Officer from the area.) "Tabling Statement for the Honourable A. J. McCallum re: Statement of the Honourable Romeo Leblanc, Minister of Fisheries and Oceans on Management of Fisheries in the Western Arctic," announcement made in the N.W.T. Legislative Assembly, N.W.T. Legislative Assembly file, March 1979.

by having the primary responsibility and authority in a single Territorial Department responsible to a Territorial Minister of Renewable Resources.

The high degree of decentralization, and the specific responsibilities that will be devolved to the communities, are arguments for a strong Departmental presence at the regional level but with firm overall policy control at headquarters in Yellowknife. The obvious requirement for considerable latitude at the regional level for policy interpretation and implementation must be balanced against the Territorial interests, and in certain cases, national interests. The dangers of a lack of firm policy guidance from headquarters (and general monitoring of the implementation of that policy) are clear. The result would be four Departments of Renewable Resources, one in each region, that would become increasingly isolated. This is what nearly brought about the disintegration of the Fish and Wildlife Branch in British Columbia sited in Appendix 1.2.

If there is to be a central Territorial level of government, it must have policy control rather than be purely an administrative co-ordinator to avoid confusion of roles and unnecessary duplication. However, to ensure the policies are responsive, there must be mechanisms for "bottom up" development and/or public review of draft policies to avoid the difficulties depicted by Langford.<sup>1</sup>

The efficiencies of full decentralization of the operational aspects of program delivery must be recognized. In certain cases, on the grounds of efficiency and responsiveness, it may be desirable to contract the delivery of certain services and responsibilities to private or non-profit organizations.

Interest groups and clients must have access to the decision making process as well as the means to take advantage of that access.

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<sup>1</sup>See the Appendix.



The size and complexity of provincial organizations, and the organization of the public they serve, are considerably different than the conditions that will exist in the Northwest Territories for some time to come. Therefore, the specific structuring and designation of provincial agencies have limited relevance to the Northwest Territories.

The relative importance of the various resources to northerners; the relative uniqueness of the expertise required to manage the various resources; and, the experience of the various agencies in the North are used as general considerations in recommending a Departmental organization structure.

## 6.2 Departmental Components and Structure

### 6.2.1 *The Divisions*

The resources to be managed by the GNWT are: surface lands, forests, inland waters, wildlife and fisheries. There will also be an expanded system of Territorial parks. In addition there will be an expanded role for the Territorial Government in the area of environmental protection (i.e.: pollution control) similar to roles carried out by the provinces.

I recommend that each of the five component resources and two roles be incorporated in a separate division within the Department. I recommend that an eighth Division be created - Information and Education. A key role of this Division will be to relay information from the Department to the programs and resource management policy development in general. A second key role of this Division would be the development of training programs that encourage and assist Northerners to become directly involved as employees in the Departmental programs at all levels - technical, administrative, and managerial. Experience has demonstrated that both of these roles (information and training) can best be handled with the relevant agencies having a direct involvement in course design and

assessment. The proposed Departmental structure is depicted in Figure 7.

The responsibility for the developmental aspects of resource management should be allocated by a simple criterion that has worked well in the past. The commercial development of resources is clearly a responsibility of the Department of Economic Development and Tourism. The development of resources for domestic purposes can be handled by the field staff of the line agencies in the Department of Renewable Resources. The operation of mainly domestic use programs by the renewable resource agencies has been proven to be the most successful approach, largely because of the different expertise required and the availability of field staff of the resource agencies in most communities. This is not the case, however, with generally larger and more complex commercial projects. The enforcement and exploitative roles also create conflicts of interest in commercial operations that require a separation of management and development responsibilities for these projects.

The absence of two programs from the Department should be noted. The first is a Division responsible for recreation programs. Recreation in the broad sense is directly related to resource management. However, in at least the medium term in the N.W.T., this program is likely to continue to be related to community services and hence most directly relevant to the Department of Local Government. This should be reconsidered in the mid 1980's.

The second exception is an agency specifically designated to be responsible for environmental management. My basic assumption is that environmental management is the result of the integration of the management of the various resources rather than as being a specific role and requiring a specific agency. The relatively limited size of Government operations in

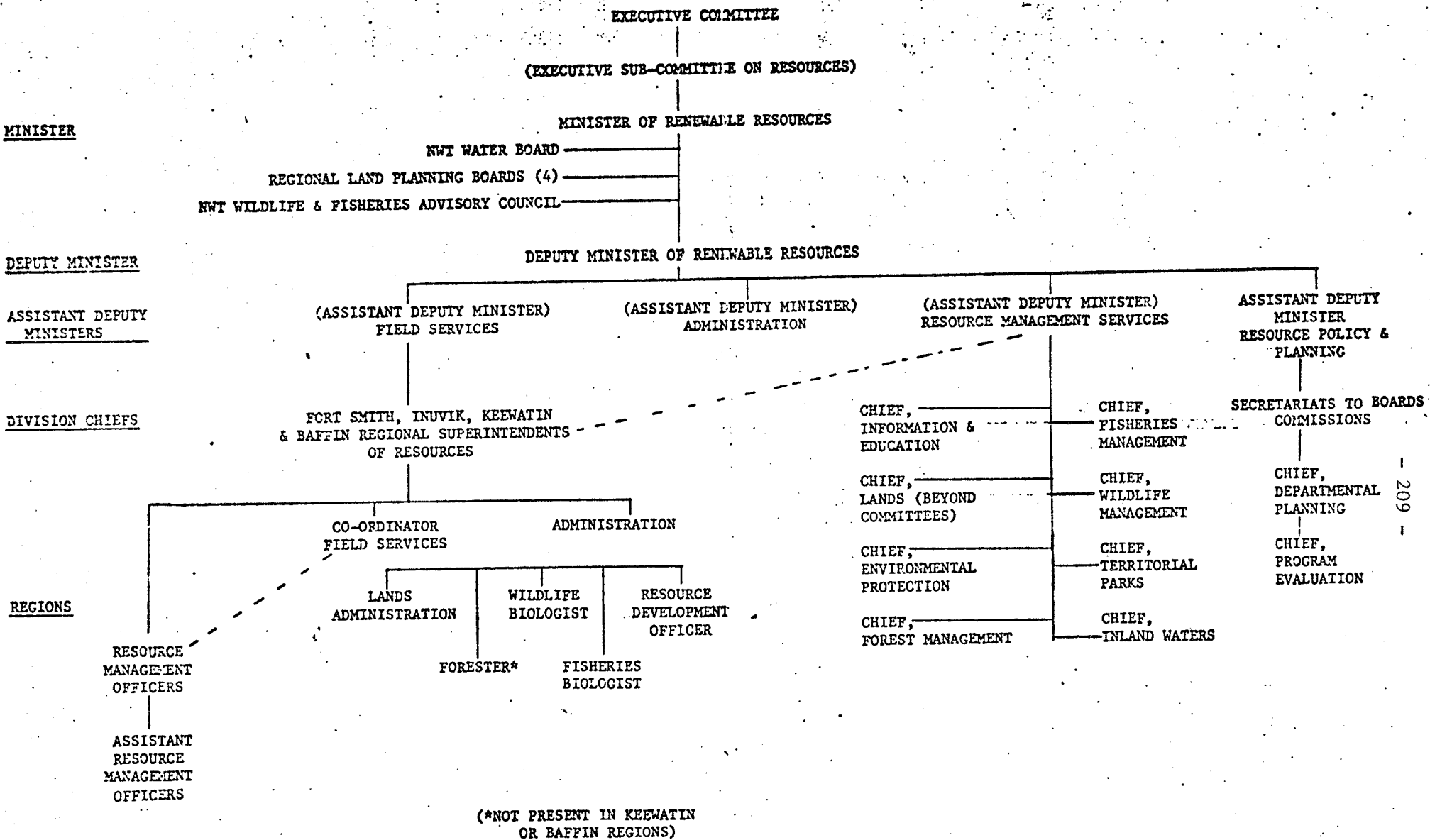


Figure 7: Proposed Department of Renewable Resources, Government of the Northwest Territories.

the resource field in the Northwest Territories at least for the present and foreseeable future, enables a simpler approach than is often used in the Provincial organizations. Line agencies can manage resources and coordinate their activities through interdisciplinary committees, as is presently the case. In addition some Provincial resource managers find that departments structured to coordinate "environmental matters" often simply duplicate services more efficiently provided by line agencies.

#### 6.2.2 *The Executive*

An executive Sub-Committee on Natural Resources is required to create major resource management and development policies, and approve programs and major project proposals when the Executive Committee becomes larger. This Sub-Committee will resolve the current conflicts of interest in DINA that require policy debates relating to people, resource management (conservation), and resource (economic) development to be within a single department. This Sub-Committee should include the Ministers responsible for the Departments of Renewable Resources, Economic Development and Tourism, Local Government, and Social Services. In the short term, the Executive Committee, since it is small and includes all the Departments previously noted, may wish to serve as this policy unit.

A Resource Development Committee (as presently known), or Resource Management Committee of Deputy Ministers chaired by a senior official of the Executive Committee (but not a Minister, or an official tied to any single line department) should support the (political) Executive Sub-Committee on Resources. This division of labor will encourage a balanced approach to the development of resource development programs and policies. The present practice of having a Minister (of Economic Development and Tourism) chair the interdepartmental committee of Directors could be thought to be biased

even if it is not. A neutral forum is required to debate the policy issues at both the directorate and political levels.

Subsequent to the constitutional review and appropriate administrative changes, specialist boards, commissions and advisory groups should report directly to the Minister. These should include the N.W.T. Water Board, the proposed Regional Land Planning boards, (possibly via a central Lands Commission) and N.W.T. Wildlife Advisory Council.

### 6.2.3 *The Directorate*

The agencies presently involved directly with the management of renewable resources in the N.W.T. if transferred would provide a staff to the Department of Renewable Resources of approximately 248 positions, 131 of which are presently headquarters positions and 117 are presently field positions which could be reallocated (with a higher ratio to the field). The total annual operating (non-capital) budget would be approximately \$17.2 million based on the present level of expenditures on these programs. The source of these fiscal and manpower resources is summarized in Table 6. The size of this Department suggests the requirement for 4 Assistant Deputy Ministers (or assistant directors as they are presently called). There should be one ADM for each of the Field Services, Administration, Resource Management Services, and the Resource Policy and Planning Divisions with the reporting relationships as depicted.

The high degree of decentralization requires a strong representation at headquarters of the views of the regional managers in discussions relating to policy and operations. An ADM equivalent to the position heading the headquarters resource managers would provide this.

It is also essential to have a senior official - an ADM - responsible for co-ordinating Departmental planning and program review at headquarters.

TABLE 6

SUMMARY OF NON-CAPITAL FISCAL AND PERSONNEL  
RESOURCES PRESENTLY (1980/81) IN RENEWABLE RESOURCE AGENCIES  
IN THE N.W.T.

Listed by the Proposed Departmental Divisions\*

A. HEADQUARTERS	Non-Capital Budget * (,000)	Person/ Years	B. FIELD OPERATIONS	Non-Capital Budget* (,000)	Person/ Years
Information & Education (DINA & WL)			DINA		
- Wildlife	127	2	- Application of Legislation	650	15
- DINA	113	1	- Inspection	1,044	15
	173	3	- Forest Protection	340	9
Forestry (DINA)			- Construction and Maintenance	270	3
- Forest Management	558	12	- Warehousing	230	4
- Fire Pre-suppression	2,052	15 (+43.5 seasonal P.Y.)	- Consult-Communities	100	2
- Fire Suppression	1,126	0 (+43.5 seasonal)	- Waste Cleanup	50	0
		27		2,684	48
Lands (DINA)			- Inuvik Research Lab	169	5 (to Admin Dept or keep Federal?)
- Land Use	453	7	Wildlife		
- Land Disposition	195	5		2,623	56
- Land-Planning	215	5	Fisheries		
- Administration	75	3		240	8 (estimate)
	938	20		5,716	117
Inland Waters (DINA)	1,253	21	TOTAL - HEADQUARTERS		
Territorial Parks (Eco.Dev.)	170	2.9		11,496	131
Wildlife (Ren.Res.)	1,847	19 (I&E deleted)	TOTAL - FIELD		
Fisheries (DFO)	360	5 (?)		5,716	117
Administration (DINA)			GRAND TOTAL		
- general - renewable & special studies	130	2		17,212	248
- financial operations*	1,753	24	(*NOTE - This does not include policy planning positions and other southern (mainly Ottawa based) positions associated with the management of resources in the N.W.T.)		
- personnel	96	2.5			
- fisheries	40	2 (estimate)			
- wildlife	60	3 (estimate)			
	2,079	33.5			
TOTAL HEADQUARTERS	\$11,496,131	131.4			

\*This does not include personal (staff) costs.

This Division would also provide the basic secretariat support to the boards and commissions that would report to the Minister. To avoid "ivory tower planning" this unit would co-ordinate the efforts of the Departmental planners (that would be located in the Divisions) in interdepartmental planning programs, largely in support of the Resource Development Committee. This would be superior to planning exercises by a separate unit that would have no line resource management responsibilities. This direct contact with line agencies will ensure the planners "keep their feet on the ground".

A Deputy Minister, equivalent to the present departmental Directors, would be the senior public servant.

#### 6.2.4 *Field Services*

The regional headquarters should closely parallel the Territorial headquarters structure. Each of the 4 present administrative regions of the N.W.T. should have a Regional Superintendent (or Director) of Resources as the senior Departmental representative at the regional office who should be supported by specialists in each of the resource areas. The support staff should include a wildlife biologist and technician, a fisheries biologist and technician, and a land administrator. A Regional foresters would be required only in the Fort Smith and Inuvik Regions. The Information and Education, Environmental Protection, and Inland Waters divisions would not be represented by staff in the regions in the immediate future.

At the regional office, a Co-ordinator of Field Services should provide supervisory support to the Area Resource Management Officers and Assistant Resource Management Officers in the communities. The Area Officers would be the Department officials in the communities and enforce all relevant legislation - the one green uniform previously referred to. Specialization

would occur in certain communities where particular resource use patterns require that specialization. Examples of this specialization would be in the field of fisheries enforcement in the Great Slave Lake area and land use inspection in the Mackenzie Delta and high Arctic. However, this specialization would be only functional and not effect the regional organization.

A direct line of responsibility should flow from the Area Officer to the Regional Superintendent to the ADM - Field Services, Deputy Minister and to the Minister.

In the short term (i.e. within two years), it would be desirable to further divide the present administrative regions to include regional headquarters in the central Arctic (Cambridge Bay), the central Mackenzie (Fort Simpson), and Great Slave Lake (Yellowknife).

### 6.3 The Financial Implications of Change and the Approach to Effecting Change

All the resources, fiscal and personnel, depicted in Table 6, excepting 12 positions and an operating budget of \$500,000 in the Department of Fisheries and Oceans, are presently in the GNWT and DINA. The DINA resources should be transferred directly to the GNWT by the Federal Treasury Board, as a result of the present constitutional review, in the same fashion that this occurred when the Territorial public service was created in 1967.

A similar transfer of the Department of Fisheries and Oceans manpower and fiscal resources should occur, on the schedule noted in chapter III. However, there may be considerable resistance to this by DFO because of personnel shortages induced by recent budget cuts and radical re-allocation of resources to meet the Departmental responsibility to enforce the 200 mile offshore limit. An extraordinary request to the Treasury Board by the GNWT will be required to obtain these fiscal and manpower resources either directly



through a transfer or as a separate submission to meet the new responsibilities of the GNWT for fisheries management.

Additional positions and fiscal resources (relating mainly to the planning and policy review or functions) should be requested (in concert with the Yukon) from the DINA establishment in Ottawa since most of their responsibilities should be devolved to the Territories.

In general proposed changes would result in the same expenditures of resources yielding a higher level of service. This is not weighed against "actual requirement" other than in broad quantitative terms noted in the chapter on each resource.

The apparent simplicity of the recommended Departmental organization is deceiving. What the figure does not show is the various administrative structures and processes. Some are now in place and require changes in reporting relationships. Others have to be created to respond to the redefinition of responsibilities.

In addition, people are involved. Change will in general be viewed positively, but nevertheless with apprehension. It will be unsettling to those involved, at least until the "dust settles". Such mundane but essential matters as position descriptions, pay levels and myriad of other matters must be determined. Equipment and facilities must also be sorted out.

Fortunately, there is recent experience, albeit on a reduced scale, which occurred in the late 1960's as the Territorial Civil Service was formed from the former Department of Indian Affairs and Northern Development. Middle and senior management personnel who are directly involved in the programs are "on the ground" in the Territories with the GNWT and the Regional/District DINA offices. They can tackle these organizational problems.

What is required is political direction to identify the general nature and scope of change within a policy framework. It will take a task force to implement the political decisions. The task force should consist of a nucleus of knowledgeable managers from the Federal and Territorial resource management agencies. Besides DINA and GNWT personnel, a representative should be sought from DFO. A major commitment of manpower resources will be required by the Territorial Department of Personnel and, to a lesser degree, by the Department of Finance, to sort out much of the administration of the transfer.

Interdepartmental negotiation will be required to determine the details of the units and support personnel and budgets that are to be re-allocated to the GNWT.

To avoid impasses on differing views on Departmental organization and reporting relationships, a knowledgeable advisor should be retained for periodic consultation during the review. An independent person with senior management experience in government in the natural resource management field should advise the Executive on such matters. It is important to all concerned that an unbiased professional help sort out the inevitable empire building of some of the participants, to help the new Department get off to a good start.

APPENDIX

A FRAMEWORK FOR ASSESSMENT

## A FRAMEWORK FOR ASSESSMENT

### 1.1 Considerations for a Framework for Assessment

A number of factors provided a framework for this assessment of the current approach to renewable resource management in the N.W.T. and for the development and analysis of realistic future options.

The attitude of the Federal Government to political evolution and to jurisdictional change in the N.W.T. in the immediate future was an important factor. The limits of change that the Federal Government is willing to consider are suggested by the terms of reference of the Special Representative and the associated "Political Development..." paper referred to briefly in Chapter 1.

The second factor is the need to accommodate the special rights and privileges relating to the use of renewable resources that the Federal Government will grant to the Native people and their role in the management of these resources. This accommodation is outlined in general terms in the Federal Government's statements of policy on the settlement of Native claims<sup>1</sup> and in detail in the James Bay Agreement and the Inuvialuit-Government Agreement-in-Principle.

A third consideration is the characteristics of each resource and the patterns of its use. These characteristics and patterns of use impose

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<sup>1</sup>The Federal policy for the settlement of aboriginal claims is under review. The policies used to date have been as enunciated by the Hon. Jean Chretien, Minister of Indian Affairs and Northern Development, in a statement on "Claims of Indian and Inuit People," August 8, 1973. Also, "Native Claims: Policy, Processes and Perspectives", Office of Native Claims, D.I.N.A., Ottawa, 1978, Supply Services, Canada with pers. comm., Mr. Keith Crowe, Office of Native Claims, D.I.N.A., Ottawa, March, 1979.

constraints on the institutional and structural responses that can be employed to manage each resource. Coordinated action by several political jurisdictions is often required. For example, a caribou herd cannot be managed effectively by a single jurisdiction if it is shared seasonally not only by several northern communities, but also by regions within the N.W.T. and in some cases by Territories and Provinces.

Two other broad considerations need to advance the objectives of "efficiency, effectiveness and responsiveness"; and, the related requirement for an integrated approach to resource management. Because of the importance of the former as a criteria for political evolution (an institutional response), the ramifications of the terms efficiency, effectiveness and responsiveness in public policy are explored in some detail. The concept and approach to integrated resource management, which is the application of the former criteria in the resource field, is also explored in considerable detail.

#### 1.2 The Efficiency, Effectiveness and Responsiveness Objectives

The jurisdictional and administrative structural responses to the objectives of efficiency, effectiveness, responsiveness and of representativeness that are suggested in the literature are far from consistent or conclusive in stating the degree to which they satisfy these objectives. However, the literature does offer some insight into the associated problems and considerations.

The terms, efficiency and effectiveness seem to be used fairly liberally, often with different implied meanings. The Federal Treasury Board, however uses these terms with specific qualitative and/or quantitative criteria in mind. The terms are usually used in the context of assessing

administrative efficiency and program effectiveness within a system that is decentralized to meet efficiency objectives but centrally coordinated to encourage program effectiveness to achieve social goals as interpreted by the Federal Cabinet.<sup>1</sup>

Although organizational specialization aids attainment of efficiency objectives, a considerably broader view is required to meet effectiveness objectives. The attainment of broad societal goals requires an integrative capacity.<sup>2</sup> Citizen participation may aid responsiveness of government programs and hence the attainment of effectiveness goals. The point is, although citizen participation may appear inefficient because it may delay decision-making, it may ultimately prove to be more effective by taking advantage of local knowledge which may offer practical solutions to problems in the local environment, and by providing a refined definition of client (citizen) needs and preferences. In short,..."responsiveness through reliable feedback is a necessary condition of successful government."<sup>3</sup>

The value of local and regional/Territorial public involvement in the development and implementation of Northern resource policies and programs is particularly apparent in such a large and diverse area as the N.W.T.

Local involvement in operational planning is of limited benefit if the local "publics" do not have the opportunity to influence the major policy decisions. The fact that there are various special interests (local to

<sup>1</sup>G.F. Obaldeston, "Evaluation of Public Programs: Treasury Board Viewpoint", Treasury Board Secretariat, Canada, November 21, 1977.

<sup>2</sup>Government of Ontario, "Citizen Involvement", A working paper prepared for the Committee on Government Productivity, p. 7.

<sup>3</sup>L. Axworthy, "A Public Communication System". A working paper prepared for the Committee on Government Productivity, Government of Ontario, Institute for Urban Studies, (University of Manitoba), October, 1971.

national) in public policy, raises the question of policy responsiveness to whom? How? To what degree? What is the relationship between representativeness and responsiveness?

The Treasury Board states it is to be responsive to the Federal Cabinet which is the responsible authority for determining whose special interests are legitimate, and it determines how and to what degree those interests shall be met. Langford<sup>1</sup> outlined this philosophy as being present where there is a "top down" determination of responsiveness to enable the leadership to maintain control over the Administration.<sup>2</sup> As desirable as central control of overall policy may be to ensure consistent direction in overall policies (including program and policy planning) he identifies the need for mechanisms for public (eg. regions and communities) comment to meet the responsiveness objectives. The Northern equivalent is to create lines of communication for special interest groups such as Hunters and Trappers Associations through their regional and/or Territorial associations to transmit their views to the GNWT Executive Committee on proposed legislation and resource management policies. Langford, in effect suggests that to do otherwise, encourages an approach to policy making that is "bureaucratically oriented...and is the antithesis of a system of participatory democracy...because it is decentralized in only the operational

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<sup>1</sup>John W. Langford, "Transport in Transition: The Reorganization of the Federal Transport Portfolio", The Institute of Public Administration of Canada, (McGill: Queen's University Press) 1976.

<sup>2</sup>The problem of the "top down" direction of policy in Northern situation would appear to be aggravated in the past by the access of special interests to key decision-makers in the Ottawa bureaucracy. See Edgar J. Dosman, The National Interest, The Politics of Northern Development 1968-75, McClelland, 1975. Also, for a general work on the subject see Robert Presthus, Elite Accommodation in Canadian Politics, Cambridge University Press, 1973.

sense."<sup>1</sup>

The problem then, is to develop an approach to resource management that is responsive to the various "publics", who are most directly affected by resource management policies. This also implies the need to protect the interests of future generations who have a vested interest in resource decisions being made by the present generation--a principle embodied in the concept of the integrated approach to resource management.

Unfortunately, according to Verbu and Nie,<sup>2</sup> "responsiveness, as far as we can tell, rarely has been defined precisely, almost never has been measured and never has been related to participation."<sup>3</sup>

Given these limitations, no precise guidelines for responsive systems can be guaranteed to ensure a responsive system to the various special interests through participation in decision-making. However, Smith and Ross<sup>4</sup> suggest several factors that seem appropriate to aid group conflict resolution that may be applicable to the Northwest Territories at this time. They suggest that all interest groups have access to the decision-making process, the resources (physical and moral), and the devices (political and legal) to articulate their needs.

In practical terms, one method of creating access to decision-making would be for the bureaucracy to hire long-term Northerners, and in particular

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<sup>1</sup>Langford, op.cit., pp. 214, 215.

<sup>2</sup>Verbu and Nie, quoted by Heinz Eulau and Paul Karps, "The Puzzle of Representation: Specifying Components of Responsiveness," Legislative Studies Quarterly, Vol.11, No. 3, August 1977, pp. 248.

<sup>3</sup>Eulau and Karps, ibid. p. 248.

<sup>4</sup>D. Smith and V. Ross, "Enhancing Citizen Participation: Improved Decision-Making in Metropolitan Regions", Secretariat Report, Interim Working Paper, Government of Ontario, May, 1973.



Native people.<sup>1</sup> The bureaucracy should also be organized to clearly identify the responsibility centre for the management of various programs at both the administrative and elected levels.

Overriding responsibilities in natural resource issues dictate institutional constraints to either the devolution of authority or decentralization of program administration. The Territorial governments are recipients of delegated authority from Parliament rather than having concurrent authority like the provinces. The Native associates are advancing very rigid and detailed land claim agreements<sup>2</sup> to delineate and protect their place in the Northern and Canadian societies while the Federal Government intends to devolve governmental powers to the Government of the Northwest Territories which should represent all Northern interests.

The Inuvialuit see their interests as being best reflected by a regional municipal form of government.

The theory pertaining to the areal division of power is largely undeveloped, and the Canadian experience with region governments is limited. Some of the relevant literature is referred to below in an attempt to extract a few points that are relevant to conditions in the Northwest Territories.

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<sup>1</sup>This is based on the assumption that direct involvement of a greater proportion of Native people in natural resource agencies would improve responsiveness of programs and policies. This should occur, not only at the operational level in the communities but as well at headquarters to ensure involvement of these people in policy planning and development.

<sup>2</sup>On this subject, Ylvisaker quotes Arthur Macmahon's (ed. Federalism: Mature and Emergent, N.Y., 1955), reference to the reaction of an 'emergent' state places importance "on the assignment of legal guaranties of exclusive powers, whereas in the 'mature' or 'working' stage...the trend and proper emphasis is toward a sharing of power, worked out largely on a pragmatic and informal basis"((in Arthur Mais "Division of Powers: An Areal Analysis" in Area and Power: A Theory of Local Government, Masi, ed. (Glencoe, Illinois: The Free Press) 1959, p. 27.)) Paul Ylvisaker, "Some Criteria for a 'Proper' Areal Division of Governmental Powers", Area and Power: A Theory of Local Government, ibid.

Ylvisaker,<sup>1</sup> in discussing the areal division of power in the United States suggests it should include all governmental powers for component areas for each function rather than partial functions. This is based on the notion that "the specialized instrument tends to disappear over time, because of obsolescence and/or lack of adequate resources of power and support." By contrast, he suggests that having power helps to ensure the "areal components survive and remain effective."<sup>2</sup>

In Canada only Quebec and Ontario have created a fourth tier of government (counties) between the local and provincial governments. A study for the Ontario Government suggested that a regional organization of government can exist through "standardized geographical boundaries" to simplify the problems of coordination between agencies. Further, regional centres can provide a focal point for "client groups"<sup>3</sup> and that the concept is equally valid for Provincial and Federal Government organizations. The problems that were identified are administrative (for example, the administrative requirement of having someone in charge of the regional organization which caused departmental friction --(which department would be 'in charge'). The problems were also political--of 'creating complex new *de facto* political constituencies".

The Ontario report recommends that these problems can be solved through a 'regional committee approach' with there being a chairman with only administrative powers and by the use of the regional offices as

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<sup>1</sup>Ibid, pp. 27-46.

<sup>2</sup>Ibid. pp. 34-36

<sup>3</sup>"Citizen Involvement", op.cit., p. 28.

powerful mechanisms for public involvement. The study envisioned that "these regional offices would not have autonomous authority; they would be linking pins between local communities and the Provincial Government, and could include citizens on problem-oriented subcommittees."<sup>1</sup>

This arrangement would appear to be similar to the authority presently vested in the four regional administrative headquarters of the GNWT.<sup>2</sup> In particular, the roles of the GNWT Regional Directors reflect this division of authority. The present structure could, with certain structural adjustments (relating primarily to public involvement in resource management and education), serve to respond to the administrative (though not political)<sup>3</sup> demands of the Inuvialuit claim and the proposals in the "Political Development..." paper.

Regional Councils such as the Baffin Regional Council have recently become involved as regional forums for reviewing, and providing recommendations for governmental programs and priorities in the region. This has occurred through a Territorial departmental organization that exhibits some line management characteristics from the area office to headquarters. As

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<sup>1</sup>Ibid., p.38. In the next section of this Appendix, the experience of translating this approach into administrative mechanisms for resource management in British Columbia are explored.

<sup>2</sup>In Ontario, this is occurring by increasing unconditional grants, thereby giving "the municipalities the freedom to allocate resources in ways which meet local needs within the framework of overall provincial policies." Government of Ontario, "Interim Report Number Three" by the Committee on Government Productivity, December, 1971, p. 29.

<sup>3</sup>The legislative jurisdiction and policy control requested by the Inuvialuit would require considerable delegation of authority (or direct devolution) to the region from the GNWT or directly from Parliament. The merits of devolution of jurisdictional and policy making authority to a regional government are discussed in this study only as a function of the constraints imposed by the characteristics of each resource.

decentralization has been stressed by the GNWT for the past several years, the Regional Directors have become increasingly autonomous. This is not generally the case with federal agencies which have relatively few staff in the field, particularly in the Keewatin and Baffin regions.

The report to the Government of Ontario recommended that a ministry system be used as the organizational response to attain "productivity, effectiveness, and responsiveness"<sup>1</sup> to permit senior management to set policy, a headquarters function, and ensure implementation of programs by the field organization. They suggested that several adaptations of the concept could be feasible. The first option would be for the ministry to delegate to agencies the responsibility for program delivery. The advantage of this arrangement was seen as being that the ministry could focus on policy and ensure accountability but extract itself from program delivery, thereby taking advantage of the efficiencies of locally oriented program delivery.<sup>2</sup> A second option would involve the use of the same approach except that the agency could provide field services for several ministries as it would not be a unit of any one ministry. A third alternative could involve the program delivery service being contracted with agencies inside or separate from government.<sup>3</sup>

These proposals were put forward for conditions (in Ontario) that vary considerably from those in the Territories. However, the alternatives

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<sup>1</sup>Government of Ontario, "Interim Report Number Three", op.cit., p. 50.

<sup>2</sup>Ibid., p. 6.

<sup>3</sup>In a subsequent report which recommended a strengthening of the municipal role in planning to meet efficiency, effectiveness and responsiveness goals, it essentially suggested the Provincial Government limit its roles to those necessary to protecting the Provincial interests, individual rights, and the settlement of intermunicipal disputes. J. Bossens, "Reforming Planning in Ontario: Strengthening the Municipal Role", Economic Council Discussion Paper Series, 1978.

are certainly worth exploring because of the peculiar circumstances that exist in the Territories that lend themselves to innovative approaches.

These circumstances include:

1. The requirements for the integration of program delivery in small Northern communities suggest the efficiency benefits of an amalgamated program delivery service rather than specialization at the local level.
2. The relatively sparse population of the North (with a limited amount of client demand for any one service) but where a large scope of government programs are required delivered at the local level are conditions that make the combining of program delivery through a field staff of generalists rather than specialists.
3. The goal of involving local residents in resource management in an advisory role through representative and responsible government and also directly as employees in various capacities, suggests a high degree of administrative decentralization is desirable.
4. The presence of non-governmental, local and regional structures for the administration of the special interest of Native people (resulting from the settlement of Native claims), and/or special interest groups such as Hunters and Trappers Associations, present opportunities for government at all levels to contract out certain functions of program delivery.

The presence of specialists in the various resource management disciplines at the regional offices will advance decentralized resource management operational planning that will enable effective program delivery. This will succeed if the regional headquarters structure has an integrative capacity and if there are adequate mechanisms for the various regional special interest groups to influence planning and program delivery. The remaining Territorial (and inter-regional) interests should be represented through the provision of overall policy by the GNWT. However, there should be mechanisms for an upward flow of information and views from the special interests at the local, regional and Territorial levels during the process of policy development.

### 1.3 The Integrated Approach to the Management of Resources

An assumption of this study is that integrated management of natural resources (IMR) in the N.W.T. will advance the efficiency, effectiveness and responsiveness objectives of resource management and will, by definition, aid the achievement of overall societal goals and objectives. The IMR concept has common support from the Territorial and Federal Governments and at least one of the Native Associations.<sup>1</sup> Following is a review of the rationale for the concept and an outline of this approach in operation. The implications of this approach to the options available to the Territories are identified.

#### 1.3.1 *The Need for Integration*

The need to consider multiple values when managing lands has long been recognized by Canadian resource managers. For example, the inter-relationships of the management of wildlife, fisheries, forestry, water and land management are clear. Resource management agencies must provide a comprehensive and coordinated response to resource user needs within a criteria that is ecologically based (which assumes the maintenance of the renewable resources) to ensure the attainment of long-term optimal benefits for society.

The Sub-Committee on Multiple Use for the National committee on Forest Land (of the Canada Land Inventory) defined integrated resource management as:

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<sup>1</sup>C.O.P.E. proposed the concept in its original land claim proposal on behalf of the Inuvialuit. Reference is made to the "preparation of a land use plan with the objectives of integrating renewable resource management," and to "an integrated result of wildlife management and land management" in the "Inuvialuit Land Rights Agreement-in-Principle", op.cit., para.11(2)(a)(i) and 14(1)(b).

The application of management strategies to achieve the maximum output from the optimized use of natural resources of a specific area for the benefit of a referrent-group and its successors.<sup>1</sup>

By definition, this approach to resource management means environmental quality (and the process of environmental management) is simply the result of integrated management rather than a specific role or separate discipline.

The Sub-Committee stated that, to integrate resource management ad hoc administrative responses by government to resource use conflicts and governmental organization along single resource lines must be replaced with "inter-disciplinary, functionally-oriented resource management teams."<sup>2</sup> The important factor identified was the need to shift the focus of the resource managers from the resource base to the resource user. Accordingly, managers of individual resources should be directed toward specific objectives with strategies policies and priorities, using area land-use planning as the mechanism.

The IMR does not necessarily require that all components be within a single provincial department. Indeed, the Sub-Committee noted that there is a federal component to the management of most resources.

Gaus<sup>3</sup> adds a further dimension to IMR by suggesting that the coordination of government activities and agencies must not only be "multi-functional" (i.e., the integration of several functional agencies to meet program objectives), but as well "multi-level" (from the international to local levels) and

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<sup>1</sup>Sub-committee on Multiple Use of National Committee on Forest Land, Toward Integrated Resource Management, A Report. (Ottawa: Queen's Printer, 1970), p. vii.

<sup>2</sup>Ibid., p. ix.

<sup>3</sup>John M. Gaus, Workshop on "How do we improve interdepartmental cooperation for more effective resource management?" Resources for Tomorrow Conference, op.cit., Vol.3, p.264.

"multi-area or jurisdiction" since to succeed in certain programs complementary action may be required by a bordering province or Territory which shares natural resources.

Gallagher<sup>1</sup> suggests that close coordination is required between the development of non-renewable resources, renewable resources and human resources. This seems particularly relevant to the current dilemma of Northern development where there is a national interest in the development of non-renewable resources, in particular, sources of energy, while Territorial Legislative Assembly has a strong interest in all forms of economic development, but also the maintenance of options for traditional life styles with a primary reliance on renewable resources.

The Man and Resources Conferences (1973)<sup>2</sup> actively supported the concept of integral planning while stressing the need for public participation in developing resource management policies.

There is general agreement on the need to practice IMR as a concept, however, the best method of implementing it is not clear and will, without doubt vary, depending on the characteristics of the area being administered.

### 1.3.2 *The Experience in British Columbia and Relevance to the Northwest Territories*

#### What is IMR in Practice?

The Jurisdiction in Canada that is perhaps most committed to IMR is British Columbia. The Province has stated IMR as a goal, recently implemented

<sup>1</sup>D.W.Gallagher, discussant to "Getting longer term perspectives and plans in the administration of renewable resource programs," *ibid.*, p. 280.

<sup>2</sup>"Man and Resources Conference," Proceedings, Canadian Council of Resource and Environment Ministers, 1974.



it in several planning and resource management programs, and has recognized the requirement for it in specific legislation. To date, the results appear mixed although the assessment may be premature. In general, it seems that the approach is highly desirable but the most appropriate mechanisms of implementation are not clear.

In outlining the response of the B.C. Forestry Service to the requirements of IMR, T.M. Aspey (Deputy Minister of Forests) states that "IMR is a requirement rather than a mandate" whereby the Service must manage the resources in its mandate and "must reconcile its production goals with the goals of other natural resource sectors." He indicated that the Service "plans, but is not delegated the responsibility for setting, a Provincial forest land use strategy"<sup>1</sup> which he directs within governmental policy as interpreted by his Minister or Cabinet. In practice, the approach is used to develop "program alternatives (that) will display what is technically feasible so that which is socially desirable can be chosen in relation to what it will cost."<sup>2</sup> He identifies "Land Use Strategy" as a key without which IMR will be chaotic.

The relevance of the IMR approach is that once governmental goals are determined, a framework is set and land use planning is used as the tool to attain those goals. The planning process allows for an integration of the knowledge relating to the use of, and limitations necessary for the maintenance of each resource. The process develops and spells out the implications of broad options; the choice of which is determined by the political process.

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<sup>1</sup>T.M.Aspey, "Resource Management in British Columbia" Integrated Management of Resources, Transactions of a conference sponsored by Resource Industries Programs, Centre for Continuing Education, U. of British Columbia, 1978, pp.14,15

<sup>2</sup>Ibid., p.19.

By outlining the implications of the various courses of action, identification of constituent interests becomes more obvious for the political decision makers who must weigh these values, and other intangibles, to arrive at resource allocation decision. The key is to shorten the technical chain leading to the policy makers and to clearly identify the responsibility centres to ensure accountability. Given the need for flexibility to respond to changing values, the approach is process oriented to ensure its adaptability<sup>1</sup> and to encourage public involvement in planning processes. Public involvement is also encouraged in "the actual management of resources"<sup>2</sup> and aided by continued delegation of resource management to the region level<sup>3</sup> which is directed to meet defined Provincial and regional goals. The ongoing difficulty of balancing local and Provincial interests is recognized.

#### Complimentary Legislation

Complimentary legislation to support this process is used as an essential tool in British Columbia for such things as setting guidelines for environmental impact assessments and the creation of appropriate structures for the review of controversial projects where integrated use studies are required.

In certain cases, legislation has been made to manage single resources

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<sup>1</sup>Dennis R. O'Gorman, "Integrated Management of Resources: Parameters, Problems and Prospects," (Director, Environment and Land Use Committee Secretariat, Ministry of Environment, Province of British Columbia), ibid., p. 23.

<sup>2</sup>Ibid., p. 30.

<sup>3</sup>The dangers of decentralization without policy control in areas of provincial interest in British Columbia are noted subsequently.

to ensure the Administration is directed toward identified public goals. For example, the Ministry of Forests Act "requires a forest and range resources analysis every 10 years" which must contain:

a summary of developments in and question of public policy that are expected to influence significantly and to offset the use, ownership, licensing and management of forest and range resources.<sup>1</sup>

In addition, each year the Forest Service is required to develop "Program Alternatives and Priorities" for the Legislative Assembly, identifying implications for other areas of public policy thereby encouraging responsiveness of the system to public attitudes which is aided by a requirement for public consultation.<sup>2</sup>

#### Problems

O'Gorman<sup>3</sup> identified several problems which tend to work against decision-making in resource management--the concern of the many different publics; the contradictory 'expert' advice; and, uncertainties due to gaps in knowledge. However, the major problem he suggests is an identification of the goals for I.M.R., specifically the economic and environmental policies or specific regional development policies and plans to be addressed by IMR. He suggested some progress has been made in this area as a result of a number of case studies.

In a case study in B.C., Chambers<sup>4</sup> notes one of the first problems

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<sup>1</sup>Aspey, ibid., p.15 (Section 8 of the Act).

<sup>2</sup>Aspey, op.cit., p.16.

<sup>3</sup>O'Gorman, op.cit.

<sup>4</sup>Alan Chambers, "Toward a Synthesis of Mountains, People and Institutions," ibid., pp. 123-152.

identified was that although the private sector evolved horizontally integrated structures to respond to public demand for production possibilities, public sector agencies remained very much oriented toward the management of single resource disputes. The amalgamation of public sector in departments of environment often simply leads to competition for a limited land base and space rather than to an actual integration of management programs. There are periodic structural reorganizations, but no commitment to philosophical change nor commitment to meet the new goals of the department. Hence, no real progress is achieved. Although reporting relationships may be altered, the mandates of the various agencies usually remain essentially unchanged. The N.W.T. is an extreme example of this. There has been little change in agency mandates in the last 10 years except a consolidation of authority by DINA with an increased advisory role for DOE. Chambers felt success would be more likely if the staff could be educated to the need for change and be involved in planning and setting priorities.

#### Organizational Considerations

The structural response Chambers suggests is not simply a lumping of resource agencies into a department of environment but rather he suggests modifying the lines of communication between them and reallocating the responsibilities for decision making based on geographical regions rather than resource discipline. He suggests that the regions should be administered by management teams led by individuals with a vested interest in making planning and management processes function. The need for this is particularly apparent in the N.W.T. where at present, the various agencies often respond to completely different cues and where loyalty to individual agencies seems paramount rather than attainment of resource management objectives.

The structural response to produce IMR in B.C. is outlined by Norrish<sup>1</sup> in his review of the Babine Integrated Management Unit. Regional Resource Management Committees replaced informal inter-sector committees in 1975 on the request of a Standing Committee of Forestry and Fisheries. The Committees include senior officials of the Provincial agencies (of eight Ministries) responsible for lands, water, pollution control, parks, fish and wildlife, forestry, agriculture, non-renewable resources, highways, municipal affairs and health.

The purpose of the Committees which Norrish sees as being of pivotal importance, are to provide a common administrative framework, areas and offices for IMR at the regional level throughout the Province. They are the forum for several agencies to bring to bear their expertise for improving and implementing integrated planning, allocation, development and management of Provincially administered Crown lands and natural resources.

For those matters which cannot be acted upon regionally, recommendations are provided to the Provincial Environment and Land Use Committee, which consists of ministers (with a Secretariat) supported by the Environment and Land Use Technical Committee made up of deputy ministers. In addition, there are "task-focussed" committees of senior headquarters and regional officials for problem analysis and policy coordination.<sup>2</sup>

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<sup>1</sup>Roger Norrish, "The Babine Integrated Management Unit--An Experimental Approach to the Integrated Management of Natural Resources in Northwestern British Columbia," ibid., pp. 153-170.

<sup>2</sup>O'Gorman, ibid., p. 32.

Because of the recent existence of the IMR concept in B.C., Norrish found it hard to assess the success of the exercise but noted the cooperative attitude of the various government agencies to jointly manage the area and in particular, indicated that the procedure led to a greater appreciation of the interests and limitations of the other resource agencies by the participants who attempted to optimize "public benefit" with direct public involvement in resource management decisions. The difficulties encountered in this particular plan were related to the fact that no special manpower or budgetary allowance was made for the process.

#### Public Involvement

Public involvement is allowed for in the B.C. system through workshops, temporary advisory groups and other mechanisms as required. Chambers<sup>1</sup> believes IMR will succeed where public participation is successful and he suggests that public involvement will most likely succeed in the hinterland situation where the people feel most directly affected and where they appreciate the considerations and issues. Where adversary positions are assumed, it will not succeed. The relevance of this statement to resource management issues in the North prior to the equitable settlement of the land claims of the native people are clear as evidenced by the recent land use dispute in the Baker Lake area, and the failure of contingency planning in the Mackenzie Delta.

#### Private Sector View

The private sectors most directly involved in resource management in B.C. support the IMR approach. This seems logical since it encourages a

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<sup>1</sup>Ibid., p. 198

"one window" approach by government in dealing with industry and there is program consistency derived from planning within a predetermined policy framework. Industry is concerned, however, about the exercise of too much authority locally or regionally, presumably because this could lead to a degree of uncertainty. The division in jurisdiction for fisheries was identified as a problem by the forest industry.<sup>1</sup> Bayliff (representing the B.C. Cattlemen's Association) noted that problems have arisen where the IMR approach was used correctly to "achieve local action" but without a "Master Game Plan" suggesting that it is not meant for a policy planning process.<sup>2</sup>

The mining industry, while agreeing with IMR, were concerned about the involvement of regional governments in the resource management field. The Mining Association of British Columbia accepts the notion of the provincial government determines policies for resource use but it is concerned about the potential for conflict between regional government; local governments and the Provincial Government, and agrees with Lanskill's comments regarding fisheries.<sup>3</sup>

#### Regionalization

A significant difference between the approach to IMR in B.C. and the future application of it in the N.W.T. could be that in B.C. the approach

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<sup>1</sup>D.A.S. Lanskill, President, Council of Forest Industries of British Columbia responding on a Reaction Panel, Ibid., pp. 37, 39. This was also identified by Premier Bennett in his opening address, perhaps because it permits the Federal Government to impose its will in respect of the habitat requirements of that particular resource (Bennett, ibid., pp. 5, 6.)

<sup>2</sup>T. Bayliff, ibid., p. 55

<sup>3</sup>R.E. Hallbauer, Vice-President, The Mining Association of British Columbia, ibid., p. 57, 59, 60.

revolves around the management of forestry while in the N.W.T. it would revolve around land management. The main features to be reconciled in the N.W.T. will be non-renewable resource exploration, development and the maintenance of wildlife habitat, water quality and aesthetic values.

Mair<sup>1</sup> identifies the dangers of regionalization or decentralization that has occurred recently in Government of British Columbia when there are no clearly stated goals and policies. This particular problem lead to the serious fragmentation of the B.C. Fish and Wildlife Branch, where power is decentralized and authority delegated. This danger can be averted according to O'Gorman,<sup>2</sup> by clearly enunciating the purposes of management programs. As Gaus recognized, there are several hierarchial levels of planning and decision making (local to international) as well as functional categories, where the respective roles should be clearly stated.

It would appear the latter comments are particularly relevant to the government in Northwest Territories where there are vast areas with considerable diversity, that encourage decentralization and delegation of authority but where territorial wide ties and controls are essential to protect the broader interests.

In summary, the IMR approach is generally accepted as optimal, however the experience in implementing it is recent and limited. The objectives and experience in British Columbia are of some relevance to the N.W.T. Specific

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<sup>1</sup>William Winston Mair, "A Review of the Fish and Wildlife Branch", commissioned by the Ministry of Recreation and Conservation, Government of British Columbia, pp. 10, 13.

<sup>2</sup>O'Gorman, op.cit., p. 94



conditions that seem appropriate to applying the IMR approach in the N.W.T. include:

1. The focus of IMR in the N.W.T. as elsewhere should be on the resource user (rather than the resource) while ensuring the maintenance of each resource.
2. Line resource management agencies should develop strategies to meet resource use targets set within broad policies of elected officials duly influenced by the various 'publics' who have access to both operational, program and policy planning exercises. The line agencies should have forums to determine common resource use objectives at the headquarters and regional levels, and the performance of resource managers should be assessed in terms of their ability to meet overall resource management objectives.
3. Land use planning should be the forum for integrated resource use planning and management.
4. Resource management legislation should require periodic reports by the Administration to the Legislative Assembly (or appropriate Committee) and in certain cases, also to recognized special interests. The legislation should also require consideration of other resource values are to be made for the allocation of natural resources.
5. Common administrative regions should be established by all (Federal and Territorial) resource management agencies and sufficient professional expertise should be located at these centres to enable competent resource use planning. Inter-sectoral committees at the regional offices should be chaired by the senior resource management official.
6. Specific manpower and budgetary resources should be identified to implement and maintain the IMR approach, including the public consultation.
7. Firm policy guidance from a committee of Ministers is essential to direct senior executive action (Departmental Directors--Deputy Ministers) as well as regional officials to avoid serious fragmentation of the regions and erosion of interests beyond the regions.

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